

**ENHANCED FEDERAL ANNUAL MONITORING  
AND  
EVALUATION REPORT  
(FAME)**

**for the**

**STATE OF UTAH**

**Evaluation Period:  
October 1, 2008 - September 30, 2009**

**Prepared by**

**U.S. Department of Labor  
Occupational Safety and Health Administration  
Region VIII**

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## **I. Executive Summary**

### **A. Summary of the Report**

This report assessed the Utah's Labor Commission's, Occupational Safety and Health Division (UOSH) progress towards achieving their performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan and reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009. Relevant observations from the first quarter of FY 2010 have also been included.

The report documents a series of program deficiencies that taken together raise concerns about the State's commitment and ability to operate an effective program. These problems include funding and staffing, CSHO training, adequacy of inspections, questionable penalty reduction practices and maintenance of data. Increased Federal oversight and technical assistance are likely needed to assure improvement in Utah's performance.

At the beginning of fiscal year 2009, the State benchmark for nine health officers and ten safety officers was met. Staff turnover had slowed down in Utah during fiscal year 2009, but has recently increased and is expected to increase during the next fiscal year with impending retirements. There are currently three health and one safety vacancies in the enforcement staff. At the beginning of the state's 2009 fiscal year in July, the Compliance Assistance Specialist (CAS) position was eliminated. While the state has an extensive basic training program, based on evidence in the report, the inexperienced CSHOs who are hired are not receiving sufficient training in investigative skills. Despite the inadequacy of the training, the state experiences difficulty retaining staff after they are trained. UOSH has and continues to adopt all new and updated Federal Occupational Safety and Health Administration standards.

Problems were found primarily in fatality, accident and safety cases. These problems included documentation of both employer knowledge and interview statements.

Documentation is critical in determining the correct classification of violations and defending them during contest. While the compliance staff, for the most part, effectively cites the correct standards and calculates the penalty correctly, the citations often do not address the cause of the fatality or the accident. Interview statements that were present in the file often showed problems with root cause analysis. There were a high number of in-compliance inspections (227 of the 597); many of these were fatalities and accidents. Most cases were settled using an expedited process that offers a high (60%) penalty reduction. There were some data entry issues such as coding and the entry of post citation information.

Other problems include:

- Abatement is often not verified and certification is accepted without documentation. Formal abatement extension procedures are not used. Citations do not indicate what violations need abatement verification. Abatement dates on 5 of the 42 citations reviewed were not appropriate to the hazards being cited. Informal abatement extensions are often given without documentation.
- The average penalty reduction at informal conference is 70%, for employers not using the PRSA option. The state also uses a standard Penalty Reduction Settlement Agreement

(PRSA) which offers a 60% penalty reduction in return for abatement certification and agreement not to contest. This is similar to the Federal Expedited Informal Settlement Agreement but doubles the penalty reduction offered. In FY 2009, the state reduced 64.9% of penalties, compared to 43.7% for federal OSHA.

- The State has a high in-compliance rate (about 38%) for accidents and fatalities.
- Documentation issues were found with fatality, accident and safety cases. An insufficient number of employees were interviewed during inspections including fatality inspections. Employer knowledge and interview statements were incomplete. Investigative techniques did not consistently get to the root cause of the fatality or the accident.
- Next of kin letters were sent in only 2 of the 13 fatality cases reviewed and families must use FOIA procedures to get copies of citations.
- The state is not properly entering data into IMIS. There are a significant number of draft/incomplete records, including 465 draft forms that should have been finalized in order to be transmitted to the host computer. There are 285 cases listed with a past due penalty. A comprehensive review and cleanup of the OSHA Integrated Management Information System (IMIS) database are needed.
- The state had two Complaints About State Plan Administration (CASPA) filed in FY 2009 (1 enforcement and 1 discrimination), each with valid allegations. In the enforcement case, the State used improper procedures to decide not to investigate a fatality. The discrimination case is related to a previous enforcement CASPA where the Region determined only that the State followed the appropriate procedures but there was not enough evidence to pursue a federal discrimination claim.

The Utah initial 23(g) grant amount was \$2,822,040, which included federal and matching state funds of \$1,277,500 each plus an additional state contribution of \$267,040. The final 23(g) grant amount was \$2,785,806, which included increased federal/state matching funds of \$1,300,200 each, while state overmatch funds were reduced to \$185,406. The program has struggled to maintain all its positions due to state funding cutbacks over the past several years.

The State of Utah mandated the UOSH program to begin working a four day workweek in August of 2008. UOSH is not allowed to use the state government facility on Friday. UOSH continues to maintain coverage by allowing a portion of their staff to work from home on Fridays.

