

**New Mexico FY 2009 FAME Report – Corrective Action Plan**  
**Prepared by Region 6; Issued September 28, 2010**  
**Finding 1 of 12**

**Finding #1:** Two of the 11 Compliance Officers interviewed were not aware of the NMFOM guidance on responding to complaints by inspection within 5 working days.

**Recommendation #1:** New Mexico OHSB should ensure that all compliance staff members are aware of the NM FOM timeframe goals for responding to complaints.

**State Response:** As discussed in the FAME Report, New Mexico receives and processes very few complaints each year. As a result, each complaint receives direct attention by compliance program management to ensure rapid assignment and investigation. The Compliance Program Manager or his designee assigns the investigation to a Compliance Officer (CO) and provides direct instructions on investigation requirements, including the timeframe for completion. New Mexico has historically exceeded established goals for responding to complaints, as reflected in State Activity Mandated Measure 1 (SAMM1). The FY 2009 data show that the average number of days to initiate an inspection of a complaint was 3.6 days and that all complainants were notified on time.

The timeframes for investigating complaints has been contained in the written performance evaluation for each CO since 2005 and is reviewed with each CO at least twice a year.

**Corrective Action Plan:** The OHSB Compliance Program Manager reviewed the 5-day goal with all compliance staff at the monthly compliance meeting which immediately followed the evaluation in February 2010. OHSB management will continue to review response goals during meetings, bureau training, and individual performance reviews.

**Documentation to be submitted w. due date:** Documentation of training on this issue has been provided, and no further documentation is required from the State. SAMM 1 will be reviewed at each quarterly meeting during FY 2011.

**Anticipated or Actual Completion Date:** March 2010

**Outcome Measure/Expectation:** Compliance staff has been reminded of the 5-day SAMM 1 goal.

**Status:** Completed.

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**Finding #2:** In the 12 fatality case files reviewed, we did not find documentation regarding contact with victims’ family members. We understand that contact did take place in several cases, but this was not documented in the files.

This issue was identified by OHSB in their FY 2009 State Internal Evaluation Program (SIEP) review, and a recommendation was made to ensure that the procedures in New Mexico Field Operations Manual, Chapter 11, Section II.G are followed.

**Recommendation #2:** New Mexico OHSB should ensure that family members are contacted early on and at appropriate times during fatality investigations, as provided in the New Mexico FOM, and that these contacts are documented in the case files.

**State Response:** New Mexico did not adopt the April 2005 Federal OSHA directive CPL 02-00-137 that contains procedures for contacting family members. OHSB notified Federal OSHA of our decision at that time, and our response was accepted. Prior to the 2009 revision of the NM FOM (effective in November 2009), OHSB policies did not include the procedures followed by Federal OSHA for contacting victims’ family members. Prior to that, compliance staff contacted family members when it was determined that useful information might be obtained during the investigation.

**Corrective Action Plan:** OHSB implemented a policy change which included letters and phone contact with victims’ family members during all fatality investigations as part of the NM FOM revisions in November 2009, after the period covered by this OSHA evaluation. The policy remains in effect. All documents received or created as part of a fatality investigation are included in case files.

The State Internal Evaluation Program (SIEP) review for FY 2009 contained a recommendation that OHSB staff members follow the new guidelines in the NMFOM, and that Compliance Officers receive instruction on the new guidelines.

During the FY 2010 SIEP review, which included following up on recommendations from the FY 2009 report, the reviewer found that the State policies and procedures for contacting family members in fatality inspections had been documented in the FOM, and all Compliance Officers had been trained to refer this task to the Compliance Program Manager.

**Documentation to be submitted w. due date:** The documentation of the State’s policy (revised NM FOM) was transmitted to the region in November 2009 and is under review. Documentation that Compliance Officers have been trained and that the Compliance

Program Manager will be contacting family members during all fatality investigations, is contained in the OHSB FY 2010 SIEP report.

**Anticipated or Actual Completion Date:** The State transmitted the revised NMFOM in November 2009. They anticipate transmitting a copy of the findings from the FY 2010 SIEP by December 31, 2010.

**Outcome Measure/Expectation:** Fatality investigation case files initiated after November 2009 will contain documentation of contact with family members at appropriate times during the investigations.

**Status:** Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that the appropriate documentation is included in fatality investigation files initiated after November 2009.

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**Finding #3:** Case files reviewed were not always fully and accurately documented.

