

**NORTH CAROLINA**  
**FY 2009 Enhanced FAME Report – Corrective Action Plan**  
**Prepared by Region IV**  
**Finding 1 of 9**

**Finding #1:** Supporting documentation is purged from (most) case files.

**Recommendation # 1:** NC should revise their records retention policy with respect to OSHNC inspection case file documentation.

**State Response:** Photos are maintained for fatalities and other significant case files. Purging of photos saves costs, and does not adversely affect the program. They will work with Area Director when retention policy is reviewed in the future to consider a policy that meets competing needs.

Meeting on 11/22/2010:

The State maintained the position that this policy has no adverse impact on the program and this practice is only done for budgetary reasons.

Meeting on 3/10/2011:

The State indicated that when the files are closed they purge the items in question before they are scanned to eliminate documents such as photos that require a large amount of storage space. This practice is done mainly due to the large amount of storage space needed and the cost to store the items in question. The State does not feel there is any value in keeping these items and there has never been an instance when this was a problem.

**Corrective Action Plan:** NA

**Documentation to be submitted w. due date:** NA

**Anticipated Completion Date:**

**Outcome Measure/Expectation:** Enhanced documentation in the OSHNC inspection case files.

**Status:** Pending further discussion and evaluation to ensure that NC's archival system is at least as effective as OSHA's.

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**Finding #2:** For complaints handled by letter, insufficient information was provided to complainant due to a decision to no longer provide a copy of the employer's response.

**Recommendation # 2:** NC should assure that written responses to complainants following investigation of complaints include clear and informative responses to their allegations.

**State Response:** Findings pertained to one case. Their FOM has been revised so that employer's response is provided to the complainant. This has been received and reviewed.

**Corrective Action Plan:** NA

**Documentation to be submitted with due date:** Revised complaint letters, and NC FOM were provided and reviewed prior to issuance of EFAME.

**Anticipated Completion Date:** NA

**Outcome Measure/Expectation:** Complainants continue to be provided a copy of the employer's response, or other written description of the complaint investigation outcome.

**Status:** Subject to further Federal review and monitoring.

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**Finding #3:** Next of kin letter was somewhat confusing and lacked explanation of the cause of the accident. These letters were usually signed by the compliance officer.

**Recommendation # 3:** NC should revise the letter sent to the next of kin at the close of their investigation to improve its clarity and include a description of the findings.

**State Response:** NC revised the letter in question, and made other changes so they are consistent with federal OSHA letters. The initial contact letters requesting any information that the next of kin might have related to the accident are signed by the Compliance Officer, with a reference to Steve Sykes, as the next-of-kin Ombudsman. The final letter with results is signed by the District Supervisor. New form letters were provided.

**Corrective Action Plan:** NA.

**Documentation to be submitted with due date:** Revised Next of Kin form letters were provided prior to the issuance of the EFAME.

**Anticipated Completion Date:** NA

**Outcome Measure/Expectation:** Families of victims are provided with easily understandable written information on the status of the accident investigation.

**Status:** Subject to further Federal monitoring.

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**Finding #4:** Case files contained insufficient information about the operations or potential hazards at the site, any safety or health programs in place, or what the inspection covered and some case files did not include injury or illness data from the 300 log.

**Recommendation # 4:** NC should assure that each case file includes documentation of the company's injury and illness experiences, safety and health programs, and a description of the processes inspected.

**State Response:** State reviewed each file that was missing 300 data. Training has been conducted on improved case file documentation. A copy of the training program was provided to OSHA.

**Corrective Action Plan:** NA

**Documentation to be submitted w. due date:** Nothing is needed from NC. The State will address identified case file inclusions during its citation review process. Results of their investigation into the deficiencies were received prior to the issuance of the EFAME, with a copy of the presentation used to train all compliance personnel.

**Anticipated Completion Date:** NA

**Outcome Measure/Expectation:** NC inspection files, particularly general industry programmed inspection files, contain information about injury and illness rates, safety and health programs, and a description of the facility and work processes.

**Status:** Subject to further Federal monitoring.

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**Finding #5:** State-specific violation classification guidelines result in a lower percentage of serious violations. Several of the violations in the case files were not classified as serious or as severe as Federal OSHA would have classified them.