Utah projected 700 inspections in their 2009 grant application and actually conducted 597 according to the Enforcement Statistics report. This was 103 inspections below their projection. Utah fell short of their projected 548 safety inspections by 49 and of their projected 152 health inspections by 54. Average initial penalties for serious violations exceed federal penalty levels.

Utah is equally divided between program and response activities and continues to respond to a significant number of complaints and referrals. UOSH addresses all work-related accidents. Employers in Utah are required to report accidents to UOSH. This resulted in 104 accident inspections and 100 accident inquiries handled through the phone and fax process for the 2009 fiscal year. UOSH has several emphasis programs that change annually, based on problem areas in the State. .

Starting in FY 2009, UOSH is devoting extensive resources to both programmed and un-

programmed refinery inspections. Utah has five refineries and currently has completed three inspections under the OSHA Refinery National Emphasis Program. They have also conducted several incident inspections including one at the Silver Eagle Refinery that resulted in one of the largest penalties ever issued by the State of Utah. While Utah has six staff members trained (four as team leaders) in process safety management (PSM), they do not have sufficient PSM trained staff. Federal OSHA provided two PSM experts from the Health Response Team to assist the State in conducting the resource intensive inspections. Currently, UOSH has issued 16 willful, 1 repeat and 787 serious violations to refineries and assessed over one million dollars in penalties for the refinery inspections.

## **B. Background and Study Methodology**

The Utah Occupational Safety and Health Division (UOSH) is located within Utah's Labor Commission. The State Designee is Labor Commissioner Sherrie Hayashi. Louis Silva serves as the UOSH Program Administrator. The Utah Occupational Safety and Health Division consist of: enforcement, discrimination, compliance assistance and private and public sector consultation. Consultation to the private sector is funded out of the 21(d) cooperative agreement. UOSH operates out of a centrally-located office in Salt Lake City, Utah.

UOSH jurisdiction covers private employers having one or more employees and all state and local government agencies, including public education. UOSH has jurisdiction over approximately 1,208,900 employees, with 176,200 of them in the public sector. Public sector coverage is the same as that in the private sector, but penalties are statutorily prohibited.

Federal enforcement jurisdiction remains over maritime employment in the private sector; employment on Hill Air Force Base; Tooele Army Depot which includes the Tooele Chemical Demilitarization Facility and the Department of Energy's Naval Petroleum and Oil Shale Reserve to the extent it remains a DOE facility. Federal jurisdiction remains in effect with regard to the federal government and the United States Postal Service employers and employees located in the state. These exempt employees account for approximately 34,800 employees.

This special study, conducted during the week of March 1, 2010, was conducted by a team of six federal staff which included: a team leader, a health and two safety compliance persons to review case files, an Integrated Management Information System (IMIS) expert and the Region VIII Voluntary Protection Program Manager (VPP) to review the Utah VPP. The results of these various portions of the special study follow under the appropriate topic headings.

Six hundred three cases were closed during the 2009 fiscal year. In order to review all processes including abatement and settlement, closed case files were used as the universe for case file selection. Seventy-nine case files were reviewed from the universe, which included 13 fatalities that occurred during fiscal year 2009. Also reviewed were four files involving Process Safety Management (PSM) violations and three case files with penalties greater than \$15,000. These 20 cases were subtracted from the total of 79. The remaining 59 cases of the sample were divided proportionally into safety or health, based on the percentage of that type of inspection conducted during FY 2009. A random sample was selected for each group.

Eleven complaints and referrals handled as inquiries (phone and fax process) were also reviewed.

A list of emphasis areas was created by the Region for this special study. The Region focused on Process Safety Management in Utah due to the increased incident activity and national emphasis in refineries. Focused areas also included the OSHA Integrated Management Information System (IMIS) data entry, the Voluntary Protection Program, fatality inspections, inspections with willful citations, abatement, health sampling, penalty reductions, inspection targeting, staff training and documentation in case files. Willful citations in Utah were not reviewed as there were no willful citations issued for cases closed during fiscal year 2009.

### C. Recommendations

The chart below is a summary of recommendations the State is expected to address. The chart references more detailed recommendations found in the body of the report. A complete list of the detailed recommendations is included in Appendix A.

