

Federal Annual Monitoring and Evaluation (FAME) Report

State of Minnesota

**Minnesota Department of Labor and Industry
Occupational Safety and Health Division**

October 1, 2008 to September 30, 2009

Report Prepared By:



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I. EXECUTIVE SUMMARY

A. INTRODUCTION

The Minnesota Department of Labor and Industry (DLI) administers the Minnesota Occupational Safety and Health (MNOSHA) program. The program became effective on August 1, 1973, with final State Plan approval obtained on July 30, 1985. MNOSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for Compliance Program administration (conducting enforcement inspections, adoption of standards, and operation of other related OSHA activities), and the Workplace Safety Consultation (WSC) Division, which provides free consultation services on 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 make Minnesota's workplaces the safest in the nation. MNOSHA is striving for the elimination of workplace injuries, illnesses, and deaths so that 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.

The Minnesota Occupational Safety and Health Strategic Plan for FY 2009 to FY 2013 established three strategic goals: 1) Reduce occupational hazards through compliance inspections, 2) Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership, and 3) Strengthen and improve MNOSHA's infrastructure. The FY 2009 Performance Plan provided the framework for accomplishing the goals of the MNOSHA Strategic Plan by establishing specific performance goals for FY 2009.

This Enhanced FAME report is a Baseline Special Evaluation of the MNOSHA program and represents a review of the strategies used and results achieved in FY 2009.

B. SUMMARY OF THE REPORT

The purpose of this report is to assess the State's progress towards achieving their performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan and to review the effectiveness of programmatic areas related to enforcement activities. This report incorporates a Baseline Special Evaluation of the State's 23(g) enforcement program and compares the State's program to Federal OSHA.

In accordance with then-Acting Assistant Secretary Jordan Barab's memorandum dated November 24, 2009, this Federal Annual Monitoring and Evaluation (FAME) report is a Baseline Special Evaluation of the Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) program. A four person Federal OSHA team was assembled to accomplish the special study, opening the evaluation onsite at MNOSHA in St. Paul, Minnesota, on January

11, 2010. The OSHA team's evaluation consisted of case file reviews and review of MNOSHA's performance statistics in accordance to Federal performance, focusing on areas not recently reviewed, such as the operation and outcome of MNOSHA contested case review procedures. The special study of the MNOSHA program focused on FY 2009 enforcement activities. This report is also an assessment of the State's progress towards achieving their performance goals established in their Fiscal Year (FY) 2009 Annual Performance Plan and to review the effectiveness of programmatic areas related to enforcement and consultation activities.

A detailed explanation of the findings and recommendations of the MNOSHA Special Study is found in the Mandated Activities, Section IV. B. of this report. The summary of all the findings and recommendations noted as the result of OSHA's study is found in Appendix A, Findings and Recommendations, of this report.

Quarterly monitoring team meetings were held during FY 2009 at which time the State Activity Mandated Measures (SAMM) and State Interim Indicators Report (SIR) were reviewed and discussed with MNOSHA Compliance staff. Any identified discrepancies were analyzed and reported to Office of Management Data Systems (OMDS) for correction to assure that the data is complete, accurate, and useful.

The Annual Performance Plan results, reported by Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) in the State's OSHA Annual Report (SOAR), indicate that the program has made advancements towards achieving its three strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed, and the results are identified in this report. The mandated activities have also been reviewed, and the results are presented in this report.

Most noteworthy are the employees' and next-of-kin contest rights and right to request a consultation with MNOSHA, in accordance with MN Stat.182.661 and Minnesota Rules Chapter 5210. After receiving the properly filed notice of contest from either employees or fatality victim's next-of-kin, 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

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. MNOSHA sends copies of specified documents related to a fatality investigation to the victim's next-of-kin. These documents are as follows.

1. The Citations and Notification of Penalty
2. Notices of Hearings
3. Complaints and Answers
4. Settlement Agreements
5. Orders and Decisions
6. Notice of Appeals

The next-of-kin have 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.

Also noteworthy in assessment of the State's progress in achieving their annual performance goals is Performance Goal 1.2. The FY 2009 target is a reduction in the State's fatality rate from the previous five-year average for Calendar Year (CA) 2003 – 2007, which was .940. The CY 2008 State's fatality rate achieved was .440, a 52% reduction. There were 18 fatalities in CY 2009, and that number will be used to calculate the rate for FY 2010.

Federal OSHA received and investigated two Complaints about the State Program Administration (CASPA) during FY 2009. It has been determined that MNOSHA followed the appropriate process and procedures. Federal OSHA's review found that the State's action regarding these complaints were proper, timely, and appropriate.

C. METHODOLOGY

An on-site review of the Minnesota OSHA workplace safety and health program was conducted from January 11, 2010 to January 20, 2010. Thirteen fatality inspection case files were evaluated. Nineteen inspection cases comprising of nine safety and 10 health were also selected randomly for review. In addition, 20 randomly selected complaint investigation cases comprised of eight safety, nine health and three combined safety and health. Five additional cases with current penalties in excess of \$50,000 were identified and evaluated. All 57 cases occurred from October 1, 2008, through September 30, 2009.

In addition to reviewing the above cited case files, the study team reviewed data gathered from Minnesota OSHA inspections conducted from October 1, 2008 – September 30, 2009, 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 to administer its program and by the State and OSHA to monitor the program, was examined. Compliance with legislative requirements regarding contact with families of fatality victims, training, and personnel retention was assessed.

The review also included interviews with Minnesota's management and compliance staff. Comments from various stakeholder groups were also collected.

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

D. FINDINGS AND RECOMMENDATIONS

As a result of the review, several findings and recommendations are being made for program improvement. A list of all findings and recommendations, by subject area, is also included in the Appendix A of this report.

1. **Finding:** 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. (p.18)

Recommendation: 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.

2. **Finding:** For fatality investigations, the form OSHA-170 (Accident Investigation Summary) was not filled out in adequate detail. (p.19)

Recommendation: 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.

3. **Finding:** Data Initiative inspections were conducted without information contained in the file to explain the compliance officer’s discussions on site as they 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. (p.22)

Recommendation: Ensure that compliance officers 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.

4. **Finding:** 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. (p.22)

Recommendation: Ensure the determinations for violation classification as “other-than-serious” are independent of OSHA recordability requirements.

5. **Finding:** In 41% of the cases reviewed, penalty reduction recommendations for good faith credit were applied at levels higher than warranted. (p.23)

Recommendation: Ensure good faith credit is applied and documented appropriately in the case files.

6. **Finding:** Of the 57 cases reviewed, abatement documentation for corrective action following inspections was not requested by MNOSHA in any circumstance. (p.25)

Recommendation: Ensure, when required, that documented proof of abatement is

received.

7. **Finding:** 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.(p.26)

Recommendation: 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.

8. **Finding:** Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests. (p.26)

Recommendation: Ensure that PMA requests contain all the required information before accepting the requests and extending the [abatement] dates.

9. **Finding:** Minnesota On-Site Consultation conducts consultation visits and VPP evaluation visits concurrently with MNSTAR [VPP] staff funded with the 23(g) grant. (p.42)

Recommendation: Ensure Consultation functions are conducted by 21(d) funded employees and that VPP evaluations are conducted separately with 23(g) employees.

10. **Finding:** For corporate VPP applications, one application is being submitted for both the corporate and other locations. (p.42)

Recommendation: Ensure each work site applying for MNSTAR participation submits an application applicable to each work site.

11. **Finding:** 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. (p.42)

Recommendation: Ensure all applications of contractors working at work sites 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.

II. SUMMARY OF RECOMMENDATIONS & STATE ACTIONS - FY 2008 FAME

The Annual Performance Plan results, reported by the Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) in the State’s OSHA Annual Report (SOAR), indicated that the program made significant advancements towards achieving its three strategic goals. Evaluations of the FY 2008 progress toward goal achievements were reviewed, and the results were identified as meeting or exceeding the State’s overall Performance Plan.

Noteworthy to mention, FY 2008 Performance Goal 1.2: Reduction in the State’s fatality rate for CA 2008 by four percent. MNOSHA Compliance exceeded this goal for the first time in the fifth year of their Five-Year Strategic Plan. There were 12 fatalities in CA 2008, the lowest number of fatalities since 1988 when MNOSHA first began tracking data via computer.

The State’s overall implementation of its enforcement program and the FY 2008 Performance Plan provided the framework for accomplishing the goals of the MNOSHA Strategic Plan in FY 2008.

III. NEW MAJOR ISSUES

In FY 2009, MNOSHA developed a strategy to maintain consistency and quality throughout the organization's field staff. Two goals were identified.

- To assure that MNOSHA has an adequate workforce to ensure that construction worksites are complying with MNOSHA safety and health regulations, and
- To assure that MNOSHA continues to be an organization that is recognized as a "best-in-class" State Plan State.

MNOSHA has been able to consistently recruit staff. Additionally, stakeholders have come to expect the MNOSHA program to be a highly-functioning organization with strong leadership and experience.

The Current Workforce Analysis and the Future Workplace Analysis, including likely retirements, determined that an organizational change was necessary to ensure that future MNOSHA management staff will be able to continue the tradition of effective and consistent enforcement of safety and health standards. A key element of the reorganization plan is to create opportunities for current staff members to develop leadership skills by taking on additional responsibilities, special projects, and networking opportunities.

The reorganization plan, developed in FY 2009, is being implemented in FY 2010. The plan eliminates the Construction Division and includes restructuring of the investigative field staff into four units with similar numbers and disciplines of staff in all four units. The four new units will be the North, Central, Southeast and Southwest units. All units will have a portion of the Metropolitan Area. The division of counties will be determined by the number of inspections conducted historically. Each unit will have approximately three industrial hygienists and nine safety investigators who will conduct both construction and general industry inspections.

Additionally, a fifth unit will be developed consisting of team leads that include both senior safety investigators and industrial hygienists. This unit will conduct informal conferences, mentoring, and case file review. The reorganization plan did not result in a reduction in investigative staff nor in staff relocation.

While developing this report, Federal OSHA took the opportunity to interview key players, including employer and labor representatives in the safety and health community of Minnesota. One concern, raised during those interviews, was the recent consolidation of the construction inspectors and Construction Division into the general industry units. Federal OSHA's review of this reorganization plan shows the new management system and office boundary jurisdiction responsibility to be following the Federal OSHA system. The reorganization plan did not result in a reduction or an increase in investigative staff or in staff relocation, and as a result, the reorganization plan did not require a change of the already approved FY 2010 grant application.

The State's Strategic Plan was amended in FY 2009, and Performance Goal 2.1a was changed. The FY 2009 target is to increase the number of Partnerships by one from the baseline of three. Some Partnerships that were in effect in previous years have ended. Therefore, beginning with the FY 2010 performance plan, MNOSHA will eliminate a baseline entirely and add "one new" Partnership each year through FY 2013. In FY 2009, MNOSHA did not enter into any Partnerships.

IV. ASSESSMENT OF STATE PERFORMANCE

Through its Annual Performance Report, MNOSHA has provided information that supports positive performance in the accomplishment of meeting their Five-Year Strategic Plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. Challenges transpired because of rule, policy, and procedural changes as well as technology improvements resulting in positive achievements.

Information provided by MNOSHA has been reviewed and analyzed to assess its accuracy in meeting Performance Plan goals and the overall accomplishment of the first year of their Five-Year Strategic Plan.

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

The following summarizes the activities and/or accomplishments for each of the FY 2009 performance goals.

MNOSHA Compliance (OSH) Goal #1

Performance Goal 1.1: Reduce total recordable cases: Target reduction in Total Recordable Cases (TRC) from the previous five-year average.

Results: This goal was met.

Discussion: The FY 2009 target is a reduction in the TRC rate from the previous five-year average for CY 2003 – 2007, which was 5.12. The CY 2008 TRC rate achieved was 4.2, an 18% reduction. MNOSHA Compliance met this goal and continues to review new information to redefine scheduling approaches to reduce injury and illness rates.

Performance Goal 1.2: Reduction in State fatality rate: Target reduction in State fatality rate from the previous five-year average.

Results: This goal was met.