**Recommendation #3:** New Mexico OHSB should ensure that:

1. Each case files contains a diary sheet that documents all actions taken, when they were taken, and by whom.
2. Documentation of employee discussions relative to violations or complaint items is included in all case files.
3. Employee exposure to hazards is documented.
4. Employer knowledge is documented.
5. The four elements for a general duty clause violation are documented on the OSHA-1B form: identify the hazard to which employees are exposed; state how the hazard is recognized (including industry recognition); state how the hazard would cause death or serious physical harm; and identify the feasible abatement methods.
6. OSHA-300 log data is documented and entered into the IMIS for all appropriate case files.

**State Response:**

1. OHSB case files have historically included a tracking sheet containing dates for standard actions and a diary sheet documenting actions taken following citation issuance. However, the diary sheet was not normally used to document all actions taken, including those prior to issuance, while the case was still open.
2. All OHSB inspections include employee participation and discussion during the walk-around to ensure an understanding of processed and related hazards. Where potential violations are identified, comments made by employees and employer representatives are documented to support citations. Comments have typically been written within field notes or field worksheets, which are then used as supporting documents to citation items. However, not all case files with citations contained documentation of employee discussions or comments, as noted in the report.
3. For case files involving citations, the documentation of exposure must be contained in the case file. This documentation should be noted on the worksheets used during inspections and a specific statement regarding employee exposure should be included in the case file.
4. For cases involving citations, the documentation of employer knowledge must be contained in the case file. This documentation should be noted on the worksheets used

during inspections and a specific statement regarding employer knowledge should be included in the case file.

5. OHSB case files that involve violations of the general duty clause do have documentation pertaining to the four elements of a general duty clause violation. However, not all citations issued for general duty clause violations contained an adequate description of the four elements.

6. OHSB agrees that the OSHA-300 log data was not properly documented and entered into the IMIS for all appropriate case files. This was also noted in our 2010 SIEP findings. We did, however, find that Compliance Officers reviewed injury and illness information during inspections and recommended recordkeeping citations where appropriate.

Compliance Officers would be more likely to perform this task if there were a recognizable benefit that justified the time and effort required.

**Corrective Action Plan:**

1. The need for better use of diary sheets was detected during the FY 2009 SIEP, and a recommendation was made regarding diary sheets. OHSB has since developed a tracking sheet for use by Compliance Officers during and following inspections. COs have been instructed in the use of the diary sheet and inclusion in all case files was implemented as of August 2010.

2. The Compliance Program Manager will instruct all Compliance Officers to document employee discussions relative to violations and complaint items. File review will include review for adequate documentation of discussions.

3. The need for more complete documentation of employee exposure was also noted during the execution of OHSB's FY 2010 State Internal Evaluation Program. The Compliance Program Manager responded to a similar recommendation from the SIEP by conducting training sessions that emphasized the requirement to fully document employee exposure and by ensuring that case file reviews include checking the adequacy of such documentation.

4. During internal compliance officer training sessions, the Compliance Program Manager will continue to emphasize the need for proper documentation of employer knowledge. He will also ensure that case file reviews include checking the adequacy of such documentation.

5. All Compliance Officers have been instructed to adequately address each of the four elements of general duty clause violations in the citations. Supervisors will continue to monitor each case where general duty violations are identified to ensure that all necessary evidence is obtained and documented in the alleged violation description.

6. All Compliance Officers have been instructed to obtain, document, and enter OSHA-300 log data when it is required.

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

1. A copy of the diary sheet was provided to the region at the FY 2010 fourth quarterly meeting the week of November 15, 2010.
2. Documentation of employee training will be transmitted by December 31, 2010.
3. Documentation of employee training will be transmitted by December 31, 2010.
4. Documentation of employee training will be transmitted by December 31, 2010.
5. Documentation of employee training will be transmitted by December 31, 2010.
6. Documentation of employee training will be transmitted by December 31, 2010.

**Anticipated or Actual Completion Date:**

1. November 15, 2010.
2. December 31, 2010.
3. December 31, 2010, and ongoing for all newly hired Compliance Officers.
4. December 31, 2010.
5. December 31, 2010.
6. This has been completed for all on board Compliance Officers, and will be ongoing as new Compliance Officers are hired.

**Outcome Measure/Expectation:**

1. Case file reviews of cases initiated after September 1, 2010, will include reviewing diary sheets. This will be accomplished as part of the FY 2011 SIEP.
2. All case files will contain documentation of discussions with employees regarding violations and/or complaint items.
3. Case file reviews of cases initiated after October 1, 2010, will include reviewing documentation of employee exposure. This will be accomplished both as part of the FY 2011 SIEP and Federal case file reviews.
4. See #3 regarding employer knowledge.