<i>Recommendations</i>	<i>Reference Recommendation</i>	<i>Page Number</i>
Ensure that complaint items handled through inquiry (phone and fax process) are addressed with adequate proof of abatement of hazards.	#7, #10	12
Investigate fatalities in a thorough manner and ensure that letters to the victims' families are sent along with copies of the citations.	#13 – 16	14
Review the large number of incompliance inspections that include fatality and accident inspections to ensure that all hazards are being identified during the inspection process. Provide increased field training and oversight of staff.	#24 - 28	19 - 20
Ensure sound investigative skills are being developed for the UOSH staff to find the root cause of an incident. Ensure that a sufficient number of employees and employer representatives are being interviewed appropriately. Ensure employer knowledge is properly established for the violations.	#20 # 51, #52	17 37 - 38
Ensure that inspections are properly coded based on the type of activity and that data is entered into the computer system accurately. Ensure accurate and complete post-citation data is entered into the system.	#18	17
Process formal abatement extensions when additional time is being provided to correct violations.	#31	21
Ensure adequate documentation of abatement is provided for all cited hazards.	#30, #32	21
Ensure that staff and employers are knowledgeable about the required abatement verification process.	#29	21
Establish a comprehensive system for the proper handling of data in the Integrated Management Information System	#35 – 38	27

(IMIS). Ensure all discrepancies listed on the activity reports are properly addressed and then resolved in the system.		
For existing cooperative relationships, document the guidelines being used and ensure that appropriate compliance protocol is being followed. Submit a copy to the Regional Office. The Regional Office should be apprised of any cooperative relationship that impacts compliance.	#41	33
Ensure that discrimination files adequately document inspection activity and contain documented interviews.	#40	31
Ensure that all Voluntary Protection Program criteria are documented for participants in the program and ensure that required annual reports are submitted by participants.	#42 – 49	34 - 35

## **II. Major New Issues**

### **Silver Eagle Refinery Explosion**

In January of 2009, UOSH responded, along with the Chemical Safety Board (CSB), to a flash fire at the Silver Eagle Refinery. This catastrophe resulted in the hospitalization of four employees. A partial inspection to investigate the incident was opened on January 13, 2009. In June of 2009, four serious citations and one “other than serious” citation were issued with total penalties of \$8,500. The final CSB report concerning this incident has not been issued to date.

On November 4, 2009, an explosion occurred at a different unit at the Silver Eagle Refinery. UOSH responded immediately to the incident. At that time, UOSH process safety management resources were stretched thin due to an ongoing refinery inspection at the Tesoro Refinery. The UOSH Administrator expressed concern about sufficient resources to address this incident. In response, the Regional Administrator for Region VIII offered UOSH federal resources from the Health Response Team (HRT) based in Salt Lake City. UOSH accepted and the inspection was conducted by two UOSH compliance officers and two HRT members. Citations with penalties totaling \$1,006,400 were issued to the Silver Eagle Refinery. Those citations include the following classifications: 16 willful, one repeat and 34 serious. This case is currently in contest.

### **UOSH Public Sector Consultation Marketing Initiative**

Due to decreased requests for consultation visits in the public sector, the public sector consultation staff mailed out letters and information to every city, county and township in the State of Utah. The letter highlighted the expense that employers experience because of an injury or illness in the workplace, and an offer to provide assistance to develop an effective and self-sustaining occupational safety and health system for their municipality. The letter was followed up by a visit to all 29 of Utah’s county seats to personally meet with the officials who handle Human Resources and safety and health training matters. This directly resulted in requests from three separate counties, each with multiple locations, three school districts, three public utilities and four state agencies.

### **Occupational Medicine**

Utah hosted two physicians from the Occupational Medicine Program at the University of Utah Department of Family and Preventive Medicine, Division of Public Health, for a three week training practicum from May 11, 2009 through June 1, 2009. The Practicum experience allows the residents to gain exposure to the administrative and regulatory aspect of Utah OSHA with respect to health and safety in the workplace.

## **III. Assessment of State Performance**

### **1. Enforcement**

UOSH has and continues to adopt all new and updated Federal Occupational Safety and Health Administration standards. UOSH also has developed unique state safety and health standards in General Industry for: Oil and Gas Well Drilling and Servicing, Materials Handling and Storage, Crushing, Screening and Grinding Equipment, Window Cleaning, House and Building Moving, Industrial Railroads, Livestock Butchering and Bulk Carcass Handling, Hot Metallurgical Operations, Elevators/Escalators/Aerial Trams/Man-lifts/Worker Hoists, Filters and Centrifuges, Food Processing, and Boilers and Pressure Vessels. Unique UOSH standards for Construction include: Roofing/Tar-Asphalt, Grizzlies over Chutes/Bins and Tank Openings, Cranes and Derricks and Residential-type Construction/Raising Framed Walls. UOSH enforces the following supplements to federal standards out of their Administrative code: Recordkeeping, Employer/Employee Responsibility, General Safety Requirements, Process Safety Management, Personal Protective Equipment and Hazardous Materials

Utah provides effective first instance sanctions and has right of entry into workplaces. Utah follows the Utah Field Operations Manual for enforcement guidance and is working to update this document to be “at least as effective as” the new federal Field Operations Manual. Utah did not experience any denial of entries for the 2009 fiscal year as depicted by SAMM Indicator 5.