Discussion: The FY 2009 target is a reduction in the State's fatality rate from the previous five-year average for CY 2003 – 2007, which was .940. The CY 2008 State's fatality rate achieved was .440, a 52% reduction. There were 18 fatalities in CY 2009, and that number will be used to calculate the rate for FY 2010. MNOSHA Compliance continues to address workplace fatalities in its outreach materials and during construction breakfast meetings.

Performance Goal 1.3: Total hazards identified / establishments visited

Results: This goal was met.

Discussion: The FY 2009 target is to maintain the previous five-year average for FY 2003 – 2007, which was 4919 hazards identified / 2619 establishments visited.

In FY 2009, MNOSHA investigators conducted 2,717 inspections where 4944 hazards were identified and cited. Seventy-two percent (72%) of the inspections conducted resulted in violations; 77% of violations were cited serious.

Performance Goal 1.4: Percent of designated program inspections

Results: This goal was met.

Discussion: The FY 2009 target is to maintain the previous five-year average for FY 2003 – 2007, which was 85% of all inspections conducted are programmed inspections. MNOSHA conducted 2,717 inspections with 88% opened as programmed inspections. MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries.

MNOSHA Compliance (OSH) Goal #2

Performance Goal 2.1a: Increase Partnerships by one.

Results: This goal was not met.

Discussion: The FY 2009 target is to increase the number of Partnerships by one from the baseline of three. In FY 2009, MNOSHA did not enter into any Partnerships. Some Partnerships that were in effect in previous years have ended. Therefore, beginning with the FY 2010 Performance Plan, MNOSHA will eliminate a baseline entirely and add “one new” Partnership each year through FY 2013.

Performance Goal 2.1b: Increase VPP MNSTAR participants by four.

Results: This goal was met.

Discussion: The FY 2009 target is to increase the number of VPP MNSTAR participants by four with 26 identified as the baseline. Currently, there are 37 employers in the MNSTAR program, with 11 granted initial certification (five Star employers and six Merit employers), during FY 2009.

Performance Goal 2.1c: Continue to identify compliance assistance opportunities.

Results: This goal was met.

Discussion: In FY 2007, the Minnesota Legislature approved additional State dollars to support 50% funding for 12 positions within the MNOSHA Compliance Division. Although Federal OSHA did not provide matching dollars, six positions were added using 100% State funding. In FY 2009, one of these positions was designated a compliance assistance focus to develop and maintain partnership agreements and assist in educating Minnesota employers on the hazards of combustible dust.

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

Results: This goal was met.

Discussion: The FY 2009 target is to maintain the previous five-year average for FY 2003 – 2007, which was 2,785 participants per year participating in outreach training sessions covering various subject areas. MNOSHA Compliance exceeded the goal for FY 2009 by conducting 93 presentations to 3,952 participants; this is 41% above baseline.

Performance Goal 2.3: Homeland Security – Participate in Homeland Security efforts at State and National levels.

Results: This goal was met.

Discussion: The FY 2009 target is to maintain the baseline as an on-going performance. The MNOSHA Compliance Program continued to participate on the State Emergency Response Team. One director attended seven MN Department of Public Safety, Homeland Security and Emergency Management (HSEM) division meetings, one Region V conference call, and nine Federal OSHA Homeland Security conference calls. Spring flooding in Northwest Minnesota followed by H1N1 outbreaks were the subjects of most of these meetings. Minnesota OSHA helped to deliver several boxes of outreach material on flood safety, provided by Federal OSHA.

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

Results: This goal was met.

Discussion: The FY 2009 target is 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 e-mails. During FY 2009, these two positions responded to approximately 1229 phone calls and 3979 written requests for assistance, primarily e-mails. The majority of these inquiries were answered within one day.

MNOSHA Compliance (OSH) Goal #3

Performance Goal 3.1: Review rules annually for effectiveness: ongoing evaluation, development of rules, standards, guidelines and procedures.

Results: This goal was met.

Discussion: A new five-year directive revision schedule has been developed to coincide with the FY 2009- 2013 Five-Year Strategic Plan. The baseline is ongoing with the goal of achieving progress each year toward conducting an annual review of the rules, standards, guidelines and procedures, with 100% of directives being updated in the five-year cycle.

Performance Goal 3.2: Maintain workforce development and retention plan.

Results: This goal was met.

Discussion: The FY 2009 target is to maintain the baseline as an on-going performance. Minnesota OSHA developed a workplace plan, which included the following eight step process.

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

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

Results: This goal was met.

Discussion: The FY 2009 target is to maintain the baseline as an on-going performance. MNOSHA's continuing process improvement actions include monthly meetings with solicitors (Assistant Attorneys General). The status of pending cases is discussed, litigation strategy is reviewed, and verification with records maintained by MNOSHA is done. An on-line calendar of pending activity, such as depositions or administrative hearings, was established in FY 2009. Staff and supervisors are notified of upcoming activity on their litigated case files.

IV. B. Assessment of State Performance on Mandated and Other Related Activities

Activities mandated under the Occupational Safety and Health Act are considered core elements of Minnesota's Occupational Safety and Health program. The accomplishment of these core elements is tied to achievement of the State's strategic goals. Many mandated activities are "strategic tools" used to achieve outcome and performance goals.

"Mandated activities" include program assurances and State activity measures. Fundamental program requirements that are an integral part of the MNOSHA program are assured through an annual commitment included as part of the 23(g) grant application. Program assurances include the following.

IV.B.i. Enforcement

IV.B.i.a. State Activity Mandated Measures (SAMMs)

State Activity Mandated Measures Report (SAMM) for Minnesota covering the period October 1, 2008 through September 30, 2009 - The following is a summary of State's performance on the major issues covered in the SAMM. Five of 15 measures were not met.

Measure		State Data	Reference Data	Comment
1. Average number of days to initiate complaint inspections		3.21	9	Met
2. Average number of days to initiate complaint investigations		1.20	2	Met
3. Percent of complaints where complainants were notified on time		100%	100%	Met
4. Percent of complaints and referrals responded to within one day		100%	100%	Met
5. Number of denials where entry was not obtained		1	0	Not Met A warrant for entry was obtained; however, when the OSHI returned to the establishment, all operations were shut down indefinitely so the file became a no inspection – process not active.
6. Percent of S/W/R violations verified	Private	66.65%	100%	Not Met Addressed in detail in this report. MNOSHA has continued to concentrate efforts to address verification of abatement.
	Public	83.47%		
7. Average number of calendar days from opening conference to citation issuance	Safety	22.71	43.8	Met
	Health	33.14		
8. Percent of programmed inspections with S/W/R violations – safety	Safety	68.27%	58.6%	Met
	Health	57.52%	51.2%	Met
9. Average violations per inspection with violations	S/W/R	1.94	2.1	Met - Goal is considered met; it is just slightly under the reference.
	Other	.54	1.2	Met
10. Average initial penalty per serious violation – private sector only		\$728.23	\$1,335.20	Not Met The average initial penalty per serious violation decreased.
11. Percent of total inspections in public sector		3.47%	2.3%	Met
12. Average lapse time from receipt of contest to first level of decision		139.62	246.1	Met
13. Percent of 11c investigations completed within 90 days		100%	90%	Met
14. Percent of 11c complaints that are meritorious		11.54%	20.8%	Not Met The percent of merit cases increased in FY 2009 from FY 2008.
15. Percent of meritorious 11c complaints that are settled		66.67%	86.1%	Not Met The discrimination staff continues to work to settle merit cases.

OSHA held quarterly monitoring meetings with MNOSHA during FY 2009 at which time the SAMMS were reviewed and discussed with MNOSHA management staff. Goals of concern not met were addressed throughout the year by MNOSHA. Through effective resource utilization and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. Performance measure #6 is addressed in detail in Section VIII.B.i.g. of this report. Performance measure #10: In 41% of the cases reviewed through this Baseline Special Evaluation of the MNOSHA program, penalty reduction recommendations for good faith credit were applied at levels higher than warranted. See Section VIII.B.i.f. of this report.

IV.B.i.b. Complaints

During FY 2009, MNOSHA received a total of 475 complaints, of which 217 (46%) were formal and 258 (54%) were non-formal. During the same period Federal OSHA received a total of 17690 complaints, of which 7162 (40%) were formal and 10528 (60%) were non-formal. Minnesota's percentages of formal complaints, complaints inspected vs. complaints received and addressed as non-formal investigations are similar with OSHA. The average number of days to initiate a complaint inspection in FY 2009 was 3.2, well below the negotiated standard of nine days. The average number of days to initiate a complaint investigation was 1.2, well below the negotiated standard of two days. OSHA randomly selected 20 complaint investigations for review during this Baseline Special Evaluation of the MNOSHA program.

MNOSHA was not required to adopt OSHA's Complaint Policies and Procedures (CPL 02-00-140) but was required to have at least as effective enforcement policies in place. MNOSHA developed its own complaint process specified in its own administrative instruction ADM 3.16A Administrative Procedures for Handling Complaints and Information Requests. It outlines the policies and procedures for processing formal and non-formal complaints. MNOSHA's complaint process for formal complaints is similar to the Federal process with one exception. MNOSHA considers electronic complaints obtained through the Federal complaint system as a formal complaint instead of a non-formal complaint. The reasoning behind considering them formal complaints is that the complainant must select that they are a current employee. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items. In some instances, the complainant may elect to process the complaint non-formally to address the issue, such as in sanitation complaints or complaints with low severity.

MNOSHA's non-formal complaint processing does differ from the Federal program in several areas. As with the Federal program, with the occurrence of a serious injury, information obtained by telephone, email, or fax will normally be scheduled for inspection. MNOSHA developed a specific administrative instruction outlining the process for these serious injury events (ADM 3.18 – Serious Injury Inspection Procedures). However, non-formal complaints or information alleging hazards covered by a local or national emphasis programs are not scheduled for inspection, whereas Area Directors in Federal offices can activate these complaints for inspection. Though many of the complaints received by MNOSHA covered by local or national emphasis programs are investigated, OSHA recommends MNOSHA's review of OSHA's criteria for warranting inspections.

Another difference between the Federal program and MNOSHA's complaint process deals with the outcome of non-formal complaint investigations. MNOSHA does not send a letter to the complainant at the conclusion of the investigation to inform them of the outcome.

Following complaint inspections, complainants are mailed a letter informing them of the inspection 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 order. This is the result of a court decision called the *Westrom* decision. In this court case, the Minnesota Department of Labor and Industry was prohibited from making public inspection results prior to citations becoming final order. The statute also prohibits the complainant from receiving a copy of the citations when issued.

During FY 2010, OSHA's Complaint Policies and Procedures were incorporated into the Field Operations Manual (CPL 02-00-148) where MNOSHA will now be required to have similar complaint policies and procedures. OSHA will work with MNOSHA to address the requirements of this Federal Program change including overcoming the limitations of the *Westrom* decision.

Three of 17 cases or 18% of non-formal complaint responses 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.

Findings and Recommendations

Finding 1: Nonformal complaint responses 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.

MNOSHA requirement: ADM 3.16 Administrative Procedures for Handling Complaints and Information Requests section V.A.: *'An adequate response to a nonformal complaint is one in which the employer provides sufficient information to show that abatement of the alleged hazard has occurred or the lack of any hazard.'*

Status: Contrary to MNOSHA requirements

Recommendation 1: Ensure an adequate response to a nonformal 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.

IV.B.i.c. Fatalities

A total of 18 fatalities were reported to MNOSHA in FY 2009, of which 17 inspections were conducted. The Serious/Fatality Log was reviewed and contained adequate documentation on why an inspection was not conducted when the jurisdictional determinations were made. Of the 17 inspection files, 13 were either issued or closed as final order at the time of this Baseline Special Study and were reviewed by the Federal OSHA team. The files reviewed contained excellent documentation and appropriate violations were issued related to the fatality. In the cases where citations were issued, the documentation was complete and supported the citations. In addition to the case file reviews, the evaluation process included interviews with MNOSHA management personnel and employee staff. The interviews supported the evaluation team's case file review findings.

Fatality information is recorded in MNOSHA's information system, MOOSE (Minnesota OSHA Operations System Exchange). All fatalities are entered into the Serious/Fatal Log. Each entry is reviewed by a supervisor who determines if the fatality falls within MNOSHA's jurisdiction. The supervisor can assign a fatality for inspection from the log, at which time an OSHA-36 Fatality/Catastrophe form is generated. Generally, non-jurisdiction fatalities are not inspected and an OSHA-36 is not generated.