5. See #3 regarding documenting the four elements of a general duty clause violation.
6. See #3 regarding documenting OSHA-300 log data for appropriate case files.

**Status:** Pending further Federal review and monitoring.

1. Use of the diary sheet by Compliance Officers was initiated in August 2010.
2. Ongoing.
3. Ongoing.
4. Ongoing.
5. Ongoing.
6. Completed for all on board Compliance Officers.

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**Finding #4:** Union representation was not documented in one case file, and documentation of union participation in the inspection and subsequent actions was not always included in several case files.

**Recommendation #4:** New Mexico OHSB should ensure that union representation is identified in the case file and documented on the OSHA-1 form, and that union representatives are appropriately involved during inspections and any subsequent review actions.

**State Response:** OHSB strives to obtain and record accurate information in all case files regarding union participation at work sites inspected by OHSB and acknowledges that union representation was incorrectly documented in at least one case. When OHSB determines that employees at a job site do have union representation, the representatives are afforded an opportunity to participate in the inspection. OHSB always requires employers to post notices for all review actions, thus providing a notification to employees and employee representatives and affording them an opportunity to participate.

**Corrective Action Plan:** OHSB will continue to stress to Compliance Officers the requirement to identify and document union representation and to appropriately involve union participation during inspections. We will continue to follow established policies for the posting of notices of meetings, and will continue to assure that the employer attests to posting of notices.

**Documentation to be submitted w. due date:** Documentation of Compliance Officer training will be transmitted by December 31, 2010.

**Anticipated or Actual Completion Date:** December 31, 2010.

**Outcome Measure/Expectation:** All case files will contain documentation of union presence at the jobsite, if appropriate. Union representatives will be involved in inspections, and will be notified through posting by the employer of subsequent review actions.

**Status:** Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that union participation in inspections and subsequent review actions is documented in case files.

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**Finding #5:** Average health citation lapse time in New Mexico is significantly higher than the National average. This has been a focus of State efforts for several years, and was identified in the 2008 State Internal Evaluation Program (SIEP) review. Steps were taken at that time and are continuing, in an effort to reduce the lapse time. We have seen reductions in both safety and health citation lapse times as a result.

**Recommendation #5:** New Mexico OHSB should continue efforts to further reduce health citation lapse time.

**State Response:** The details provided in the FAME report contain an accurate description of the actions taken to address this issue. This issue was identified by the Region VI State Plans Program Manager several years ago and has been discussed in every quarterly review since that time. Corrective action was initiated when the issue was first identified and has been on-going since that time.

In our 2010 SIEP, we identified a response time issue with the Salt Lake Technical Center (SLTC) that contributed to extended lapse times in FY 2010. The average turn-around time for obtaining diagnostic results from the SLTC is 27 days. One of the reasons SLTC gave for the longer than usual response times was that in order to handle “a large influx of samples from the Gulf Oil Spill,” SLTC “had to divert 4 of...8 organic analysts to this project, causing delays in processing our normal sample load.”

**Corrective Action Plan:** OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance.

We will continue to perform a monthly analysis of lapse times for individual Compliance Officers and will continue to use lapse times as a major factor during employee performance evaluations. We have instituted progressive administrative discipline for Compliance Officers whose performance in this area is substandard.

In addition, we are investigating alternative sources for performing analyses of samples obtained during health inspections in an attempt to find a provider with quicker response times than the SLTC.

**Documentation to be submitted w. due date:** None.

**Anticipated or Actual Completion Date:** December 31, 2010.

**Outcome Measure/Expectation:** Health citation lapse time will continue to decrease.

**Status:** Ongoing. Pending further Federal monitoring.

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**Finding #6:** In a very small number of instances (4 of 225), violations were not properly classified in accordance with the severity of the potential injuries/illnesses that could result. These included asphyxia, systemic poisoning, and electrical shock being noted as minimal severity.

**Recommendation #6:** New Mexico OHSB should ensure that Compliance Officers appropriately record the severity of all injuries and illnesses identified as violations.

**State Response:** In our closing conference with the audit team, we were provided with the specific cases where improper classification was detected. We subsequently reviewed these case files and conducted specific training for Compliance Officers in response to this review.

We also believe that the accuracy of our violation classification process is validated by the data in the Interim State Indicator Report (SIR), item C.8, titled “Violations Reclassified %.” When OHSB performance is compared to Federal performance in this area, New Mexico consistently achieves lower rates for violations reclassified. For example, according to the SIR report contained in Appendix E of the FAME report, the percentage of violations that were reclassified by Federal OSHA in FY 2009 was 4.8% versus the New Mexico rate of 1.1%

**Corrective Action Plan:** OHSB has conducted training for Compliance Officers to ensure that potential injuries and illnesses associated with identified hazards are appropriately described.