Utah projected 700 inspections in their 2009 grant application and actually conducted 597 according to the Enforcement Statistics report. This was 103 inspections below their projection. Utah fell short of their projected 548 safety inspections by 49 and of their projected 152 health inspections by 54. Ninety-eight inspections (16%) were health related and 499 (84%) were safety. This closely compares to the federal percentages of 15% health and 85% safety. Forty-eight percent of Utah’s inspections were construction related as compared to 61% of Federal OSHA inspections. According to SAMM #4, Utah conducted one imminent danger related inspection, which was opened within one day. According to a scan report, eight follow-up inspections were closed in FY 2009.

The enforcement report denotes a Utah inspection lapse time of 34.7 days for safety and 58.6 for health as compared to the federal lapse time of 34.3 days for safety and 46.7 days for health. Compliance officers in Utah average 22.0 hours per safety inspection and 28.0 hours per health inspection as compared to Federal OSHA’s 17.7 hours for safety and 33.1 hours for health.

## **General Case File Information**

### **Findings**

Of the case files reviewed during the on-site inspection: 13 were fatalities, 10 were accidents, 36 were programmed, 11 were complaints and nine were referrals. The cases reviewed were 50% general industry and 50% construction related. One case indicated a follow-up inspection had been done, but the follow-up inspection was not in the file.

Case files were organized for the most part. UOSH recently improved the organization of case files by providing written guidance to the staff titled "Case File Structure." This guidance also includes a case file index cover sheet that serves as a reminder to send a copy of the citations to the union, if there is union involvement. UOSH has also implemented a "Case File Management Checklist." This sheet documents all the actions taken from the review of the case file until the case file is closed. If used, this should assist UOSH in documenting their actions after issuance. Post-citation action was identified as a concern during this on-site review (see Tracking Systems & Information Management section below).

Privileged medical information obtained during the inspections was properly identified and marked as confidential in the case files. In addition, any information indicating the identity of the complainant was also identified and marked as confidential.

Health files and those involving Process Safety Management (PSM) were well organized and complete. Potential health hazards were thoroughly analyzed and the correct sampling was conducted where appropriate. The PSM investigations addressed the hazards specific to the processes and the correct standards were cited. There were more problems noted with safety case files as these were not as well organized and were sometimes missing information. Employee interviews were not always conducted, particularly during fatality/accident investigations, and files lacked documentation of employer knowledge. (See Employee & Union Involvement section below.)

With the exception of fatality/accident investigations, no problems were noted with the competency of the inspectors' field work (See Fatalities section below). For the most part, the correct standards were cited and the initial penalties were calculated correctly. The State was actively using the general duty clause to cite industry recognized hazards that do not have OSHA regulations.

### **Conclusions**

- The Case File Management checklist in the case file is not consistently used by management to ensure post citation actions are completed.
- There are overall organization problems with safety case files and some of these are missing documentation.
- A follow-up inspection done at a later date was not attached to the original case file.

## **Recommendations**

- 1. Ensure post citation actions are completed. Complete the Case File Management checklist in all case files.**
- 2. Ensure that safety case files are organized and are completely documented.**
- 3. Include the follow-up inspection information with the original case.**

## **Un-programmed Activity**

### ***Complaints / Referrals***

Utah has adopted CPL 02-00-140, Complaint Policies and Procedures, now part of CPL 02-00-148, the Field Operations Manual (FOM), and deals with un-programmed activity in the same manner as federal OSHA. Utah also follows similar guidelines to the federal FOM, written in the Utah FOM, Chapter XI, titled "Complaints and Referrals". Utah negotiated a complaint response time of five working days for inspections and three working days for inquiries (phone and fax process). Sixteen percent of Utah inspections (95 inspections) were complaint generated during FY 2009 as compared with 17% of federal OSHA inspections.

### **Findings**

For the audit period, the response time was 3.5 days to initiate inspections and 1.8 days to initiate the inquiry process according to the State Activity Mandated Measures Report (SAMM). These response times are slight improvements over last fiscal year and are within the negotiated time frame. According to SAMM Indicator 3, complainants were notified of the inspection results within 20 days 91% of the time. Un-programmed inspections accounted for 45% of Utah's total inspections in 2009.