MNOSHA has statutory requirements and internal policies regarding notifying the next-of-kin for fatality investigations. MNOSHA has a statutory requirement (Minn. Stat.182.6545) to locate the next-of-kin and the next-of-kin has the right to request a consultation with MNOSHA regarding citations and notification of penalties issued as a result of an employee's death. Additionally, MNOSHA ADM 3.19F requires a condolence letter be sent to the next-of-kin. All fatality case files from FY 2009 indicated the letter was sent, and the file contained a copy.

After the issuance of the initial next-of-kin letter, MNOSHA generally does not communicate with the next-of-kin unless MNOSHA is contacted by them. Contact with the next-of-kin is generally kept at the supervisory/management level. Compliance officers typically do not communicate with the next-of-kin.

During the 2000 session, the legislature amended the Minnesota Occupational Safety and Health Act by adding a new section which requires MNOSHA to send copies of specified documents related to a fatality investigation to the victim's next-of-kin. A copy of the following documents must be sent to the next-of-kin:

1. The citations and notification of penalty
2. Notices of hearings
3. Complaints and answers
4. Settlement agreements
5. Orders and decisions
6. Notice of appeals

The next-of-kin also have 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.

In six of 13, or 46% of the fatality investigation files, the form OSHA-170 was not filled out in adequate detail.

Findings and Recommendations

Finding 2: For fatality investigations, the form OSHA-170 (Accident Investigation Summary) was not filled out in adequate detail.

MNOSHA requirement: MOOSE Manual: *'Investigation Description (Abstract). Provide a brief description of the event. The purpose of this summary is to provide readers (including those outside of MNOSHA) with a general idea of what happened.'*

OSHA requirement: Fatality/Catastrophe Investigation Procedures CPL 02-00-137 section V.A.1: *'states are **required** to complete the OSH- 170 (see paragraph XVI.B) **only for***

fatalities, this is OSHA's means for counting fatalities investigated' And section XVI.B.2: 'The OSHA-170 narrative should not be a copy of the summary provided on the OSHA-36 pre-investigation form. The OSHA-170 narrative must comprehensively describe the characteristics of the worksite; the employer and its relationship with other employers, if relevant; the employee task/activity being performed; the related equipment used; and other pertinent information in 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.'

Status: MNOSHA requirements are contrary to Federal OSHA requirements.

Recommendation 2: 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.

IV.B.i.d. Targeting and Inspection

MNOSHA conducted 2,717 inspections with 88% opened as programmed inspections. 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 2.1-10A Scheduling Plan for Programmed Inspections.

MNOSHA has developed targeting lists to address Strategic Plan hazards and industries for programmed inspections. MNOSHA's Program Administration unit is responsible for collecting data and developing targeting lists for inspection under the various National and Local Emphasis Programs.

MNOSHA participates in several National Emphasis Programs (NEPs). These include Amputations; Combustible Dust, and Silica; Lead in General Industry and Construction; Process Safety Management; and Trenching.

Federal OSHA's Data Initiative information is also used by MNOSHA to develop its own Local Emphasis Program (LEP) to address employers with high injury and illness rates. MNOSHA also used data from Minnesota's Department of Employment and Economic Development and Workers' Compensation unit. Employers with high compensation claims and whose SIC/NAICS codes are identified in the State's Strategic Plan will also be scheduled for an inspection.

Other LEPs include but are not limited to Foundries, Nursing Homes, Meat Packing, Serious Injury, Tree Trimming and Removal, Hexavalent Chromium, and Asthma.

MNOSHA's procedures for scheduling construction inspections are outlined in Minnesota's Notice, Scheduling Plan for Programmed Inspections (ADM 2.1-10A, 10/14/2009). The primary scheduling methods for construction inspections come from the University of Tennessee data 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, 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 7,500 square feet,

multiple equipment operation – crushing hazard or struck-by hazard, or roofing work equal to or greater than 14 feet from the eave to a lower level.

Of the 2,398 programmed inspections, 2,387 were coded as programmed planned while six were coded as programmed-related and five were coded as programmed-other indicating Federal record-keeping audits.

Of the 2,717 inspections conducted during the review period, 1,959 (72%) inspections resulted in citations. Of those, 64.4% resulted in the issuance of serious, willful or repeat violations. Comparatively, Minnesota's percentage of inspections with citations is higher than the average for all State Plans, which was 62%, and higher than that of Federal OSHA, which was 70%. Seventy-seven percent of the citations Minnesota issued during the review period were serious, which is higher than the percentage for all State Plans, which was 62%, and lower than Federal OSHA's 87%. For FY 2009, Minnesota's performance was calculated at 64.48% of Not-in-Compliance (NIC) programmed safety inspections with S/W/R violations, which is above the national (Federal and State data) average of 58.6%. For NIC programmed health inspections, Minnesota's performance was calculated at 45.06% inspections with S/W/R violations, which is lower than the national average of 51.2%.

Violations per Inspection

During FY 2009, Minnesota issued a total 2,288 violations with 1,763 (77.1%) classified as serious, six (0.3%) classified as willful, nine (0.4%) classified as repeat, and 509 (22.2%) classified as other-than-serious. Comparatively, Minnesota's percentage of violations classified as serious is higher than the average of 43% for all State Plans and in line with that of Federal OSHA's 77%.

Hazard Identification

In FY 2009, MNOSHA investigators conducted 2,717 inspections where 4944 hazards were identified and cited. The 63 inspection files audited contained sufficient information documenting the hazards identified during the inspections. There are no hazard identification outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities evaluated.

Violation Classification and Grouping

Documentation of the violation classifications along with the grouping of violations were appropriate and deemed similar to OSHA. Non-serious (other-than-serious) violations are classified by MNOSHA 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.

Under the Federal program, recordable injury or illness is not a criterion in determining if a violation is classified as serious or not. Recordability is independent of the classification of serious violations.

In-Compliance Inspections

Seventy-two percent of the inspections conducted resulted in violations; and 77% of violations were cited serious. There are no in-compliance inspection outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities evaluated.

Findings and Recommendations

Finding 3: Data Initiative inspections were conducted without information contained in the file to explain the compliance officer's discussions on site as they 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.

MNOSHA requirement: MNOSHA Field Compliance Manual chapter III section F.3.c.1: *'Copy the 300 Log summary totals for each of the preceding three calendar years. Discuss the company's lost workday injury rate (LWDIR) and significant injuries and illnesses with opening conference attendees to determine if there are specific work areas to be included in the inspection.'*

OSHA requirement: FIRM CPL 2.103 Chapter III Section B.1.a: *'The OSHA 1-A Form, or its equivalent, shall be used to record information relative to the following at a minimum' – 'Comment on S & H program to the extent necessary, based on CSHO's professional judgment, including penalty reduction justifications for good faith.'*

Status: Contrary to MNOSHA and contrary to Federal OSHA requirements

Recommendation 3: Ensure that compliance officers discuss and document the company's LWDIR 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.

Finding 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.

MNOSHA requirement: MNOSHA -Field Compliance Manual Chapter IV B.2. and Chapter IV B.1.c

OSHA requirement: FIRM CPL 2.103 Chapter III Section C.2.a. and Chapter III Section C.2.b.

Status: Contrary to Federal OSHA requirements

Recommendation 4: Ensure the determination for violation classification as "Other-Than-Serious" is independent of OSHA recordability requirements.

IV.B.i.e. Employee and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the Field Compliance Manual (FCM) contain requirements and policies for the compliance officer to involve employees and employee representatives during the course of the inspection. This includes the opening conference, walk around, and closing conference. This has been sufficiently documented in the case files reviewed. In cases where citations are issued, the authorized employee representatives are also mailed a copy of the citation.

In accordance with MN Stat.182.661 and Minnesota Rules Chapter 5210, employers, employees, and authorized employee representatives have 20 calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty and/or abatement date. The statute further requires that the notice be filed on a form provided by the Commissioner and that the contesting parties serve a copy of the notice on affected employees.

Additionally, Minnesota Rule 5210.0573 permits an employer, affected employees or authorized representatives to elect 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 electing party status, affected employees or authorized representatives are involved in informal and formal settlements and formal hearings.

IV.B.i.f. Citations and Penalties

MNOSHA's Field Compliance Manual (FCM), Chapters 5 and 6 contain the requirements and policies for citations and penalties. There is adequate evidence in the 63 case files reviewed to support the violations cited. Appropriate classification of the violations is applied. The apparent violations identified in the case files are cited appropriately. Appropriate uses of willful and repeat violation classifications were utilized. The citations and penalties proposed for issuance are reviewed at multiple levels in MNOSHA's management system prior to issuance. The average initial penalty per serious violation in the private sector during FY 2009 was \$728, below the national average of \$1335. Penalty reduction recommendations for good faith credit were applied at levels higher than warranted, meaning documentation of the company's safety and health management system in the case files did not contain the evidence to support the proposals for the good faith credits applied to the penalties.

In fifteen of 37 cases, or 41%, the penalty reduction recommendations for good faith credit were applied at levels higher than warranted.

Findings and Recommendations

Finding 5: Penalty reduction recommendations for good faith credit were applied at levels higher than warranted.

MNOSHA requirement: MNOSHA Field Compliance Manual chapter VI section 4.a.

Status: Contrary to MNOSHA requirements

Recommendation 5: Ensure good faith credit is applied and documented appropriately in the case files.

IV.B.i.g. Abatement

During the on-site review, MNOSHA had 44 inspections with abatement past due over 30 days. These inspections were identified on the Violation Abatement Report and on the Open Inspection Report generated from the MOOSE system. Of the 44 inspections with past due abatement, three were from FY 2006 and FY 2007. Four inspections from FY 2008 had abatement past due. The remaining inspections were from FY 2009 and FY 2010.

In October 2009, MNOSHA completed a reorganization of compliance and management personnel. As a result of the reorganization, the MOOSE Open Inspection Report did not effectively identify cases with abatement due. At the end of December 2009, MNOSHA implemented a management system to control abatement past due issues. At the time of this Baseline Special Evaluation of the MNOSHA program, the past due abatement was being aggressively addressed by MNOSHA.

Minnesota has specific policies for abatement verification: ADM 3.4B – Review of Progress Reports (Abatement Verification). The processes outlined in the instructions do not accurately reflect the current abatement verification process that is in place.

MNOSHA's abatement documentation policy is different than Federal policy. OSHA's Field Operations Manual and prior policy (CPL 2-0.114 Abatement Verification Policy and Procedures) required abatement documentation for all high gravity serious citations. For moderate and low gravity serious citations, abatement documentation must be obtained for final order citations of a willful violation or failure-to-abate notice or if the employer's citation history reveals they have been cited for a similar standard in connection to a previous fatality or serious injury.

Identical to OSHA, MNOSHA's abatement documentation standard (5210.0532 subp. 3) and ADM 3.4B require abatement documentation such as written, videographic, or photographic evidence of abatement in circumstances when required. MNOSHA's requirement also identifies the need to include that documentation specifically is required in the citations. As determined through interviews and case file review, abatement documentation is not being requested by MNOSHA. The employer's written certification of abatement is all that is required for the proof of the employer's corrective action.

The appropriate use of the abatement method "Corrected During Inspection" was not well documented in MNOSHA's policies and procedures and at times was used inappropriately. A violation can be considered corrected during the inspection when the compliance officer witnesses and observes the correction to the specific violation while onsite. Additionally Federal OSHA requires that the OSHA-1B worksheet must contain information on how the violation was abated. This policy is outlined in the OSHA FOM and in the previous Compliance Directive Abatement Verification Regulation, 29 CFR 1903.19 - Enforcement Policies and Procedures (CPL 2-0.114). In six of 25, or 21% of files reviewed where serious hazards were identified and the abatement was classified as Corrected During Inspection (CDI), the files did not contain the specific information outlining the corrective action observed by the compliance officer. An additional example of the inappropriate use of CDI is contained in one file reviewed where the investigator documented a

trenching competent person violation as corrected during the inspection by identifying the observance of the employer backfilling the trench.