**Documentation to be submitted w. due date:** Documentation of Compliance Officer training will be transmitted by December 31, 2010.

**Anticipated or Actual Completion Date:** May 10, 2010.

**Outcome Measure/Expectation:** All case files will include documentation regarding the severity of injuries and illnesses identified as violations. This issue will be included in case file reviews conducted as part of the 2010 SIEP and/or Federal case file reviews.

**Status:** Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that violations are properly classified.

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**Finding #7:** In a very small number of case files (6 of 84), our review identified hazards that were not addressed.

**Recommendation #7:** New Mexico OHSB should ensure that potential hazards are assessed through appropriate sampling, and that all hazards are addressed through either a citation or, if no standard exists and the elements of a general duty clause violation are not present, a hazard alert or 5(a)(1)/general duty clause letter is sent to the employer.

**State Response:** This finding did not establish the presence of violations that were not cited, only that there may have been hazards present that were not addressed.

We agree that the ability to properly identify hazards varies among Compliance Officers, who have different levels of training and experience. We are confident that overall, our Compliance Officers are competent in identifying hazards. Inspections are assigned to Compliance Officers based upon their experience and ability to recognize hazards in a specific industry.

**Corrective Action Plan:** OHSB will continue to evaluate Compliance Officers' competency in hazard identification through individual case review and monthly analysis of citation rates. We will continue to evaluate the experience level and training histories of our Compliance Officers and attempt to enroll them in appropriate training courses to improve their ability to properly recognize and cite hazards. We will review sample hazard alert letters provided by the Region for possible use.

**Documentation to be submitted w. due date:** The Regional Office will provide sample hazard alert letters to OHSB for review by December 10, 2010. OHSB will provide a response by January 31, 2011.

**Anticipated or Actual Completion Date:** January 31, 2011.

**Outcome Measure/Expectation:** Case files will contain hazard alert letters where appropriate.

**Status:** Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that hazard alert letters are contained in case files where appropriate.

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**Finding #8:** Compliance Officers did not uniformly complete the violation calculation worksheet for assessing penalties. **(Deleted)**

**Recommendation #8:** New Mexico OHSB should ensure that Compliance Officers complete the “Violation Calculation” guide on the back of the OHSB Field Worksheet, to ensure uniformity in assessing severity and probability for penalty calculations. **(Deleted)**

**State Response:** We acknowledge that some variance exists among Compliance Officers in the interpretation of severity and probability for penalty calculations, but it is important to note that we have occasionally encountered unintended consequences when relying strictly upon the “Violation Calculation” guide. As a result, we consciously decided not to implement a strict policy of utilizing the guide for penalty calculations in every case. We will, however, continue to utilize the guide as just that – a guide – and will encourage its use as a training tool. We will continue to follow the NM FOM in determining penalties. We believe it provides guidance for considering the factors used to calculate penalties that is at least as effective as the “Violation Calculation” guide.

**Corrective Action Plan:**

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

**Anticipated or Actual Completion Date:**

**Outcome Measure/Expectation:**

**Status:** **FINDING AND RECOMMENDATION DELETED**, pending issuance of formal direction from OSHA on revised penalty policy implementation.

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**Finding #9:** Nine of 57 (16%) of the case files we reviewed had at least one violation with abatement dates we considered longer than necessary. For example, guardrails on scaffolds should be assigned abatement dates of a few days, rather than several weeks; separation of oxygen and fuel gas cylinders was given a 2 week abatement period; and a 17 day abatement period was given for controlling carbon monoxide exposure.

**Recommendation #9:** New Mexico OHSB should ensure that, in accordance with NMFOM Chapter 5, Section II.C.2.k, “The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation.”

**State Response:** We acknowledge that some Compliance Officers have developed patterns or habits for determining abatement period which may not always take into account the shortest reasonable intervals. We also acknowledge that quick abatement of hazards is paramount to achieving our goal of providing a safe and healthful workplace of all employees in New Mexico.

Although the SIR data for “Abatement Periods for Violations” (Appendix E, Item C.4) may not be a direct correlation to the findings above, we believe the comparison of New Mexico data with Federal data validates our practices related to abatement dates. When compared to Federal numbers, we consistently achieve substantially lower results for abatement periods “greater than 30 days for safety violations” and “greater than 60 days for health violations.” For example, the percent of safety violations with an abatement period longer than 30 days for FY 2009 shows the Federal rate was 17.6% and the New Mexico rate was only 3.3%. The percent of health violations with an abatement period longer than 60 days shows the Federal rate was 10.0% while New Mexico OHSB’s rate was 1.0%.