**Recommendation #5:** NC should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice.

**State Response:** This item was not included in the draft FAME prepared by the Area Office. NC has no current plans to revise the violation classification procedures or severity assessment procedures as they are similar to Federal OSHA's. NC requested opportunity to review federal inspection files that are properly classified and to discuss specific cases where NC violations were not correctly classified. Completion of violation documentation training for all compliance personnel should increase consistency in assessing violation severity.

North Carolina has reviewed their serious violation guidelines and they are similar to Federal OSHA. The State will continue to discuss any differences of opinion concerning violation classification with Federal OSHA. Supervisors routinely review case files to assure proper classification of violations and the State conducts case file audits, and training is provided in violation classification. NC feels certain that the vast majority of violations are classified properly. The State believes that violations are classified consistently with established procedures.

**Corrective Action Plan:** NA

**Documentation to be submitted w. due date:** NA

**Anticipated Completion Date:**

**Outcome Measure/Expectation:** Possible increase in NC's average of serious violations, or percentage of serious violation issued.

**Status:** Pending further discussion. Violation classification is an essential component of an effective program and should be relatively consistent nationwide. Although the State's procedures for determining the classification of violation are the same as those of Federal OSHA, NC classifies a lower percentage of violations as Serious.

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**Finding #6:** State penalty calculation and adjustment policies result in lower penalties for serious violations. Violations are misclassified and willful violations were not cited. More follow-up inspections should be conducted.

**Recommendation # 6:** NC should monitor the results of its recently revised penalty calculation procedures and its penalty reduction policies to assure that penalties are appropriate for the violations cited. The State should also review its practices on the citing of willful violations and conducting follow-up inspections.

**State Response:** NC had made a change to its penalty calculation procedures prior to the EFAME review. As of the third quarter of FY 2010, NC's average serious penalty increased by 63%, to \$1,173. NC retains a higher percent of penalties than does federal OSHA. NC issued 20 willful violations in FY 2010. The low number of willful violations (one) in FY 2009 was due to normal fluctuations in discovering violations that meet the definition of willful. NC agrees that management review of follow up inspection goals is needed, and will implement an action plan.

Meeting on 11/22/2010:

A follow-up action plan has been developed and implemented. FY 2010 follow-ups were double when compared to FY 2009 (47 in FY 2009 and 100+ in FY 2010). The Assistant Director discussed this matter during a meeting with the Bureau Chiefs and field supervisors.

**Corrective Action Plan:** NA.

**Documentation to be submitted w. due date:** NA

**Anticipated Completion Date:** Recommendation was implemented and actions were completed during FY2010.

**Outcome Measure/Expectation:** Increased average penalty for serious violations (documented), increased number of willful violations issued (documented) and increased percent of follow-up inspections.

**Status:** Subject to further Federal monitoring. Pending issuance of Federal guidance on revised penalty policy implementation.

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**Finding #7:** Untimely closing of inspections in IMIS

**Recommendation # 7:** NC should review the status of all inspections on the IMIS Open Inspections Report and take any needed action to assure that activities related to the case have been taken and correctly entered into IMIS. In addition, procedures should be revised to take into account changes in staffing so that all IMIS data is subject to regular review.

**State Response:** Open inspection reports for employees no longer with the program have been assigned to current employees. NC has taken action to reduce the number of open inspections (that should have been closed). Steps have been taken to monitor debt collection cases more closely, and to close files where penalties are deemed uncollectible according to State procedures.

**Corrective Action Plan:** NA

**Documentation to be submitted w. due date:** Verified through discussions with and written explanations from NC Bureau Chiefs.

**Anticipated Completion Date:** Recommendation was implemented and actions were completed during FY2010.

**Outcome Measure/Expectation:** Decrease number of open inspections on IMIS reports; timely closing of inspection cases that should have been closed. Effective supervisory review of all abatement reports, debt collection reports, and open inspection reports.

**Status:** Subject to further Federal monitoring.

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**Finding #8:** Many penalties remain uncollected. Due to internal procedures for debt collection, debt collection status is not entered into IMIS and as a result standard IMIS debt collection reports cannot be used to regularly track overdue penalties.

**Recommendation #8:** NC should review and revise its debt collection procedures to assure appropriate collection actions, recording of information, and timely closing of cases.