Of the 79 case files reviewed during the audit, 11 of them were complaint files and nine were referrals. It appeared that most of the referrals were promptly responded to with the exception of one. In this instance, the first attempt to conduct the inspection was approximately three months after receiving the referral. A second attempt, five months later, established the employer was no longer open for business. The referral was closed. On another referral, the date the referral was received was not in the case file. Another case was coded as a referral, but appeared to have been a complaint. In this case an anonymous source called in 23 items about a construction site. Notifications of the inspection findings were not sent for three complaints.

With the exception of one complaint and one referral, all of the inspections adequately addressed the alleged hazards. Of the cases reviewed, one referral, from a local government agency, addressed hazards that were not cited; one complaint file did not include a copy of the complaint; and the narrative for one complaint inspection did not address the complaint items.

### **Conclusions**

- One referral was not responded to in a timely manner as required by the Complaint Directive adopted by Utah, which is now part of the federal FOM, Chapter 9, Section I, B.

- Three unprogrammed inspections were missing notifications to the complainant. This was due to the contact information not being documented in the case file. According to the Utah FOM, Chapter XI Section 11(d), “the complainant should be informed of the results” of the complaint after the completion of an inspection.
- One local government agency inspection addressed hazards that were not cited.

### **Recommendations**

- 4. Ensure all referral inspections are opened in a timely manner.**
- 5. Ensure complainants are notified of the results of the inspection for all complaints not filed anonymously. Document contact information in the file for all non-anonymous complainants in order to provide the results of the inspection.**
- 6. Perform a review of the local government agency inspection file to determine if any follow-up action is necessary.**

### **Inquiries**

#### **Findings**

Ten phone and fax files were selected for review during the on-site visit. Nine were complaints and one was a referral. Upon review, it was determined the referral was incorrectly coded on the IMIS Referrals Received report. The referral was not an inquiry, but was handled as an inspection.

Utah has negotiated a three day response time to initiate complaint investigations. A ten day response time for employers was decreased to five days midway through the year, which matches the federal response time. For fiscal year 2009, the response time was 1.84 days according to SAMM Indicator 2.

Of the nine remaining inquiries, all were initiated within one working day. All eight complaint files contained an initial letter to the complainant mailed in a timely fashion. Two of these complaint files did not contain documentation that the final letter to the complainant was sent notifying them of the results of the investigation. However, the IMIS report titled “Complaint – Employee Response Due Report” indicates all complainants had been notified of the results of the inspection. Three cases involved serious hazards that should have been promptly abated. Two of the investigations surpassed the ten working days for the employer to respond. There was no documentation in the file that more time had been requested or why more time was allowed for either of these two cases. In both of these cases, the word of the employer was taken as abatement with no proof that the hazard was actually fixed. One case involved broken boards on a scaffold. This case took greater than ten days to fix and the employer’s word that the boards were good was taken as proof of abatement. Two of the complaints contained complaint items that were vague and non-specific making it difficult for the employer to respond to the complaint. It was not possible to tell if the hazards in these cases were properly abated because the hazard description was not specific. One complaint involved an employee who alleged an illness from a past exposure. This complaint should have been scheduled for inspection to properly inspect the conditions that caused the exposure and the illness.

## Conclusions

- There was not consistent documentation in case files that the complainant was advised of the employer's response to the inquiry as stipulated in the Utah FOM, Chapter XI, Section A(5)(d) and or in the federal FOM, Chapter 9, Section I(I)(6).
- Negotiated abatement times for employers to respond to inquiries were exceeded without documentation that the employer had requested more time and the conditions around that request.
- Inquiries, instead of inspections, were sometimes scheduled to address serious hazards and prompt abatement was not required.
- Proof of abatement in cases with serious hazards was not sufficient.
- Some complaint items were vague and non-specific, making it difficult for employers to properly abate the hazards.
- An inquiry, instead of an inspection, was scheduled to address a past exposure that was alleged to cause a permanent illness.

