

**SOUTH CAROLINA
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 1 of 10**

Finding #1: No narrative description of the accident or investigation details of multi-employer responsibilities

Recommendation # 1: South Carolina should assure that fatality investigation case files and inspection case files directly related to a fatality include a narrative that thoroughly describes the accident and its causes.

State Response: South Carolina does not independently promulgate extensive safety and health standards, so it has few uses for detailed findings for causation. State investigation is focused on determining the factual conditions at the time of the incident, "...on whether the employer complied with safety and health standards and adequately addressed all recognized hazards on the job site." Each fatality inspection file does include a narrative description of the incident in addition to the report filed by the employer; no enforcement action in South Carolina has ever failed due to a lack of detailed findings of causation in a file.

Conference call on 11/18/2010:

Ms. Ison stated that the need to have a narrative in the case files has all been reviewed with staff and supervisors. She stated that the narrative information is in the files; however, it will be in different places with the new (IMIS) system. Ms. Street told Ms. Ison of need to have a process, such as internal audit, to assure that the information was included in every fatality file.

Corrective Action Plan:

1. Provide documentation of training content to ensure it meets the intent of the recommendation. Federal OSHA will review and determine if additional action is necessary.
2. State needs to implement processes to assure that fatality files are reviewed thoroughly for compliance with procedures (in addition to verbal discussions with compliance officer.)
3. Hire a new Program Coordinator . This position will assist the Compliance Manager in reviewing fatality files and work to ensure all case files are documented thoroughly.

Documentation to be submitted and due date:

1. Fatality narrative information by 12/15/2010
2. Training/meeting documentation by 1/14/2011

Anticipated Completion Date: 1/30/2011

Outcome Measure/Expectation: Enhanced documentation in case files.

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Status: Pending further Federal monitoring. State to submit documentation for Regional review.

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Finding #2: Case file documentation consists of checklists of fill in the blank forms with no or minimal narrative description of the hazardous condition. Employees not always interviewed; documentation inadequate or missing; sampling forms lacked information on operations being sampled.

Recommendation # 2: South Carolina should assure that each violation is documented adequately for employer knowledge, employee exposure, health sampling factors, and description of the hazardous condition.

State Response: This finding has been addressed through several training sessions and routine staff meetings. Compliance officers do routinely question workers during inspections and record their comments. South Carolina OSHA does not have the resources to provide translation services for all the different languages, and would be interested in a MOU with USDOL to access in-house translation services.

Conference call on 11/18/2010:

Ms. Ison agreed on problems with insufficient documentation in files. This was covered during the same meeting where they went over fatality files. Additionally, the State will post a position for a Program Coordinator, which should help greatly with the oversight of the compliance program.

Corrective Action Plan:

1. Hire a new Program Coordinator . This position will assist the Compliance Manager in reviewing fatality files and work to ensure all case files are documented thoroughly.
2. Provide documentation of training content to ensure it meets the intent of the recommendation. Federal OSHA will review and determine if additional action is necessary.

Documentation to be submitted and due date:

1. Provide documentation of the training provided to compliance officers and supervisors by 12/15/2010.

Anticipated Completion Date: 12/31/2010

Outcome Measure/Expectation: Enhanced documentation in case files.

Status: Pending further Federal monitoring. State to submit documentation on training for Regional review.

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Finding #3: Violations (mostly electrical) misclassified as low severity rather than medium or high. For most other-than-serious violations, no description of the injury, just the notation: “less than serious physical harm or death.” Violations incorrectly rated as low probability rather than high probability.

Recommendation # 3: South Carolina should assure that each violation is classified accurately for severity and probability. Guidelines for rating the severity of the injury or illness being prevented should be revisited to assure that they are consistent with the definitions of high, medium, and low severity in SC OSHA’s procedures.

State Response: South Carolina established guidelines for consistency among compliance officers when addressing common hazards. Findings do not identify cases where South Carolina compliance officers did not follow the instructions in the (SC) FOM in classification of violations.

Conference call on 11/18/2010:

Guidelines, such as for electrical and amputation hazards, are not consistent with federal practices and result in lower serious violations. Ms. Ison agreed to send documentation of their specific review of severity guidelines. She believes some changes were made to the guidelines, and she will provide documentation.

Corrective Action Plan:

1. Provide documentation of training content to ensure it meets the intent of the recommendation. Federal OSHA will review and determine if additional action is necessary.

Documentation to be submitted and due date:

1. Revised guidelines and/or other results of review by 12/15/2010.

Anticipated Completion Date: 12/31/2010

Outcome Measure/Expectation: Enhanced inspection and appropriate classified of violations.