**State Response:** A committee was formed to address this issue in February 2010. The debt collection procedures have been revised to streamline the process, as reflected in a flow chart provided to OSHA. Data on closed cases and penalties written off was provided to OSHA. The Division of OSH is currently working with another division in the NC Department of Labor that handles NC OSH collections, and that office is applying more resources to updating and following up on cases in debt collection.

**Corrective Action Plan:** NC will provide Open Inspection Reports to Federal OSHA for review in February, 2011.

**Documentation to be submitted w. due date:** Revised debt collection flow chart, and tables indicating cases that have been “written off” as uncollectible and can be closed, has been provided and discussed.

**Anticipated Completion Date:** March 1, 2011

**Outcome Measure/Expectation:** Decreased number of inspections on IMIS Open Inspection report (documented) and decreased number of “old” cases in debt collection (documented).

**Status:** Subject to further Federal monitoring.

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**Finding #9:** The report noted deficiencies in North Carolina’s discrimination program, including: the State policy that complaints must be received in writing; that all interviews are conducted by phone, not in person; the lack of closing conference information in case files; and guidance on settlement requirements that is not as detailed as OSHA’s Whistleblower Investigation Manual.

**Recommendation # 9A:** North Carolina should review their retaliatory discrimination laws and procedures and discontinue the practice of requiring that safety and health complaints be submitted in writing. Complaints should be docketed on the date that the complainant contacts the Employment Discrimination Bureau (EDB) and provides information establishing a prima facie case.

**State Response:** North Carolina’s Retaliatory Employment Discrimination Act requires that complaints be in writing. This is consistent with statutory language of federal and state safety or health complaints. Complainants are provided with the forms needed to make their complaints in writing, and there has been no indication of hardship due to this requirement. It is a State requirement and the State cannot deviate from these requirements.

**Recommendation #9B:** North Carolina discrimination investigators should conduct interviews in person when possible to assure that the quality of Employment Discrimination Bureau (EDB) investigations is not negatively impacted by conducting interviews by telephone. (North Carolina OSH management stated that they were not made aware of budgetary reasons for this practice and they have not have been asked for additional travel funds. They have discussed this issue with the EDB Administrator and agreed that interviews will be conducted in person when it will promote the quality of the investigation).

**State Response:** The State responded that if it can be proven that the practice of conducting interviews by phone adversely affects the quality of investigations, the practice could be curtailed. State policies do not require that all interviews be conducted by phone. Reducing travel time associated with in-person interviews allows investigations to be completed more timely.

**Recommendation #9C:** North Carolina should assure that safety and health discrimination files include details about the closing conference.

**State Response:** North Carolina will review discrimination closing conference procedures and details of the closing conference will be required to be included in files, if it is determined that the information adds value to the investigation process.

**Recommendation #9D:** North Carolina should review its settlement policy for safety and health discrimination cases and consider adding criteria consistent with current federal OSHA guidelines.

**State Response:** Federal OSHA's settlement policies are being reviewed. When federal OSHA's revised Whistleblower Manual is issued, North Carolina will begin the review process and work with federal OSHA to improve investigative procedures where appropriate.

Meeting on 11/22/2010:

Discussed the recent federal interpretation that all whistleblower complaints may be filed telephonically, and then reduced to writing by the investigator, in order to meet the requirement that complaints be filed in writing.

**Corrective Action Plan:** Pending implementation of the new whistleblower investigation manual.

**Documentation to be submitted w. due date:** NA

**Anticipated Completion Date:** North Carolina has already begun a review of the draft Federal OSHA Whistleblower's Manual and reviewed the procedures in question. EDB has assigned the identified issues to staff. 6-months following federal issuance of new whistleblower investigation manual

**Outcome Measure/Expectation:** Overall enhancement to the State's Employment Discrimination Bureau

**Status:** Pending further discussion. The draft revised Federal Whistleblower Manual has been made available to the States. State Plan discrimination investigation procedures are expected to be at least as effective as the Federal which includes docketing of oral complaints through written transcription, in person interviews, case file documentation of the details of closing conferences, and settlements based on established legal criteria. As these are not new policies, North Carolina is asked to begin the necessary modifications to its programs as soon as possible independent of issuance of the revised Whistleblower manual.