## Recommendations

- 7. Place documentation of complainant's notification of the employer's response in the case files of inquiries.**
- 8. Enforce the newly negotiated five day abatement period for phone and fax. Document the reasoning and extension period in the case file, as required by the federal FOM, Chapter 9, Section I(I)(5), when an inspection is not scheduled because of overdue abatement. Enter extensions for abatement of inquiries in the computer database as required.**
- 9. Ensure that serious hazards are abated quickly. Follow the guidelines in the federal FOM, Chapter 9, Section I(I)(3)(b) for inquiries, which provide the latitude to decrease response times based on circumstances of the complaint.**
- 10. Follow the guidelines in Chapter 9, Section I (I)(3)(c) for proof of abatement.**
- 11. Follow the procedures in the Utah FOM, Chapter XI, Section A(3)(a)(3) which stipulates "determine the exact nature of the alleged violation."**
- 12. Schedule inspections in accordance with Chapter XI, Section A(2)(f), when "The complaint alleges that physical harm, such as disabling injuries and illnesses has occurred as a result of the complained of hazards and that there is reason to believe that the hazard or related hazard still exists." This criteria is reiterated in the federal FOM, Chapter 9, Section I(C) (3).**

## **Fatalities**

Utah experienced fourteen fatalities during fiscal year 2009. Four of the fatalities were in the construction industry and 10 were in general industry. Thirteen of the 14 fatality inspections were reviewed.

Utah follows ADM-010, their Fatality Investigation and Reporting procedure, as well as Chapter X of the Utah FOM when responding to fatalities. In addition to that, Utah was required to adopt the federal Fatality Directive now a part of the federal FOM. UOSH completes the Fatality Catastrophe Report (form 36) for all fatalities and sends it to both the

Region and the National Office. The Investigation Summary Report (form 170) is also filled out in a timely manner and sent to the Regional Office.

Utah defines catastrophe as one or more persons hospitalized rather than federal OSHA's definition of three or more. UOSH conducts inspections for all catastrophes. Utah fills out a form 36 for all catastrophes, but does not forward the form unless the number involved is three or more.

## **Findings**

Thirteen of the fourteen fatality files were reviewed. Of the thirteen files reviewed, eight of them were in general industry and five in construction. Utah OSHA had jurisdiction in all 13 instances. Eleven of the thirteen investigations were opened on the same day the fatality was reported, one was opened the following day, and one fatality occurred on a Friday, which was a Utah state holiday, and was opened the following Monday. A UOSH manager visited the site on Saturday, after reading about it in the newspaper, but the company was closed until Monday. Five of the fourteen fatalities occurred on Friday and were opened the same day with the exception of the one which occurred on a state holiday. Eleven of the inspections were partial in scope and two were comprehensive.

The standard 60% penalty reduction settlement agreement (PRSA) was given on at least two of the fatalities. For one inspection, the citation pertaining to the fatality was vacated. On another inspection, the employer was not cited for failing to report the fatality within 8 hours. The narrative in one inspection was very brief and a general duty clause violation was not issued in an industry where it is commonly cited. Employee interviews were not thoroughly conducted on a majority of the fatality and accident investigations. Often only one person was briefly interviewed and the questions were not relevant to the cause of the fatality or accident. Employer knowledge was also not documented and it appeared that compliance officers were not asking the proper questions of the employer representatives that could have had knowledge of the violations.

In only two cases were next of kin letters correctly sent. No letters were sent on five of the inspections. On two inspections, the initial letter was sent but not the final letter. The State does not send out copies of the citations to the victim's family, but instructs families to go through the State's Freedom of Information process to request copies of any citations issued.

Three of the fatality inspections did not have violations, so no penalties were assessed. The average total initial penalty of the remaining ten cases was approximately \$3000 with an average penalty reduction of approximately 50% applied at the informal conferences.

Eleven non-fatal accident files were reviewed. Several of them were in compliance and were not thoroughly investigated. Information in the case files is limited. Employee and employer interviews were deficient which resulted in employee exposure and employer knowledge not being documented. This situation is more closely addressed in the Penalty and Citation Section of this report.

## Conclusions

- UOSH is not consistently sending letters and copies of the citations to the victims' families as required in the federal FOM, Chapter 11, Part II, Section G, Families of Victims.
- The standard 60% PRSA was given on two of the fatalities. An average 50% penalty reduction was given for fatality inspections during the FY2009.
- A fatality that was not reported in one day was not cited during the inspection.
- Fatality cases were not appropriately documented and interviews were not thoroughly conducted.
- The cause of employer knowledge and exposure was not well documented. (See recommendations #50 and #51 in Section 8, Program Administration / Training.)