Status: Pending further Federal monitoring. State to submit documentation on policy changes and training. Proper violation classification is an essential component of an effective program and should be relatively consistent nationwide.

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Finding #4: 1995 policy memo provides that other-than-serious violations that are corrected during the inspection are not cited. No documentation on violations not cited, nor abatement. Indication that as many as 34-violations were not cited on one inspection

Recommendation #4: South Carolina should revoke their policy, contained in their memorandum dated June 23, 1995, of not citing other-than-serious violations that are immediately abated.

State Response: South Carolina has consistently chosen to increase the number of inspections, rather than the time spent on a single inspection. South Carolina's practice of not citing other-than-serious violations corrected in the presence of the compliance officer allows South Carolina to reduce the time to write and process reports, and to inspect a larger percentage of employers in the state. The effectiveness of this approach should be judged on the basis of the injury and illness rates in the state.

A draft procedure for Immediate Abated Penalty Reduction (IAPR) dated 8/5/2010 was provided to Area Director. This also covers other-than-serious (OTS) violations and references classifying violations as de minimis, and issuing a recommendation instead of a citation. Documentation is required in the case files.

Conference on 11/18/2010:

Ms. Ison stated the procedure has changed and they no longer have a policy for not citing other-than-serious violations corrected during the inspection. The State could start by requiring documentation of all violations and abatement method, then discussing with supervisor upon return.

Corrective Action Plan: NA

Documentation to be submitted and due date: Revised IAPR policy has been finalized and a copy of was received in the Regional Office on 11/29/2010. New policy was implemented on 8/6/2010.

Anticipated Completion Date: NA

Outcome Measure/Expectation: Enhanced documentation in case files and increase in OTS violations cited.

Status: Subject to further Federal monitoring and review of State IAPR policy to determine if it addresses the identified problem. OSHA maintains that all other than serious violations identified must be cited, in accordance with State and Federal statute, and are subject to discretionary first instance penalties. It is unclear whether the State's new policy on penalty

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reduction for immediately abated other than serious violations revokes the 1995 policy and how a penalty reduction policy will address the issue of not citing immediately abated OTS violations, which in most cases would not be subject to a penalty.

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Finding #5: Inadequate abatement accepted under “Immediately Abated Penalty Reduction” policy (15% for serious violations corrected during inspection, similar to quick-fix). Policy used more frequently with greater penalty reduction (based on gravity-based penalty not adjusted penalty. Check-off without employer abatement certification or documentation for abatement information when obtained at informal conference. Abatement information reviewed for adequacy by informal conference officer, not CSHO or supervisor. Hazards not adequately addressed. Planned follow-up inspections never conducted.

Recommendation #5: South Carolina OSHA should conduct training and implement management controls to assure that adequate abatement certification or documentation is received for each violation, and that the abatement information is maintained in the case file. When follow-up inspections have been recommended or when citations meet the State’s criteria for follow-up inspections, follow-up inspections should be conducted unless the reason a follow-up is not needed is documented.

State Response: South Carolina OSHA has a policy for reviewing abatement submitted by a company and South Carolina regulations outline procedures for documenting violation abatement. For cases where the informal conference officer did not document abatement actions, this has been brought to the attention of the hearing officer, and steps were taken to make this a part of the Informal Conference policy. Where a follow up was not assigned, this was where the abatement for a health file was reviewed by a safety supervisor who was unaware of the policy to conduct follow ups for overexposures. The policy has been updated to require all health cases to be reviewed by a health supervisor or health manager.

A draft procedure for Immediate Abated Penalty Reduction (IAPR) dated 8/5/2010 was provided to Area Director. This also covers other-than-serious (OTS) violations and references classifying violations as de minimis, and issuing a recommendation instead of a citation. Documentation is required in the case files.

Conference call on 11/18/2010:

Revised Immediate Abated Penalty Reduction (IAPR) policy has been finalized. Ms. Ison said that we will see a lot fewer instances where penalty reductions are given due to immediate abatement.

Corrective Action Plan:

1. Update Informal Conference Policy
2. Provide documentation of training content to ensure it meets the intent of the recommendation. Federal OSHA will review and determine if additional action is necessary.

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Documentation to be submitted w. due date:

1. Provide a copy of the revised Informal Conference Policy by 12/15/10. A copy of the finalized IAPR policy was received by the Regional Office on 11/29/10.

Anticipated Completion Date: 12/31/2010

Outcome Measure/Expectation: Case files will include adequate abatement documentation, and particularly where a penalty reduction is given due to immediate abatement. Average serious penalty should increase.