MNOSHA's regulations and written procedures for Petitions for Modification of Abatement Dates (PMA) are equivalent to Federal regulations and procedures. In practice, however, PMAs have been granted without employers providing all required information. Many abatement extensions have been granted from employers entering an anticipated completion date on MNOSHA's Mandatory Progress Report form. Required information not provided included the steps that have been taken to achieve compliance, and dates they were taken; why additional time is needed; interim steps taken to safeguard employees against the cited hazard(s) until the abatement; and a certification that the petition has been posted, the date of posting and, when appropriate a statement that the petition has been furnished to an authorized representative of the affected employees. The petition must remain posted for 10 working days, during which employees may file an objection.

MNOSHA's follow-up inspection policy is slightly different than OSHA's in that 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. The Federal program uses follow-up inspections for abatement assurance to verify compliance of willful, repeat, and high gravity serious violations, and/or citations related to imminent danger situations. This policy is outlined in the FOM and its predecessor, the Field Inspection Reference Manual. In FY 2009, MNOSHA conducted 13 follow-up inspections. During the review, MNOSHA was scheduling and conducting follow-up visits according to its current policy.

Abatement documentation was not requested in any circumstance. Four of 13, or 31% of fatality inspection files and six of 25, or 21% of files where serious hazards were identified and the abatement was classified as Corrected During Inspection (CDI), "No Abatement Documentation Required," were without the specific information outlining the corrective action observed by the compliance officer documented in the case file.

Findings and Recommendations

Finding 6: Abatement documentation was not requested by MNOSHA in any circumstance.

MNOSHA requirement: ADM 3.4B Review of Progress Reports (Abatement Verification) section B.2.d: *'Unless, specified in the citation, it is not generally a requirement for employers to submit these documents.'* And section A.8: *'Those violations which are not observed by the OSHI as abated shall be marked "Abatement Documentation Required" on the MNOSHD 1-B following the guidelines in the Case File Prep Manual.'*

OSHA requirement: CPL 02-00-114 Abatement Verification Regulation, 29 CFR 1903.19 – Enforcement Policies and Procedures section VII E: *'...all willful and repeat citations require abatement documentation, such as written, video graphic, or photographic evidence of abatement...the employer must provide abatement documentation for any serious violation for which the Agency indicates on the citation that such abatement documentation is required. OSHA policy is that all high gravity serious citations will require abatement documentation.'*

Where, in the opinion of the Area Director, abatement documentation is not required for a high gravity serious violation, the reasoning will be noted in the case file.'

Status: Contrary to MNOSHA requirements and contrary to Federal OSHA requirements

Recommendation 6: Ensure violations have been corrected by obtaining proof of the corrective action to ensure employee protections are in place following inspections.

Finding 7: Abatement was classified as Corrected During Inspection (CDI), "No Abatement Documentation Required," for multiple fatality inspections involving serious hazards and for a significant enforcement action involving a willful serious hazard where final, reasonable abatement methods were not implemented.

MNOSHA requirement: ADM 3.4B Review of Progress Reports (Abatement Verification) section B.2.d: *'Equipment related and all program-related (e.g., crane inspections, training, competent person, etc.) violations will always require employer certification of abatement.'*

OSHA requirement: CPL 02-00-114 Abatement Verification Regulation, 29 CFR 1903.19 – Enforcement Policies and Procedures section VII E.

Status: Contrary to MNOSHA requirements and contrary to Federal OSHA requirements

Recommendation 7: Ensure 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.

Finding 8: Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests.

MNOSHA requirement: MN Regulation 5210.0542 subpart 6 and ADM 3.5 Extension of Abatement Dates – PMA Processing

OSHA Requirement: 29 CFR 1903.14a and CPL 2.103 Chapter IV Section D.2.

Status: Contrary to MNOSHA requirements and contrary to Federal OSHA requirements

Recommendation 8: Ensure PMA requests contain all the required information before accepting the requests and extending the [abatement] dates.

IV.B.i.h. Review Process

During FY 2009, MNOSHA vacated 2.5% of violations, while OSHA vacated 5.1%. MNOSHA also reclassified 3.4% of violations, while OSHA reclassified 4.8% of violations. With regard to penalties, MNOSHA retained approximately 79.2%, while OSHA retained 63.2% of penalties. During FY 2009, five cases went to hearing resulting in formal settlement, three of which the companies filed appeals.

MNOSHA's review procedures are organized slightly different than the Federal 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 citations notice is issued. The Employee Notice of Contest form is sent to the employee 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.

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.

During the 2000 session, the legislature amended the Minnesota Occupational Safety and Health Act by adding a new section which requires MNOSHA to send copies of specified documents related to a fatality investigation to the victim's next-of-kin. These documents are as follows.

1. The Citations and Notification of Penalty
2. Notices of Hearings
3. Complaints and Answers
4. Settlement Agreements
5. Orders and Decisions
6. Notice of Appeals

The next-of-kin also have 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 management discusses interim employee protection measures with employers during settlement conferences prior to entering into an agreement where abatement dates are extended. MNOSHA does not have a policy developed to document interim protection measures when the dates are extended. Documenting the interim employee protective measures when employers enter into the agreements will assist MNOSHA, the employer and employees during the extension period.

MNOSHA management discusses penalty reduction and reclassification reasoning with employers during settlement conferences; however, they do not document the reason for the changes in the agreement or in management's notes from the meetings. Documenting the justifications for the changes will ensure consistency within the program when the changes are made.

In FY 2004, MNOSHA began using a creative settlement agreement option for qualifying employers. The 7525 Program is a penalty reduction incentive program that links workers' compensation claim rates and MNOSHA Compliance penalties. This program allows an employer

to obtain a 75% reduction in penalties, provided they reduce their workers' compensation claims by 25% within a one-year period. This plan provides employers in the State of Minnesota an economic incentive to reduce accidents and protect employees from harm. Participation in this program does not preclude an employer from using consultation services; in fact, it is encouraged.

Since its inception in FY 2004, MNOSHA has offered the 7525 Program to 604 employers. A total of 240 employers have entered the program. By the end of FY 2009, 128 employers have completed the program. Of those, 57% (73 employers) were successful in achieving a 25% reduction in their workers' compensation claims rate and, therefore, received the full 75% off the initial penalties. The rates for 30 employers increased and, thus, they were required to pay the entire initial penalty dollars. The claims rates for 25 employers decreased less than 25% and they paid a pro-rated penalty in accordance with the schedule outlined in the program.

There are no Review Process outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities evaluated.

IV.B.i.i. Public Employee Program

MNOSHA's Public Employee Program operates identically as the private sector. 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 2009, MNOSHA conducted 95 public sector inspections. This is about 3.5% of the total inspections conducted in Minnesota. The number of inspections in the public sector is below MNOSHA's three-year average of 6%. MNOSHA's goal for FY 2009 was 2.5% and it was met.

There are no Public Employee Program outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities evaluated.

IV.B.i.j. Information Management

Minnesota used Informix based software for enforcement information management and data processing, called MOOSE for Minnesota OSHA Operations System Exchange. It provides MNOSHA with real time information and data processing. The data entered into MOOSE is transmitted into OSHA's IMIS database on a daily basis. Management reports, equivalent to those available from IMIS, are used by the MNOSHA management to track complaints, accidents, assignments, inspections, abatement, debt collection, and other issues of interest.

MNOSHA operates as paperless as possible. The use of MOOSE is integral to the process. Complaint and fatality intake, assignments, case file processing, and many other operations are performed in MOOSE. Data is entered into the system in a timely manner.

There are no information management outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities evaluated.

IV.B.i.k. General Inspection Statistics

A review of Minnesota's enforcement statistics was conducted using the MOOSE system reports for the review period, FY 2009. During the review period, Minnesota conducted 2,717 inspections.

General Statistics

Of the 2,717 inspections, 2,177 (80.1%) were safety related, while 540 (19.9%) were health related. Total programmed inspections were 2,398 (88%), while total unprogrammed inspections were 319 (12%).

The 319 unprogrammed inspections were comprised of the following: 14 accident investigations, 222 complaint inspections, 38 referral inspections, 13 follow-up inspections, and 32 unprogrammed related inspections. No monitoring or variance inspections were conducted during the review period.

In accordance with the Minnesota Strategic Plan and Performance Plan, 1,807 (75%) of all programmed inspections were conducted in the establishment emphasis areas. Breaking out the inspections by industry, 1,072 (40%) were in construction [NAICS 236-238]; 381 (14%) were conducted at manufacturing sites [NAICS 31-33]; and the remaining 1284 inspections were conducted in other categories.

A total of 2623 inspections were conducted at private sector establishments and 94 (3%) inspections were conducted at public sector agencies.

Programmed Inspections

Of the 2,398 programmed inspections, 2,387 were coded as programmed planned while six were coded as programmed-related and five were coded as programmed-other indicating Federal record-keeping audits.

Of the 2,717 inspections conducted during the review period, 1,959 (72%) inspections resulted in citations. Of those, 64.4% resulted in the issuance of serious, willful or repeat violations. Comparatively, Minnesota's percentage of inspections with citations is higher than the average for all State Plans, which was 62% and higher than that of Federal OSHA, which was 70%. Seventy-seven percent of the citations Minnesota issued during the review period were serious, which is higher than the percentage for all State Plans, which was 62% and lower than Federal OSHA's 87%. For FY 2009, Minnesota's performance was calculated at 64.48% of Not-in-Compliance (NIC) programmed safety inspections with S/W/R violations, which is above the national (Federal and State data) average of 58.6%. For NIC programmed health inspections, Minnesota's performance was calculated at 45.06% inspections with S/W/R violations, which is lower than the national average of 51.2%.

Violations per Inspection

During FY 2009, Minnesota issued a total 2,288 violations with 1,763 (77.1%) classified as serious, six (0.3%) classified as willful, nine (0.4%) classified as repeat, and 509 (22.2%) classified as other-than-serious. Comparatively, Minnesota's percentage of violations classified as serious is higher than the average of 43% for all State Plans and in line with that of Federal OSHA's 77%. Minnesota issued an average of 1.94 violations per inspection, which is slightly lower than the three-year national average of 2.1 violations per inspection.

Willful Violations

Minnesota issued citations for a total of six willful violations in four inspections. Penalties associated with these willful violations equaled \$193,600.

Follow-Up Inspection Statistics

During FY 2009, Minnesota performed 13 follow-up inspections, which resulted in 31 failure-to-abate violations and \$95,796 in associated penalties. Beginning in FY 2010, MNOSHA placed added emphasis on identifying candidates for follow-up inspections. As a result, nine follow-up inspections have been conducted in FY 2010 to date.

Most Frequently Cited Standards

A review was conducted of the most frequently cited standards by Minnesota OSHA. The top cited standard was Right-to-Know training and written programs with 182 serious, five repeat, and 250 non-serious citations. Typically, the training program deficiency is cited as serious, whereas a written program deficiency is cited non-serious. The second most frequently cited standard was 1926.501- Fall Protection, with 340 serious, one repeat, and 12 non-serious citations. Overall, 76% of the top 10 cited standards were cited serious, and approximately 40% of the top 10 most frequently cited standards are construction related. Below are the tables of the Top 10 Most Frequently Cited Standards for Minnesota OSHA and Federal OSHA.