## Recommendations

- 13. Follow the procedures in the federal FOM concerning proper notification to families of victims.**
- 14. Follow the guidance in the federal FOM, Chapter 11, Part II, and Section L (1) (d) that states: "insure that settlement terms are appropriate, including violation reclassification, penalty reductions, and additional abatement language."**
- 15. Cite any fatality that is not reported by the employer to OSHA in one day.**
- 16. Follow the procedures in the federal FOM, Chapter 11, Part II, Section C, Investigative Procedures and D, Interview Procedures.**

## **Targeting / Programmed Inspections**

Fifty-five percent of Utah's inspections in 2009 were programmed as compared to 62% of federal inspections. Utah conducted 61.9% private sector programmed inspections in safety and 22.6% in health as compared to federal OSHA percentages of 66.8% and 35.3%, respectively, as indicated by the State Indicator Report (SIR), item C1. According to SAMM Indicator 8, 68% percent of these programmed safety inspections and 48% percent of these programmed health inspections had serious, repeat or willful violations. During 2009, Utah places emphasis in the following areas:

1. Accidents
2. Residential & Commercial Construction
3. Oil and Gas Well Exploration and Drilling
4. Petroleum Refineries
5. Sawmills
6. Metal Fabrication
7. Material Handling
8. Amputations
9. Trenching and Excavation

Employers in Utah can be self insured for worker compensation or use private carriers, but all carriers must be approved by the State. The State picks up the cost of accidents for workers

that are injured or killed when the employer is uninsured. Compliance Safety and Health Officers (CSHOs) are required to collect the employer's worker compensation number when doing an inspection. If the employer does not have a worker compensation number, that employer's name is turned over to the Division of Industrial Accidents for investigation. All employers are required by state law to report a workplace accident to the Division of Industrial Accidents within five days. Physicians treating work-related injuries and illnesses are also required to report to the Division of Industrial Accidents in order to get paid by the worker compensation insurance carrier. UOSH has access to accident and worker compensation rates through the Division of Industrial Accidents and uses this data to schedule their emphasis program inspections.

### ***Accidents***

While accidents are not an "official" emphasis program in Utah, a significant amount of UOSH resources are used to conduct inspections generated from accident reports. The Utah Administrative Code requires that all employers report workplace accidents and fatalities to UOSH with eight hours and UOSH inspects or investigates all accidents that are reported. The inspections are coded as accidents and correctly tracked using the form 36.

### ***Emphasis Program***

Utah has created the "UOSH Compliance Inspection Emphasis Procedures" which is categorized as ENF-006 in the Utah Policies and Procedures Manual. This is in lieu of adopting the federal directive 09-05 (CPL-02) Site Specific Targeting for 2009 and CPL 02-00-141 Inspection Scheduling for Construction. The program has both a general industry and a construction component. Each year UOSH selects industries to direct resources where fatalities, injuries and illness are occurring in both general industry and construction. The current written procedure lacks coding instructions to be followed when entering activities into the federal database and; therefore, these inspections are not always coded correctly.

In 2009, both Residential and Commercial Construction were an emphasis for different periods of time during the year. The program referred to as the "BIG 4," focused on the four leading causes of construction fatalities: falls, struck-by, caught between and electrical. During the emphasis period, CSHOs were allowed to go onto any site that was observed and conduct an inspection. A hazard did not have to be seen in order to gain entry. Data is secured from Industrial Accidents in order to schedule inspections in the general industry emphasis areas. This data was used in 2009, for scheduling inspections concerning material handling, sawmills and metal fabrication shops. CSHOs inspect any oil and gas operations as they are seen. Utah also has adopted the National Emphasis Programs for petroleum refineries, amputations and trenching and excavation.

### **Findings**

#### **Accidents**

During the audit period, Utah conducted inspections for 112 accidents under this program. Data concerning violations from these inspections was not readily available. However, it was found during the on-site review that 21 of the reviewed accident and fatality cases were in-compliance. (See Citations and Penalties for recommendation.)

### Emphasis Program

The following are the resulting inspection numbers from the official Utah 2009 Emphasis Program. There were a total of 166 inspections generated from these emphasis areas with a total of 289 violations cited.

### Construction

Fifty-four inspections were conducted in residential construction under the “BIG 4” with 88 violations being issued for an average of 1.5 violations per inspection. Fifty-six inspections were conducted for the commercial part of the program in FY 2009, with 38 violations issued which is 0.6 violations per inspection. The parameters of this program focused on identifying and citing violations and getting them fixed quickly. Citations were issued for all identified violations, but those fixed and verified on-site by the CSHO did not require further abatement. This may have impacted the 38% in-compliance rate for Utah which is somewhat higher than the federal 30% rate.

### Oil and Gas Well Exploration/Drilling

Six inspections were conducted in standard industrial codes 1381 and 1389. Eight violations were cited.

### Petroleum Refineries

One petroleum refinery was inspected with 33 violations cited.

### Materials Handling

Four inspections were conducted with a total of 10 violations cited.

### Metal Fabrication

Forty-four inspections were conducted in this industry with a total of 140 violations cited.

### Sawmills

One inspection was conducted in Sawmills with no citations issued.