Status: Pending further Federal monitoring and review of State IAPR and revised informal conference policies to determine if they address the identified problems.

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Finding #6: Employer penalty option provides 60% (proposal to reduce to 50% in 2009) penalty reduction at informal conference, if safety and health improvements promised. Policy used even in fatality cases. Employers not required to take sufficient extra steps for a safe and healthful workplace. Change to 50% reduction never implemented and State impact and analysis promised in 2008 never conducted.

Recommendation # 6: South Carolina should revise their Employer Penalty Option procedure, to assure that employer size, history, and the nature of the current violations are considered when any penalty reductions are offered; and, South Carolina should assure that the employer is making significant commitments to implement or improve their workplace safety and health program in exchange for penalty reductions.

State Response: The state will review the frequency with which individual employers use the program and the guidelines for negotiating workplace safety and health enhancements which are not required by current standards.

Conference call on 11/18/2010:

Ms. Ison stated that South Carolina no longer has an “EPO”. She indicated that the new policy was effective 10/1/2010. This includes a maximum penalty reduction of 50%. Revised policy will be submitted as soon as possible.

Corrective Action Plan:

1. Revise the EPO procedure.
2. Provide documentation of training content to ensure it meets the intent of the recommendation. Federal OSHA will review and determine if additional action is necessary.

Documentation to be submitted w. due date:

1. Submit revised procedures to Federal OSHA for review by 12/15/10.
2. Submit documentation of training for all staff in new procedures by 1/31/11.

Anticipated Completion Date: 2/15/2011

Outcome Measure/Expectation: The use of “phone and fax” informal settlement agreements has been greatly reduced. What the informal conference officer can agree to without going through her has been greatly reduced. Increase in average current penalty for serious violations.

Status: Pending further Federal monitoring and review. State to submit all current and revised penalty policies and documentation of training for Regional review. .

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Finding #7: Response to Federal Program Changes not timely; response to New FOM not yet submitted.

Recommendation # 7: South Carolina should provide state plan changes, adoption documents, and state procedures for comparison purposes to federal OSHA on a timely basis.

State Response: South Carolina does provide state plan changes, adoption documents, and state procedures for comparison purposes to Federal OSHA on a timely basis. The Field Operations Manual (FOM) example involved a state decision not to adopt a federal management document. The comparable state procedures have always been available to Federal OSHA for comparison purposes. Neither Section 18 of the Act nor the indices of effectiveness in 29 CFR 1904.24(c) require that the state have procedures that are equivalent to those utilized by USDOL.

During the quarterly meeting on 7/27/2010 The State indicated to Ms. Street that the State was making the final changes to the South Carolina FOM and would provide it with side-by-side comparison in about two weeks.

Conference call on 11/18/2010:

Ms. Ison stated that South Carolina has been working on the FOM and she believed it had been completed.

Corrective Action Plan:

1. Provide state plan changes, adoption documents, and state procedures for comparison purposes to Federal OSHA on a timely basis.

Documentation to be submitted and due date:

1. Revised SC FOM and side-by-side comparison by 12/15/2010.
2. Provide documentation of training content to ensure it meets the intent of the recommendation. Federal OSHA will review and determine if additional action is necessary.

Anticipated Completion Date: 12/31/10

Outcome Measure/Expectation: Documentation of adoption of federal program changes or issuance of revised state policy will be provided to federal OSHA timely.

Status: Pending further Federal monitoring and review of revised SC FOM with side-by-side comparison to Federal FOM and training documentation.

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Finding #8: CSHOs conduct all discrimination case investigations usually concurrently with workplace complaint investigations. Discrimination program procedures are different from those of federal OSHA and do not assure that a quality investigation is conducted and documented.

Recommendation #8a: South Carolina should eliminate their written procedures requiring discrimination complaints to be submitted in writing. Complaints should be docketed on the date that the complainant contacts SC OSHA and provides information establishing a prima facie case. Because there is a 30 day time-filing requirement, it is imperative that complaints be filed as promptly as possible.

Recommendation #8b: South Carolina should assure that complaint notification letters are sent to the Respondent informing them of the discrimination complaint and requesting a written position statement in response to the complaint.

Recommendation #8c: South Carolina should assure that a signed and dated statement is obtained from the discrimination complainant when he or she is interviewed.

Recommendation #8d: South Carolina should assure that each discrimination investigation case includes a written report that presents all of the facts gathered during the investigation. The case file should include an analysis or evaluation of the facts as they relate to the four elements of a prima facie case, a case activity log, documentation of discussions related to the case, and documentation of the closing conference with the complainant.