Minnesota OSHA Most Frequently Cited Standards – All Industries October 1, 2008 to September 30, 2009

	<i>Standard</i>	<i>Description</i>	<i>Serious</i>	<i>Willful</i>	<i>Repeat</i>	<i>Non-Serious</i>	<i>Total</i>	<i>% Serious</i>
1	5206.700	<i>Right-to-Know</i>	182	0	5	250	437	42%
2	1926.501	<i>Fall Protection</i>	340	0	1	14	355	96%
3	1910.147	<i>Control of Hazardous Energy</i>	222	0	0	33	255	87%
4	182.653(8)	<i>AWAIR Program</i>	231	0	0	17	248	93%
5	1910.305	<i>Electrical- Wiring, methods, components and equipment for general use</i>	157	0	0	78	235	67%
6	1910.212	<i>Machine Guarding</i>	218	0	0	12	230	95%
7	1910.134	<i>Respiratory Protection</i>	103	0	0	66	169	61%
8	1926.405	<i>Electrical - Wiring, methods, components and equipment for general use</i>	86	0	0	77	163	53%
9	1926.651	<i>Requirements for Excavations</i>	141	3	2	0	146	97%
10	1926.451	<i>Scaffolds</i>	139	0	0	4	143	97%

**Federal OSHA Most Frequently Cited Standards – All Industries
October 1, 2008 to September 30, 2009**

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1926.501	<i>Unprotected sides and edges</i>	6143	319	451	6953	88
2	1926.1053	<i>Use of ladders</i>	2813	257	65	3139	90
3	1910.147	<i>Lockout tagout program</i>	2394	492	68	2969	81
4	1926.451	<i>Fall protection</i>	2696	58	193	2961	91
5	1910.1200e	<i>Hazard communication program</i>	1378	1075	51	2504	55
6	1910.212	<i>Machine guarding</i>	2074	149	48	2284	91
7	1910.1200h	<i>Hazard communication training</i>	1355	701	41	2104	64
8	1926.503	<i>Training – fall</i>	1704	112	80	1898	90
9	1910.178	<i>PIV training</i>	1421	419	23	1864	76
10	1926.20	<i>Accident prevention responsibilities</i>	1479	343	40	1862	79

In comparing the Minnesota and Federal OSHA top 10 most frequently cited standards for all industries, fall from elevations are in the top two most cited for both. MNOSHA issued 340 serious violations for employer’s fall protection deficiencies (1926.501), with this being the most cited standard by Federal OSHA in FY 2009. MNOSHA issued 96% of the violations for failure to provide fall protection as serious violations. Control of hazardous energy and similar lockout/tagout program related deficiencies were the third most cited standards for both Minnesota and Federal OSHA. MNOSHA cited the failure to provide control of hazardous energy (1910.147) as serious violations 87% of the time, while Federal OSHA did the same 81%. Along with lockout/tagout violations, Minnesota and Federal OSHA cited machine guarding (1910.212) hazards similarly. MNOSHA cited machine guarding 95% of the time as serious, while Federal OSHA 91%. This comparison reveals overall MNOSHA and Federal OSHA are issuing citations for the top 10 most frequently cited standards in all industries similarly.

**Minnesota OSHA Most Frequently Cited Standards - Construction
October 1, 2008 to September 30, 2009**

	<i>Standard</i>	<i>Description</i>	<i>Serious</i>	<i>Willful</i>	<i>Repeat</i>	<i>Non-Serious</i>	<i>Total</i>	<i>% Serious</i>
1	1926.501	<i>Fall Protection</i>	340	0	1	14	355	96%
2	1926.405	<i>Electrical - Wiring, methods, components and equipment for general use</i>	86	0	0	77	163	53%
3	1926.451	<i>Scaffolds</i>	139	0	0	4	143	97%
4	1926.651	<i>Requirements for Excavations</i>	141	3	2	0	146	97%
5	1926.652	<i>Protective Systems for Excavations</i>	115	3	1	0	119	97%
6	182.653(8)	<i>AWAIR Program</i>	231	0	0	17	248	93%
7	1926.1053	<i>Ladders</i>	61	0	0	5	66	92%
8	1926.1101	<i>Asbestos</i>	51	0	0	0	66	77%
9	5207.1100	<i>Fall Protection on Elevated Work Platforms</i>	41	0	0	4	45	91%
10	1926.403	<i>Electrical - General Requirements</i>	24	0	0	19	43	56%

**Federal OSHA Most Frequently Cited Standards – Construction
October 1, 2008 to September 30, 2009**

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1926.501	<i>Unprotected sides and edges</i>	6036	312	450	6838	88
2	1926.1053	<i>Use of ladder</i>	2763	256	65	3088	89
3	1926.451g	<i>Fall protection</i>	2651	57	193	2915	91
4	1926.503	<i>Training</i>	1672	107	8	1861	90
5	1926.020	<i>Accident prevention responsibilities</i>	1451	334	40	1825	80
6	1926.451b	<i>Scaffold platform</i>	1654	49	79	1790	92
7	1926.453	<i>Aerial lift requirement</i>	1521	79	94	1697	90
8	1926.100	<i>Head protection</i>	1492	98	63	1653	90
9	1926.451e	<i>Scaffold access</i>	1239	35	87	1372	90
10	1926.451c	<i>Criteria for support scaffold</i>	1210	58	32	1301	93

Comparison of the Minnesota OSHA’s and Federal OSHA’s top 10 cited standards for construction reveals that MNOSHA shared five similar standards with Federal OSHA. Those standards included fall protection (1926.501), and scaffolds (1926.451). MNOSHA cited fall protection (1926.501), their most frequently cited construction standard, as serious 96% of the time while Federal OSHA cited fall protection serious 88 % of the time. Scaffold violations under (1926.451) were cited by MNOSHA as serious 97% of the time, while Federal OSHA 91% of the time. This comparison reveals overall MNOSHA and Federal OSHA are issuing citations for violation in the top 10 most frequently cited standards in the construction industry similarly.

**Minnesota OSHA Most Frequently Cited Standards – General Industry
October 1, 2008 to September 30, 2009**

	<i>Standard</i>		<i>Serious</i>	<i>Willful</i>	<i>Repeat</i>	<i>Non-Serious</i>	<i>Total</i>	<i>% Serious</i>
1	5206.700	<i>Right-to-Know</i>	172	0	5	237	416	41%
2	1910.147	<i>Control of Hazardous Energy</i>	220	0	0	33	253	87%
3	1910.305	<i>Electrical- Wiring, methods, components and equipment for general use</i>	157	0	0	78	235	67%
4	1910.212	<i>Machine Guarding- General</i>	218	0	0	12	230	95%
5	182.653(8)	<i>AWAIR Program</i>	157	0	0	78	235	67%
6	1910.134	<i>Respiratory Protection</i>	91	0	0	63	154	59%
7	1910.213	<i>Machine Guarding - Woodworking</i>	122	0	0	2	124	98%
8	1910.178	<i>Powered Industrial Trucks</i>	46	0	1	73	120	38%
9	1910.23	<i>Guarding Floor and Wall Openings</i>	89	0	1	29	119	75%
10	1910.303	<i>Electrical-General</i>	80	0	0	27	107	75%

**Federal OSHA Most Frequently Cited Standards – General Industry
October 1, 2008 to September 30, 2009**

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1910.147	<i>Lockout tagout program</i>	2175	437	60	2687	81
2	1910.212	<i>Machine guarding</i>	1890	132	35	2071	91
3	1910.178	<i>PIV training</i>	1075	328	17	1421	76
4	1910.1200e	<i>Hazard communications program</i>	677	469	18	1164	58
5	1910.305g	<i>Flexible cords</i>	886	230	18	1134	78
6	1910.305b	<i>Electrical cabinets, boxes and fittings</i>	819	187	15	1021	80
7	1910.1200h	<i>Hazard communication training</i>	670	294	23	994	67
8	1910.303b	<i>Electrical examination, installation and use of equipment</i>	679	159	5	844	80
9	1910.303g	<i>Working spaces about electrical equipment</i>	636	170	12	818	78
10	1910.134	<i>Respiratory protection program</i>	391	348	8	747	52

Comparison of the Minnesota OSHA’s and Federal OSHA’s top 10 cited standards for general industry reveals that MNOSHA shared seven standards with Federal OSHA. These include control of hazardous energy and similar lockout/tagout program related deficiencies (1910.147). MNOSHA cited control of hazardous energy as serious 87% of the time, while Federal OSHA cited (1910.147) as the number one overall as serious 81% of the time. MNOSHA cited right to know (5206.0700), their equivalent to Federal OSHA’s hazard communication standard (1910.1200), as their most frequently cited general industry standard, as serious 41% of the time. Federal OSHA cited hazard communication, listed as fourth and seventh, as serious 62% of the time. This comparison reveals overall MNOSHA and Federal OSHA are issuing citations for violation in the top 10 most frequently cited standards in general industry similarly.

IV.B.i.l. BLS Rates

Over the past five years, the National TRC and DART injury-illness rates have decreased 23% and 25% respectively. Similarly, the TRC and DART rates for workplaces in Minnesota have also decreased, however, they have decreased more than the national rates. Minnesota’s TRC and DART rates have decreased 26% and 36% respectively over the past five years. MNOSHA Compliance met their goal of a reduction in the rate and continues to review new information to redefine scheduling approaches to reduce injury and illness rates.

		2004	2005	2006	2007	2008
TRC ^{1, 3}	National	4.8	4.6	4.4	4.2	3.9
	Minnesota	5.3	5.0	5.0	4.7	4.2
DART ^{2, 3}	National	2.5	2.4	2.3	2.1	2.0
	Minnesota	2.6	2.5	2.4	2.3	1.9
Fatality Counts ⁴	Minnesota	80	87	78	72	65

¹ Total Recordable Case (TRC)

² Days Away Restricted or Transferred (DART)

³ Rate for Private industry as defined by the Department of Labor – Bureau of Labor Statistics

⁴ State fatality rates are unavailable. Counts include fatalities outside of Minnesota OSHA's jurisdiction.

During FY 2009, MNOSHA conducted 17 fatality investigations. Of those, three investigations were in the construction industry. As indicated in the table below, two of the three fatalities in the construction industry occurred from trench collapse, an increase of one over the previous year. There have been five trenching fatalities investigated in Minnesota over the past four years. MNOSHA follows Federal OSHA's National Emphasis Program (NEP) for targeting and conducting trench and excavations related inspections. MNOSHA increased their number of trenching inspections under the NEP from 67 in FY 2008 to 109 in FY 2009.

Types of Construction Fatalities in Minnesota

Type	2006	2007	2008	2009
Struck-by	0	2	1	0
Caught-between	3	3	2	0
Asphyxia	0	0		0
Fall	2	5	1	0
Heart Attack	0	0	0	1
Trench Collapse	2	0	1	2
Electrocution	1	1	1	0
Arc Blast	1	0	0	0
Explosion	0	0	1	0
Drowned	0	1	0	0
Total	9	12	7	3

MNOSHA does analyze BLS data for targeting purposes, which is described in the targeting section of this report.

There are no rate increases and/or inspection targeting outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities.

IV.B.ii. Standards Adoption and Plan Changes

IV.B.ii.a. Standards Adoption

Only two applicable standards were required to be adopted during FY2009. Both were dealt with by the State in a timely manner. The two standards adopted by Minnesota became effective 60 days after the effective date of Federal standards.

FY 2009 Standards Adoption

Federal Standard Number	Intent to Adopt	Adopt Identical	State Standard Number	Date Promulgated	Effective Date	FR Published Date
Longshoring and Marine Terminals; Vertical Tandem Lifts 1917,1918 2009 35	YES	YES	N/A	03/30/09	06/01/09	N/A
Clarification of Employer Duty to Provide PPE and Train Employees 1910,1915,1917,1926 2009 36	YES	YES	N/A	03/30/09	06/01/09	N/A
Updating OSHA Standards Based on National Consensus Standards; PPE ,1910,1915,1917,1918 2009 37	YES	YES	N/A	Pending	Pending	N/A

Information from the Automated Tracking System

IV.B.ii.b. Federal Program and State Initiated Changes

All standard adoptions due were submitted timely along with plan change information and any State initiated changes with no outliers of concern or recommendations requiring attention for the MNOSHA FY 2009 activities.

On March 26, 2009, Federal OSHA implemented the new Field Operations Manual (FOM), replacing OSHA Instruction CPL 02-00-103, Field Inspection Reference Manual (FIRM), issued September 26, 1994. The request for the State's 'Intent to Adopt' and 'Adoption Required Notice' was sent to MNOSHA at that time. OSHA received MNOSHA's intent on June 01, 2009. MNOSHA notified OSHA of their intent to adopt the requirement of the FOM; however, they will not adopt the OSHA instruction identical. MNOSHA program staff reviewed the new Federal FOM, and participated in the web-based training/information sessions. Specifically, OSHA was informed by the State that a review and update of the entire FCM was to be complete in six months, and the plan supplement forwarded at that time. On November 9, 2009, OSHA made revisions to the new FOM and notified MNOSHA requesting their intent at that time. Again, MNOSHA notified OSHA of their intent to adopt the requirements, but not identical. The new revisions to MNOSHA's FCM have been completed and are currently in final review. MNOSHA has notified OSHA the revised FCM, which will include a complete review of the revisions contained in the new FOM, will be in effect in May of 2010.