**Corrective Action Plan:** The Compliance Program Manager has emphasized to Compliance Officers the need to consider abatement period for violations based on the circumstances in each individual case in order to achieve optimum results in abatement time intervals.

**Documentation to be submitted w. due date:** Documentation of Compliance Officer training will be transmitted by December 31, 2010.

**Anticipated or Actual Completion Date:** December 31, 2010.

**Outcome Measure/Expectation:** Assigned abatement periods will be for the shortest interval within which the employer can reasonably be expected to correct the violation in case files reviewed as part of the 2011 SIEP and/or Federal case file reviews.

**Status:** Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that assigned violation abatement periods are for the shortest interval within which the employer can reasonably be expected to correct the violation

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**Finding #10:** The reasons why a violation was changed as the result of an informal administrative review were not always documented in the case files.

**Recommendation #10:** New Mexico OHSB should ensure that the reasons why violations and/or penalties are changed at the Informal Administrative Review are documented in the case file.

**State Response:** OHSB questions the advisability of always documenting the reasons for changing violations and/or penalties. The settlement process often involves compromises that are reached after consideration of a variety of factors, including a desire to ensure that workplace hazards are abated in a timely manner, acknowledgement of the fact that the existence of a particular violation is not always “cut and dried”, and an obligation to ensure that limited resources are utilized wisely. Requiring documentation of the specific factors considered as part of the settlement process will increase the likelihood that parties not directly involved will misunderstand how the process worked and will take elements of an agreement out of context, which could result in unintended consequences.

**Corrective Action Plan:** The Bureau will review the current NMFOM sections on settlements after Informal Administrative Review, and will develop language to address this issue.

**Documentation to be submitted w. due date:** Draft revisions to the NMFOM will be transmitted to the Region by June 30, 2011.

**Anticipated or Actual Completion Date:** June 30, 2011.

**Outcome Measure/Expectation:** Documentation of reasons for settlement following Informal Administrative Reviews will be included in case files.

**Status:** Pending review of draft NMFOM revisions and further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that the NMFOM provisions regarding settlements are being followed.

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**Finding #11:** Our review of nine currently-approved Voluntary Protection Program (VPP) files found that the annual reports were missing in most of the files. The Bureau Chief stated that the annual reports are maintained in Albuquerque, where the Compliance Assistance Specialists are physically located.

**Recommendation #11:** New Mexico OHSB should ensure that the Voluntary Protection Program (VPP) case files are complete, including annual reports, wherever they are maintained. One suggestion could be to create an electronic file that would be accessible to appropriate staff at any location at any time.

**State Response:** The Compliance Assistance Specialists responsible for the administration of the VPP program have offices in our Albuquerque office and maintain the VPP files there. When annual reports are completed, they are delivered to our Santa Fe office for review and approval by the Bureau Chief, and they are then returned to the appropriate Compliance Assistance Specialist in Albuquerque.

**Corrective Action Plan:** Any missing annual reports will be obtained and filed. We will institute a practice of creating and posting electronic copies of the annual reports on an internal drive available to OHSB staff.

**Documentation to be submitted w. due date:** Not applicable.

**Anticipated or Actual Completion Date:** This was completed in spring 2010.

**Outcome Measure/Expectation:** All VPP case files will be complete.

**Status:** Subject to further Federal monitoring. This issue and appropriate case files will be reviewed and finalized at the spring 2011 quarterly meeting.

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**Finding #12:** There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations.

**Recommendation #12:** New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).

**State Response:** OHSB acknowledges the inconsistency in language and interpretation of the private interviewing regulations that were created by the Environmental Improvement Board. As noted in the evaluation report, OHSB attempted to resolve the issue in 2009 by proposing statutory changes, but was unsuccessful.

**Corrective Action Plan:** OHSB has requested legal assistance in drafting and presenting appropriate corrections of the regulations to the Environmental Improvement Board. The proposed regulatory changes will be presented to the Environmental Improvement Board for consideration in FY2011.

**Documentation to be submitted w. due date:** Proposed revised regulations will be transmitted by June 30, 2011.

**Anticipated or Actual Completion Date:** June 30, 2012.

**Outcome Measure/Expectation:** OHSB regulations will ensure the Bureau's right to interview employees in private.

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