Recommendation #8e: South Carolina should review its settlement policy for discrimination cases and consider adding criteria consistent with federal OSHA guidelines.

State Response: Response covers Recommendations 8a through 8e - It is appropriate for the efficiency of the administration of the whistleblower program, that South Carolina return jurisdiction to the federal government for mixed jurisdiction whistleblower cases (involving a federal statute in addition to 11c) and cross-border employment cases.

Conference call on 11/18/2010:

Recommendations 8a through 8e – Ms. Ison discussed problems/issues with South Carolina’s program LLR Legal Counsel and the upcoming personnel changes. Other attorneys assigned to OSH cases are not entirely familiar with the discrimination laws. Street said they would need to have someone handle this area of their program. South Carolina also asked for complaints where company headquarters are out of South Carolina to be handled by Federal OSHA, due to inability for South Carolina to issue subpoenas. Federal OSHA uses subpoena power very rarely for 11c cases.

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Ms. Ison was told that a specific response to each recommendation related to the discrimination program is required.

Corrective Action Plan:

1. New South Carolina discrimination procedures can be implemented in conjunction with their response to the new federal whistleblower manual.
2. A specific response to each recommendation related to the discrimination program is required.
3. Federal OSHA to provide a response regarding South Carolina's request to have federal OSHA investigate any complaints that are mixed statutes (11c plus a federal-jurisdiction statute).

Documentation to be submitted w. due date:

1. South Carolina will provide a response to each recommendation by 12/15/2010.

Anticipated Completion Date: 6-months following federal issuance of new whistleblower investigation manual.

Outcome Measure/Expectation: Overall enhancement to the State's discrimination investigation program.

Status: Pending further discussion and submission of the specified documentation for Regional Review. State plans are required to have an at least as effective nondiscrimination program including necessary staff and the authority to issue subpoenas or alternate means to gather needed information. Deferral to Federal OSHA for investigation of workplace discrimination occurring in South Carolina would not be appropriate, merely because the employer is headquartered out of State. However, cases involving another whistleblower statute in addition to 11(c) could reasonably be considered for Federal investigation on a case-by-case basis.

The draft revised Federal Whistleblower Manual has been made available to the States. As the problems identified do not relate to new policies, South Carolina is asked to begin the necessary modifications to its program as soon as possible without waiting for the issuance of the revised Federal manual.

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Finding #9: The state VPP manual lacked details on several procedures.

Recommendation #9: The South Carolina Palmetto Star VPP policy document should include procedures for placing an employer on a two-year rate reduction plan; the small employer alternative rate calculation; and tracking of abatement for hazards noted during an evaluation.

State Response: South Carolina was using these procedures, and has now incorporated them into the VPP policy manual.

Information or Documentation Needed:

1. Submit updated policy by 12/15/2010. A copy of the revised VPP policy was received by the Regional Office on 12/1/2010.

Corrective Action Plan: NA

Anticipated Completion Date: NA

Outcome Measure/Expectation: Enhancement to the overall South Carolina Palmetto Star VPP

Status: Subject to further Federal monitoring and review of the updated VPP policy manual.

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Finding #10: South Carolina OSHA does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual.

Recommendation #10: South Carolina should develop and implement a formal program for conducting periodic internal self-evaluations. The procedure should assure that internal self-evaluations possess integrity and independence. Reports resulting from internal self-evaluations will be made available to federal OSHA.

State Response: Monitoring has always been an integral part of the South Carolina program and with the deployment of the new database system, data can be tracked and reports run instantly. South Carolina OSHA will identify the activities that need to be closely monitored and tracked for performance. These goals will be outlined in an annual policy and the process will be discussed with Federal Area Director during the review period.

Conference call on 11/18/2010:

A new Program Coordinator will have responsibility to review every file. State is also currently developing a new policy. Additionally, under the new State's IMIS system, South Carolina has the ability to review data immediately and they look at a variety of reports daily. State was also encouraged to not just reviewing data, but to also implement quality control of the case file documentation process.

Corrective Action Plan:

1. South Carolina will develop and implement an Internal Audit Program and share with Federal OSHA for review.
2. Hire a new Program Coordinator. This position will assist the Compliance Manager in reviewing fatality files and work to ensure all case files are documented thoroughly.

Information or Documentation Needed:

1. Internal Audit Program (guidelines/policies) by 1/14/2011.

Anticipated Completion Date: 2011

Outcome Measure/Expectation: Enhancement to the overall State Program.

Status: Pending further Federal review and monitoring. The State will submit documentation on its Internal Audit Program for Regional review.