Federal Program/State Initiated Changes and MN Response

Federal Program Change
Summary for MN Report

03/05/2010

Directive Number	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical	State Adoption Date	State Submission Date	FR Published
CPL-03-00-007 2008 308	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-02-02-074 2008 309	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-02-00-147 2008 311	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-03-00-008 2008 312	NO	YES	YES	NO	N/A	N/A	N/A
CPL-02-00-146 2008 313	NO	YES	NO	N/A	N/A	N/A	N/A
CSP0301003 2008 314	NO	YES	YES	NO	N/A	N/A	N/A
CPL-02(08-03) 2008 327	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-02-01-045 2008 329	NO	YES	YES	NO	N/A	N/A	N/A
TED-01-00-018 2008 330	YES	YES	YES	NO	----	----	----
CPL-03-00-009 2008 331	NO	YES	YES	NO	N/A	N/A	N/A
CPL-02-00-148 2009 332	YES	YES	YES	NO	----	----	----
CPL-2(09-05) 2009 333	NO	YES	YES	NO	N/A	N/A	N/A
CPL-02(09-06) 2009 334	NO	YES	YES	NO	N/A	N/A	N/A
CPL-03-00-010 2009 353	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-02-01-046 2010 354	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-09-08 2010 355	NO	YES	YES	NO	N/A	N/A	N/A
CPL-0200148 2010 374	YES	YES	YES	NO	----	----	----
CPL-02-02-075 2010 375	NO	YES	YES	NO	N/A	N/A	N/A
CPL-03-00-011 2010 376	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-02-076 2010 377	NO	YES	----	----	N/A	N/A	N/A

The State continues to provide timely responses to OSHA regarding their intentions with regard to all federally initiated program changes, including those initiated during FY2009.

FY 2009 State Initiated Changes

Plan Change Number 11/03/08-1 - Minnesota Rules 5205.0720 “Thermoplastic Piping (PVC Pipe)”

Plan Change Number 11/03/08-2 - Minnesota Rules 5205.1310 and 5207.100 “Elevating Work Platform Equipment”

Plan Change Number 11/03/08-3 - Minnesota Rules 5208.1500 “Standard Industrial Classification List for AWAIR”

The State continues to provide timely notification to OSHA regarding all State-initiated program changes, including those initiated during FY 2009.

IV.B.iii. Variances

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

A variance is an order issued by the Minnesota Department of Labor and Industry 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 because needed construction work will not be completed by the effective date; the employer is taking all feasible precautions to protect employees from the hazards covered by the standard; and the employer has an effective plan to come into compliance with the new standard as soon as possible.

To apply for a temporary variance, an employer must submit an application to the department containing: the standard or the portion of the standard for which the employer is requesting the variance; a detailed statement describing why the employer cannot come into compliance by the standard’s effective date, endorsed by employees who have first-hand knowledge of the process or hazard; a description of all the measures the employer will be taking to protect the employees from the hazards covered by the standard; a statement of when the employer expects to be in compliance with the standard, along with a description of the specific steps the employer has taken and will take to meet the requirements of the standard, including completion dates for all steps; and a certification that the employer has notified employees about the application by providing written copies to their union representative, posting a summary of the application in the workplace.

A permanent variance recognizes there may be other ways to effectively protect employees from hazards other than those specified in a particular OSHA standard. In the application for the variance, the employer must provide detailed information about engineering controls, work practices, administrative controls and personal protective equipment that will be used, and demonstrate that these measures would protect employees from injury and illness at least as effectively as the measures required under the standard. Employees must be notified in writing of the application for a permanent variance and their right to request a hearing about the matter. The order granting the variance will contain the same information about the specific conditions and

methods of compliance with the variance as that of a temporary variance. A permanent variance can be modified or revoked by the employer, the employees or the department at any time after six months of the issuance date.

If a variance is denied, the department will issue an order denying the variance request. This order will contain the employer's name and address, the standard or portions of the standard applicable to the requested variance, the proposed extent and duration of the requested variance, and a concise statement of the reasons the request is being denied. The employer can file a written objection to the denial with the department. The objection must be postmarked within 15 days of receipt of the denial. The department then has seven days in which to send the objection with all the relevant documentation to an Administrative Law Judge, who will conduct a hearing into the matter. Affected employees must be notified by the employer about the hearing and given an opportunity to participate in the hearing.

When variances are granted by Federal OSHA covering several States, MNOSHA will honor a federal variance, provided: the employer has not applied to the department for a separate State variance; the Federal application included Minnesota; the Federal standard from which the variance was granted has been adopted by MNOSHA without change; and the department receives no objections to the variance.

The procedures Minnesota use for the receipt and denial or approval of variances is appropriate.

IV.B.iv. Discrimination Program

MNOSHA's Whistleblower Program consisted of a Director, Team Leader, and two discrimination investigators. The MNOSHA Whistleblower Program follows their MNOSHA INSTRUCTION ADM 3.6C, Discrimination Complaint Handling Procedures, and supplements when necessary with the Federal Whistleblower Program, DIS Manual (DIS.9) and applicable regulations (29 CFR 1977), etc. Therefore, this review followed the guidelines, procedures, and provisions of the OSHA Whistleblower Program, DIS .9, 29 CFR 1977. All members of the Whistleblower Program were either consulted for information and/or interviewed with the exception of an investigator.

Appropriateness of State findings and decisions

This was an audit for the period 10/31/2008 through 09/30/2009. The information and materials used were: DIS Manual and 29 CFR 1977, Whistleblower System Case Listing, Length of Investigation, Activity Measures, and Investigation Data Reports. The cases reviewed were selected at random based on determination and the investigator of record. Ten cases, or 38%, were reviewed, including litigation/merit, settled, settled other, and dismissed and withdrawn determinations. During this review period, the program has two FTE whistleblower investigators and one team lead investigator that investigates the more difficult cases.

MNOSHA completed 26 cases during this reporting period. A review of the whistleblower system reports revealed that of the 26 cases completed during this reporting period, two were withdrawn; 21 were dismissed; three were merit, with two of the three being settled; one was settled other; and one was settled agency. The program statistics for this reporting period were 12% merit rate and 100% timely completion rate. There are slight differences between the MNOSHA and Federal OSHA's Discrimination Program. The determinations made by MNOSHA would not have been different than if Federal OSHA was performing the investigation.

Discrimination Complaint Intake and Screening

MNOSHA follows MNOSHA INSTRUCTION 3.6C for complaint intake and screening. The instruction states 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. The review of the program revealed there was no documentation in the 113 screened and closed cases stating that the complainant understood the reason for their complaint being screened out, however, there was no reason found by OSHA to suggest that the complainant did not understand the decision. In addition, 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 their 30-day filing time. The reviewed screened and closed cases in which the complainant chose not to file did not indicate if the complainant was informed of their right to leave their name and address to receive a confirmation letter, however, again, there was no information to suggest the complainant was not informed of their right.

The OSHA DIS.9 Manual recommends that a memo to the file and a letter to the complainant be generated for screened and closed complaints. MNOSHA's INSTRUCTION 3.6C, which MNOSHA follows, does not contain the same recommendation.

Case Activity Worksheet

The MNOSHA Whistleblower Program does use case activity worksheets (OSHA 87s) generated by the Whistleblower IMIS system. The majority of the time the case activity worksheet is not given to the respondent, rather, the allegation is incorporated into the notification letter.

Complainant and Witness Interviews

MNOSHA utilizes a questionnaire similar to the form in the DIS.9 Manual as complainant's statement. The complainant is asked to sign the questionnaire and provide an additional written statement for the complaint. Although the complainant did sign the questionnaire, most did not provide a written statement to supplement their questionnaire. It appeared that the complainant was not interviewed in person, and the information gathered for the complainant's statement was only through the mail using the questionnaire and an additional statement if provided.

Additionally, MNOSHA did not utilize any signed statements for witness interviews in the reviewed case files. MNOSHA records the witness interviews and reduces the interview to a memo to file. The memo to files appeared to be more of a "typed field note" than a memo to file.

Respondent Notification

MNOSHA speaks with the complainant by telephone and determines if the file meets the criteria to be docketed. Once the determination is made to docket the case, the complainant's questionnaire and the respondent's notification are sent by certified mail. Therefore, the respondent's notification is not delivered in person.

Discrimination Web System Information

The information in each case file was compared with that entered in the Whistleblower Web Based (IMIS) system. The information reveals a limited use of the IMIS with a lengthy allegation and respective party information. It does not appear that MNOSHA used the case comment, additional tracking information, and adverse employment action sections in the reviewed files.

Data and procedural discrepancies were noted in several of the files reviewed. For example, it appears that the FIR and determination dates are often entered as the same date regardless of the date on the document in the case file. Various data discrepancies between the date in the IMIS and the information in the respective case files were discovered.

Final Investigation Report

MNOSHA only prepares a Final Investigative Report when the complaint resulted in a full field investigation. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed with a closing memo to the file. The Final Investigative Report follows the criteria provided in the DIS.9 Manual. However, a few of the Final Investigative Reports do follow the current format used by OSHA, which includes a section for respondent defense tested and closing conference.

Secretary Finding

MNOSHA does not utilize a Secretary's Finding as in the OSHA Whistleblower Program. MNOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to appeal the MNOSHA finding.

Settlement Agreement

The files reviewed contained the appropriate settlement documentation except for two. Neither of those case files contained a copy of a signed settlement agreement, nor did they contain information documenting why. In one case, the settlement was verbal. In the other case, the respondent removed the adverse employment action when they provided their response to the complaint. Both files did contain copies of the letters sent to the parties confirming the settlement and closing the complaint. Both files did include the settlement determinations, however, files identified as settled require a copy of a signed settlement agreement.

Discrimination Conclusion

Procedurally the MNOSHA Whistleblower Program differs slightly from the OSHA DIS Manual, 29 CFR 1977, and the applicable directives, policies, etc. when using the MNOSHA Instruction 3.6C. MNOSHA's use of a questionnaire and not obtaining either a signed statement or recorded interview from the complainant is in opposition to the OSHA DIS.9 Manual as is the lack of providing a letter to individuals whose files are screened and closed. With these slight differences, the determinations made by MNOSHA would not have been different than if OSHA was performing the investigation.

IV.B.v. Complaints About State Program Administration (CASPA)

The following summarize CASPA investigations during FY 2009.

09-10-MN: The CASPA alleged that MNOSHA did not conduct an investigation following MNOSHA's receipt of a complaint informing the program of an employee being seriously injured as a result of an accident occurring on June 1, 2005 involving a lawn mower. The complainant alleged in the CASPA that at some point in the spring of 2006, notification of the accident was made with MNOSHA.

Findings: After a thorough review of the documents received from MNOSHA, including relevant portions of their Field Compliance Manual, Administrative Procedures for Handling Complaints and Information Requests (ADM 3.16C), Serious Injury/Fatality handling Directive (ADM 3.19E), and State's Scheduling Directive (ADM 2.1), OSHA determined that MNOSHA followed their policies and procedures that were in place during the timeframes identified in the CASPA. Additionally, several interviews were conducted with MNOSHA compliance staff regarding their knowledge of the policy and procedures in place, and their knowledge, if any, of the specifics associated with the complainant's original alleged notification made with MNOSHA in the spring of 2006. It has been determined that MNOSHA followed the appropriate process and procedures. Our review found that the State's action regarding the complaint was proper, timely, appropriate, and within the scope of the policies and procedures listed above. MNOSHA's response associated with the CASPA is determined as meeting the "*as effective as*" Federal OSHA criteria.

09-11-MN: The CASPA alleged that MNOSHA conducted an incomplete and incompetent investigation into recordkeeping violations as evidenced by an initial inspection being conducted without supporting documentation or direction being given to the investigator. The initial inspection resulted in no violations. The CASPA further alleged that after providing documentation to the investigator, a second inspection was opened by MNOSHA and the complainant claims a request for information on the case has been denied because the complainant is not the complainant on record.

Findings: After a thorough review of the documents received from MNOSHA, interviewing MNOSHA staff, and reviewing the State's Administrative Procedures for Handling Complaints and Information Requests (ADM 3.16), dated October 29, 2008, it has been determined that MNOSHA conducted a thorough and timely investigation of the recordkeeping referral and made a final determination based on the resulting evidence. Since the inspection was the result of a referral from the discrimination investigator, a copy of the results would not be sent to the complainant. In accordance with MNOSHA Instruction (ADM 3.7A CH-3), dated July 26, 2006, the complainant may make a written request for copies of the closed inspection file. Our review found that the State's action regarding the complaint was proper, timely, appropriate, and within the scope of the policies and procedures listed above. MNOSHA's response associated with the CASPA is determined as meeting the "*as effective as*" Federal OSHA criteria.

IV.B.vi. Voluntary Compliance Programs

There were 14 Voluntary Protection Program (VPP) site evaluations conducted in Minnesota in FY 2009. Five of the 14 received the designation of MNSTAR sites, five received the designation as Merit sites, and four were Recertification evaluations. Seven of the Minnesota VPP site evaluations were reviewed during this special study evaluation. Three of the seven received the designation of MNSTAR, two received Merit, and two were successful Recertification evaluations.

MNOSHA's Consultation Program operates the Voluntary Protection Program (VPP) in Minnesota. MNOSHA Instruction ADM 3.28 MNSTAR Voluntary Protection Program outlines how the State administers the program. Applicants must meet the criteria in the Federal VPP policies and procedures manual. In addition to requiring the company's injury and illness rate be below the national average for the country, MNSTAR applicants' rates must also be below the State averages for the industry.

Administration of the MNSTAR program occurs under the Consultation Program. Evaluators are paid using 23(g) funding. New applicants and recertifications are given a full service consultation visit after receipt of their application by the program. Following the close out of the consultation visit, the VPP evaluation team is to visit the facility and evaluate the facility's safety and health management system.

Several issues were identified during the VPP program review relating to consultation activity occurring concurrently by the consultants/VPP team, corporate VPP sites, sites involving Process Safety Management (PSM), and issuance of union notification letters.

Several consultation visits occurred at the same time by the same personnel as the VPP evaluation. This creates a number of concerns. The personnel conducting the site visit are funded under the 23(g) grant, yet they are performing 21(d) consultation services. Additionally, several of the visits found numerous hazards under the combined visit. The hazards were corrected under Consultation's policies and procedures, yet the evaluation team did not evaluate how the employer's safety and health management system failed in recognizing and controlling the hazards. Employers who are recognized under VPP have a safety and health management system that requires little to no assistance from other organizations. VPP employers should not rely upon consultation services to identify hazards and ensure their correction.

A review included an employer who was a nested contractor at a facility covered by OSHA's Process Safety Management (PSM) standard. Employers working at sites which have covered processes under OSHA's PSM standard must also complete PSM application materials. The on-site evaluation team must also include a member trained by the OSHA Training Institute (OTI) in PSM. The VPP evaluation of the nested contractor did not include an evaluation of the PSM components.

Several corporate VPP sites were included in the review. Only one application was submitted for the corporate office and other locations. The evaluation team did not visit all the sites included in the application. The program issued either MNSTAR or Merit status to all locations. Only one evaluation report was prepared for all 14 locations. The project did not follow OSHA's corporate VPP guidance.

Employers with employee unions were not provided with an approval letter after the employer was recognized with either MNSTAR or Merit. OSHA's VPP Policy and Procedures Manual require an approval letter be sent to the union representatives of VPP Star and Merit employers.

Findings and Recommendations

Finding 9: Minnesota On-Site Consultation conducts consultation visits and VPP evaluation visits concurrently with MNSTAR staff funded with the 23(g) Grant.

OSHA Requirement: CSP 08-02 FY 2009 Instructions for (1) Integrated 23(g) State Plan Grants and 21(d) On-Site Consultation Cooperative Agreements; (2) 23(g) Public Employee Only State Plan Grants; and (3) 23(g) State Plan Grants without 21(d) Funding - Appendix A – Exhibit I – Cooperative Agreement only allows 21(d) Consultants to conduct consultation visits.

Status: Contrary to 21(d) Cooperative Agreement

Recommendation 9: Ensure Consultation functions are conducted by 21(d) funded employees. Ensure 23(g) cooperative activities are conducted by 23(g) grant personnel.

Finding 10: For corporate VPP applications, one application is being submitted for both the corporate office and other locations.

MNOSHA requirement: MNOSHA's ADM 3.28 MNSTAR Voluntary Protection Program Section 1: All written applications for consideration as a MNSTAR participant must meet the criteria in Federal OSHA Instruction CSP 03-01-003 Voluntary Protection Program (VPP) Policy and Procedures Manual.

OSHA Requirement: Federal OSHA Instruction CSP 03-01-003 Voluntary Protection Program (VPP) Policy and Procedures Manual, Chapter V (I) - Applications must be submitted for each worksite.

Status: Contrary to MNSTAR and Federal OSHA requirements

Recommendation 10: Ensure each work site applying for MNSTAR participation submits an application applicable to each work site.

Finding 11: An employer working as a contractor at a work site covered by the Process Safety Management standard did not submit an application with the appropriate VPP PSM Application Supplement. The MNSTAR evaluation team did not have a PSM Level 1 auditor participate in the onsite review.

MNOSHA requirement: MNOSHA's ADM 3.28 MNSTAR Voluntary Protection Program Section 1: All written applications for consideration as a MNSTAR participant must meet the criteria in Federal OSHA Instruction CSP 03-01-003 Voluntary Protection Program (VPP) Policy and Procedures Manual and provide all information required in the VPP application/information kit.

OSHA Requirement: 29 CFR 1910.119 Process Safety Management of Highly Hazardous Chemicals applies to contractors performing turnaround on process equipment. Federal OSHA Instruction CSP 03-01-003 Voluntary Protection Program (VPP) Policy and Procedures Manual requires these employers to submit the PSM Application Supplement with the application and also requires a PSM Level 1 auditor to participate in the onsite review.

Status: Contrary to MNSTAR and Federal OSHA requirements

Recommendation 11: Ensure all applications of contractors working at work sites covered by 29 CFR 1910.119 contain the PSM Application Supplement. Ensure the MNSTAR evaluation team consists of at least one PSM Level 1 auditor.

IV.B.vii. Program Administration

The MNOSHA Program administration follows closely with Federal initiatives. The plan serves as a mechanism for communicating a shared set of expectations regarding the results that MNOSHA expects to achieve and the strategies that it will use to achieve them. MNOSHA will adjust the plan as circumstances necessitate, use it to develop the annual performance plan and grant application, report on progress in annual performance reports, and monitor program accountability for achieving the goals and outcomes.

IV.B.vii.a. Training

MNOSHA developed and implemented its own training program outlined in ADM 5.1 – MNOSHA Investigator Training Plan. This training plan is comprehensive in nature, covering not only the information needed to conduct enforcement activities, but the routine administrative function 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 timeframe 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.

During FY 2009, MNOSHA had the privilege of hosting the OSHA Training Institute (OTI) as they conducted two courses for MNOSHA staff. The first class was the OSHA 3110 Fall Arrest Systems in July and the second was the OSHA 3080 Principles of Scaffolding in September. These courses provided a great opportunity for cross training the Metropolitan Area safety staff.

IV.B.vii.b. Benchmarks/Furloughs/Funding

Management and administration of the MNOSHA Compliance Division is the responsibility of the OSH Division Management Team (OMT). The OMT is comprised of the Compliance Director, two area directors, and five supervisors. The total complement of the OSH Division (compliance activity) was 88.38 full-time equivalents (FTE) for FY 2009. The State of Minnesota did not experience any State employee reductions in force or work time reductions such as layoffs and furloughs.

According to the April 2009 AFL-CIO Death on the Job report, based on the current benchmark staffing level of 43 inspectors in Minnesota, it would take approximately 67 years to inspect all job

sites. In Minnesota, the ratio of inspectors to covered workers is one inspector for every 47,149 workers. It is important to note that while the benchmark level was 43 at the time of this review, Minnesota was operating its program with 55 inspectors. MNOSHA is maintaining a staffing level higher than currently required by OSHA.

MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. During FY 2009, these two positions responded to approximately 1229 phone calls and 3979 written requests for assistance, primarily e-mails. A majority of these inquiries are answered within one day. During FY 2009, 74% of phone calls, e-mails, and written responses were received from employers, consultants or other individuals requesting safety and health information. Most information is provided to callers during the initial phone call, while others are directed to the MNOSHA or Federal OSHA websites, or another State agency for assistance. The information requested covers a wide variety of topics, which is why MNOSHA continues to use investigative staff to answer a majority of the calls.

In FY 2007, the Minnesota Legislature approved additional State dollars to support 50% funding for 12 positions within the MNOSHA Compliance Division. Although Federal OSHA did not provide matching dollars, six positions were added using 100% State funding. In FY 2009, one of these positions was designated a compliance assistance focus to develop and maintain partnership agreements and assist in educating Minnesota employers on the hazards of combustible dust.

During FY 2009, the benchmark for safety is 31 positions with 37 filled, or 119% are filled. The benchmark for health is 12 positions and 18 filled, or 150% are filled.

		FY 2006	FY 2007	FY 2008	FY 2009
Safety	Benchmark	31	31	31	31
	Positions Allocated	38	38	38	37
	Positions Filled	37	37	35	31
	Vacancies	0	0	0	7
	Percent of Benchmarks Filled	119%	119%	113%	100%
Health	Benchmark	12	12	12	12
	Positions Allocated	17	17	17	18
	Positions Filled	16	18	16	15
	Vacancies	3	0	2	3
	Percent of Benchmarks Filled	133%	150%	133%	125%

There are no Program administration outliers of concern or recommendations requiring attention from the MNOSHA FY 2009 activities evaluated.

IV.B.viii. State Internal Evaluation Program (SIEP)

MNOSHA established goal #3 in their FY 2009 to FY 2013 five-year plan as their workplace plan to address the State’s SIEP. Projected Fiscal Year plans are identified in the programs annual grant applications. Summaries of the program’s achievements in relations to their plan are provided in the State’s OSHA Annual Report (SOAR).

MNOSHA reviews the rules for effectiveness, which include ongoing evaluation and development of rules, standards, guidelines and procedures, including the following eight step process for workplace development and retention plan.

1. Environmental Scanning
2. Organizational Analysis
3. Identify Target Areas
4. Current Workforce Analysis
5. Future Workplace Analysis
6. Gap Analysis and Strategy Development
7. Develop and Implement an Action Plan and Communication Strategy
8. Monitor Plan and Evaluate Results

MNOSHA’s Compliance Directives Coordination Team (DCT) is charged with coordinating and managing the MNOSHA internal information system. The DCT consists of one MNOSHA management analyst, two MNOSHA program analysts, and two MNOSHA management team directors. This group monitors Federal standard/policy activity and coordinates updates to all relevant MNOSHA standards, directives, and policies accordingly. MNOSHA adopts Federal standards by reference and/or develops Minnesota specific standards when necessary to support MNOSHA program goals.

A new five-year directive revision schedule was developed to coincide with the FY 2009 - FY 2013 five-year plan. During FY 2009, 26 existing directives were revised. These included internal procedures for case file processing, complaint handling, discrimination, voluntary protection, and scheduling. The directive on hexavalent chromium inspections was rewritten following the release of the Federal directive. Two new directives on tree trimming inspections and PPE requirements for foundry inspections (CPL 2-1.20 and 2-1.45) were developed and issued.

It is recommended that in addition to MNOSHA’s established goal #3 where projected plans are identified in the program’s annual grant applications and their ongoing review of the MNOSHA rules for effectiveness, MNOSHA should conduct internal audits to ensure the MNOSHA program continues to follow the requirements of the OSHA program.

IV.B.ix. Other Issues

MNOSHA supports professional development for staff beyond core training when feasible and appropriate. Currently, MNOSHA Compliance has staff with the following professional certifications.

P.E. (Professional Engineer)	=	5
CIH (Certified Industrial Hygienist)	=	5
CSP (Certified Safety Professional)	=	1

On May 1, 2009, the Minnesota Department of Labor and Industry launched its new website, with a new web address: www.dli.mn.gov.

The new site increased navigational options, uses informational tabs to display multiple links more easily, and offers a “highlights” section enabling users to find frequently accessed features on the site. MNOSHA staff assisted DLI Communications staff with layout and organization of the MNOSHA webpage (www.dli.mn.gov/MnOsha.asp) to ensure a smooth transition of website content.

Website satisfaction surveys remain available on the site for stakeholders to offer feedback on their experience with the website.

V. PUBLIC COMMENTS

While developing this Federal Annual Monitoring and Evaluation (FAME) report and Baseline Special Evaluation of the (MNOSHA) Program, Federal OSHA took the opportunity to contact and interview key players, both with employer and labor representatives in the safety and health community from the State of Minnesota. The overall impressions following these interviews were that the MNOSHA program is a very well accepted and effective program meeting the needs and expectations of the key players in the safety and health community in the State. The following is a summary of the most important comments made during the interviews of each.

Minnesota Safety Council
474 Concordia Avenue
Saint Paul, MN 55103

I have chaired the Minnesota OSHA Advisory Council for several years. The Minnesota Safety Council and MNOSHA have been partners in workplace safety initiatives for decades. The Minnesota Safety Council would not be affiliated with MNOSHA, and I would not serve on the Minnesota OSHA Advisory Council if we did not believe that MNOSHA is an agency of integrity, fairness and effectiveness. We respect the work done by MNOSHA. We base that judgment on our own experience, and the comments we receive from our members (employers from both the private and public sectors) about their interactions with MNOSHA.

Minneapolis Building & Construction Trades Council
312 Central Avenue, Suite 556
Minneapolis, MN 55414

I have been concerned with the recent changes with the MNOSHA division structure. MNOSHA has recently consolidated their construction inspectors and Construction Division into the General Industry Divisions, doing away with the Construction Division entirely. My concern is there will be a loss of expertise and continuity in the construction trade inspections. As far as overall, I believe the safety on the jobsites is much better than years ago. MNOSHA has helped to get the word out to the workers that safety and health is for them and not something the company's management mandates.

Associated General Contractors (AGC) of Minnesota
525 Park St., Suite 110
St. Paul, MN 55103

As the representative of general contractors throughout Minnesota, one of the issues we have been dealing with as it relates to MNOSHA enforcement activities on construction sites has been citations being issued alleging noise and health hazards. General contractors, members of the AGC, have experienced difficulties with MNOSHA during post citation settlement negotiations. On at least one occasion, the cited company did not settle the case during the informal process, instead going to hearing that resulted in significant costs. I feel the main reason our contractors are experiencing these problems, especially as it relates to the employee exposure to noise on construction sites, is there isn't enough specific guidance in the standards MNOSHA enforces. This is resulting in the various different interpretations as to what is actually required. I have also been concerned with the recent consolidation of the construction inspectors and Construction Division and General Industry Divisions. My concern is there will be a loss of expertise in the construction trade inspections. Lastly, the AGC has experienced outstanding results from our partnership with MNOSHA and the Construction Health and Safety Excellence (CHASE) program. The contractors have expressed their favorable opinions concerning this program time and time again. The participating contractors feel CHASE gives them an opportunity to separate them as the best of the best in their safety and health efforts. MNOSHA does an outstanding job in assisting with the CHASE program.

IBEW Local 160
P.O. Box 158
Becker, MN 55038

I have enjoyed my tenure representing labor on the MNOSHA Advisory Board. Also as a Co-chair on the Joint Safety and Health Committee for Excel Energy, I have had the opportunity to work with the MNOSHA Consultation Division. Consultation has been very helpful with assisting labor in the power generation industry in Minnesota. In my 30 plus years working in labor, I haven't had a lot of interaction with MNOSHA enforcement; however, I haven't been made aware of any negative information in that regard. I have always had the opportunity to apply for 'party status' to represent labor following MNSOHA enforcement activity, and have done so from time to time.

Appendix A Findings and Recommendations

[] = words added

	Findings	Recommendations
Complaints (p. 17)		
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.
Fatalities (p. 18)		
2	For fatality investigations, the form OSHA-170 (Accident Investigation Summary) 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.
Targeting and Inspection (p. 20)		
3	Data Initiative inspections were conducted without information contained in the file to explain the compliance officer’s discussions on site as they 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 officers 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.
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.
Citations and Penalties (p. 23)		
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.
Abatement (p. 24)		
6	Of the [57] cases reviewed, abatement documentation for corrective action following inspections was not requested by MNOSHA in any circumstance.	Ensure, when required, that documented proof of abatement is received.
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.
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.
Voluntary Compliance Programs (p. 42)		
9	Minnesota 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 VPP evaluations are conducted separately with 23(g) employees.
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 work site.
11	An employer working as a contractor at a work site 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 work sites 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.

**Appendix B
Enforcement Comparison Chart**

	Minnesota	State Plan Total	Federal OSHA
Total Inspections	2,737	61,016	39,004
Safety	2,197	48,002	33,221
% Safety	80%	79%	85%
Health	540	13,014	5,783
% Health	20%	21%	15%
Construction	1,090	26,103	23,935
% Construction	40%	43%	61%
Public Sector	95	7,749	N/A
% Public Sector	3%	13%	N/A
Programmed	2,417	39,538	24,316
% Programmed	88%	65%	62%
Complaint	223	8,573	6,661
% Complaint	8%	14%	17%
Accident	14	3,098	836
Insp w/ Viols Cited	1,937	37,978	27,165
% Insp w/ Viols Cited (NIC)	71%	62%	70%
% NIC w/ Serious Violations	86%	62%	87%
Total Violations	4,900	129,363	87,663
Serious	3,612	55,309	67,668
% Serious	74%	43%	77%
Willful	19	171	401
Repeat	28	2,040	2,762
Serious/Willful/Repeat	3,659	57,520	70,831
% S/W/R	75%	44%	81%
Failure to Abate	23	494	207
Other than Serious	1,218	71,336	16,615
% Other	25%	55%	19%
Avg # Violations/ Initial Inspection	2.5	3.3	3.1
Total Penalties	\$ 2,738,471	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 606.30	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 603.40	\$ 934.70	\$ 977.50
% Penalty Reduced	29.8%	51.9%	43.7%
% Insp w/ Contested Viols	22.2%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	13.4	15.7	17.7
Avg Case Hrs/Insp- Health	27.4	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	16.6	31.6	34.3
Lapse Days Insp to Citation Issued- Health	22.9	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	20	2,010	2,234

Source:

DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

Appendix C

Acronyms

ADM	Administrative Management Directive (Minnesota)
ADM	OSHA Instruction – Administrative
AGC	Associated General Contractors
APTA	American Physical Therapy Association (Minnesota)
AWAIR	A Workplace Accident and Injury Reduction (Minnesota)
BLS	Bureau of Labor Statistics
CAPR	Consolidation Annual Progress Report (Minnesota)
CASPA(s)	Complaint(s) about the State Program Administration
CA	Calendar Year
CDI	Corrected During Inspection
CFR	Code of Federal Regulations
CHASE	Construction Health and Safety Excellence Program.
CIH	Certified Industrial Hygienist
CPE	Certified Professional Ergonomist
CPL	Compliance Directive
CPPM	Consultation Policies and Procedures Manual (Minnesota)
CSP	Certified Safety Professional
DCT	Directives Coordination Team (Minnesota)
DLI	Department of Labor and Industry (Minnesota)
DIS	Whistleblower Investigations Manual, Discrimination Directive
FAME	Federal Annual Monitoring and Evaluation (Minnesota)
FCM	Field Compliance Manual (Minnesota)
FIR	Final Investigative Report (Minnesota)
FIRM	Field Inspection Reference Manual
FOM	Field Operations Manual
FR	Federal Register
F-T-A	Failure-To-Abate
FTE	Full Time Equivalent
HSEM	Homeland Security and Emergency Management (Minnesota)
IBEM	International Brotherhood of Electrical Workers
IH	Industrial Hygienist
ILO	International Labor Organization
IMIS	Integrated Management Information System
ISA	Informal Settlement Agreement
LEP	Local Emphasis Program
LWDIR	Lost Workday Injury Related
MARC	Mandated Activity Report for Consultation (Minnesota)

MN	Minnesota
MNOSHA	Minnesota Department of Labor and Industry – Occupational Safety and Health Division
MNOSHD 1-B	Minnesota Occupational Safety and Health Violation Worksheet
MNSTAR	Minnesota’s version of the Federal VPP Program
MNSHARP	Minnesota Safety and Health Achievement Recognition Program
MOOSE	Minnesota OSHA Operations System Exchange
NAICS	North America Industry Classification System
NIC	Not in Compliance (Minnesota)
NCR	National Cash Register Company (Manufacturer of the IMIS Servers)
NEP	National Emphasis Program
OMDS	Office of Management Data Systems
OMT	Occupational Safety and Health Management Team (Minnesota)
OSH	Occupational Safety and Health
OSHA	Occupational Safety and Health Act
OSHI	Occupational Safety and Health Investigator (Minnesota)
OTI	Occupational Safety and Health Training Institute
PE	Professional Engineer
PMA	Petition for Modification of Abatement
PPE	Personal Protective Equipment
PSM	Process Safety Management of Highly Hazardous Chemicals
PVC	Thermoplastic Piping
RACER	Regional Annual Consultation Report (Minnesota)
SA&O	Settlement Agreement and Order
SAMM	State Activity Mandated Measures (Minnesota)
SFY	State Fiscal Year (Minnesota)
SIC	Standard Industrial Classification
SIEP	State Internal Evaluation Program
SIR	State Interim Indicators Report (Minnesota)
SOAR	State OSHA Annual Report (Minnesota)
STD	Standard Interpretation Directive
S/W/R	Serious, Willful, Repeat
TED	Training and Education Directive
TRC	Total Recordable Cases
VPP	Voluntary Protection Program
WB IMIS	Web Based Integrated Management Information System
WSC	Workplace Safety Consultation (Minnesota)
23 (g) grant	Grant Agreement of the OSHA 23(g) Operational Program (MN Compliance Program)
21(d) grant	Grant Agreement (MN Workplace Safety Consultation Program)

OSHA Forms

OSHA 1	Inspection Form
OSHA 1B	Violation Worksheet
OSHA 7	Complaint Form
OSHA 31	Weekly Activity Report
OSHA 36	Accident Form
OSHA 90	Referral
OSHA 170	Accident Investigation Summary
OSHA 300	Log of Work-Related Injuries and Illnesses
OSHA 300A	Summary of Work-Related Injuries and Illnesses
OSHA 301	Injury and Illness Incident Report

Appendix D
SAMM – FY 2009 (Final)

Measure		State Data	Reference Data	Comment
1. Average number of days to initiate complaint inspections		3.21	9	Met
2. Average number of days to initiate complaint investigations		1.20	2	Met
3. Percent of complaints where complainants were notified on time		100%	100%	Met
4. Percent of complaints and referrals responded to within one day		100%	100%	Met
5. Number of denials where entry was not obtained		1	0	Not Met A warrant for entry was obtained; however, when the OSHI returned to the establishment, all operations were shut down indefinitely so the file became a no inspection – process not active.
6. Percent of S/W/R violations verified	Private	66.65%	100%	Not Met Addressed in detail in this report. MNOSHA has continued to concentrate efforts to address verification of abatement.
	Public	83.47%		
7. Average number of calendar days from opening conference to citation issuance	Safety	22.71	43.8	Met
	Health	33.14	57.4	Met
8. Percent of programmed inspections with S/W/R violations – safety	Safety	68.27%	58.6%	Met
	Health	57.52%	51.2%	Met
9. Average violations per inspection with violations	S/W/R	1.94	2.1	Met. Goal is considered met; it is just slightly under the reference.
	Other	.54	1.2	Met
10. Average initial penalty per serious violation – private sector only		\$728.23	\$1,335.20	Not Met The average initial penalty per serious violation decreased.
11. Percent of total inspections in public sector		3.47%	2.3%	Met
12. Average lapse time from receipt of contest to first level of decision		139.62	246.1	Met
13. Percent of 11C investigations completed within 90 days		100%	90%	Met
14. Percent of 11C complaints that are meritorious		11.54%	20.8%	Not Met The percent of merit cases increased in FY 2009 from FY 2008.
15. Percent of meritorious 11C complaints that are settled		66.67%	86.1%	Not Met The discrimination staff continues to work to settle merit cases.

Appendix E
FY 2009 SOAR (State OSHA Annual Report)

(Available Separately)