### Conclusions

- Utah has no coding instructions in ENF-006 to ensure coding is consistent when entering the activity into the federal database.
- There are extensive problems with coding of programmed and un-programmed inspections. Utah has 166 programmed inspections out of 597 inspections. This calculates to about a 28% programmed rate which differs greatly from the 55% rate or 328 inspections designated as programmed in the enforcement report. While these numbers do not include inspections from the amputation and trenching NEP, it is doubtful those two hazards would account for over 250 inspections.
- Utah had one sawmill inspection and four material handling inspections.
- The number of citations per construction inspection was considerably below the national average.
- The accident reporting utilizes significant resources and effectively gets UOSH into the right places.

## **Recommendations**

- 17. Add instructions to ENF-006 on how to code the various emphasis areas each year.**
- 18. Accurately code inspections. At the end of the fiscal year, tally inspection numbers and reconcile those numbers with those from the Integrated Management System (IMIS). This will ensure inspections are being correctly coded.**
- 19. Reassess targeted areas for effectiveness. If the data supports continued targeting, resources should be redirected to these high hazard industries.**
- 20. Place emphasis on hazard recognition skills, particularly in the area of construction, for the compliance staff.**
- 21. Consider using the accident inspections, generated by legislation, as a formal emphasis program. Refine this program and track the number and types of violations cited during these inspections.**

## **Employee and Union Involvement**

UOSH follows the guidelines in Chapter IV (Inspection Procedures) in the Utah FOM when dealing with unions (employee representatives) and for conducting employee interviews.

## **Findings**

Employees were represented by unions on 10 of the 79 inspections reviewed by this audit. Of those 10, the union was included in the opening conference six times and the closing conference seven times.

No employees were interviewed on seven of the inspections. Of these seven, two of them were fatality inspections and on several other fatality inspections, only one employee was interviewed.

Review of case files during the audit disclosed that during several safety fatality inspections, employees were not being asked the appropriate questions to document the facts surrounding the fatal incidents.

## **Conclusions**

- Employee representatives were not consistently involved in both the opening and closing conferences of inspections.
- A sufficient number of employees are not being interviewed during inspections including fatality inspections.

## **Recommendations**

- 22. For union involvement follow the guidance in the Utah FOM, Chapter IV, Sections B (2), B (10) (b) and D. If the union waives involvement, document the circumstances in the narrative of the case file.**
- 23. Follow the guidance in the Utah FOM, Chapter IV, Section C (1) (d) for conducting employee interviews. On fatality inspections follow federal FOM, Chapter 11, Part II Section D.**

## **Citations and Penalties**

During fiscal year 2009, Utah issued: five willful, 32 repeat, 730 serious and four failure-to-abate citations. According to SAMM Indicator 9, Utah averaged 1.93 serious, willful or repeat violations per inspection as compared to the reference standard of 2.1. The reference standard is an average of all federal and state plan offices. Utah averaged .63 other than serious violations in comparison to the reference standard of 1.2. Seventy-one percent of Utah's citations were serious in FY 2009 and 25% were other than serious citations. This compares to 77% serious citations for federal OSHA with 19% other than serious. Citations were issued in 62% of Utah inspections and serious citations were issued in 87% of inspections. The federal indicators for comparison are 70% and 87%, respectively.

The Utah average initial penalty per serious violation for fiscal year 2009 was \$1,673.75 compared to the reference standard of \$1,335.60 as demonstrated in SAMM Indicator 10. The reference standard is an average of all federal and private sector state offices. The average serious penalty for 2009 in Utah was \$1,149.70 as compared to the federal average serious penalty of \$970.20. Utah average assessed penalties have exceeded the average assessed federal penalties for several years. Utah does not assess penalties in the public sector.

## **Findings**

Of the 79 case files reviewed, citations were issued in 42 cases. Three of the case files reviewed, were "no inspection" files. On two fatality cases which were in-compliance, it appears citations could have been issued. In the 42 cases where citations were issued, the correct standard was cited 40 times. In one instance the violation was not correctly classified. Penalties were correctly classified and calculated in all 42 instances. In one instance the citations were grouped improperly.

The abatement dates on five of the citations were not appropriate to the hazards being cited. General duty clause letters and hazard alert letters were used on only two of the cases reviewed.

Hazards were addressed appropriately on health and PSM inspections. In only one case were hazards not properly addressed. On this inspection, trench violations were on the video but no citations were issued and no justification for this decision was found in the file. Another file indicated that hazards were addressed (Hazard Communication) but were not cited.

Eight out of the 23 accident/fatality files were in-compliance. This is approximately 26%. In one file, there was no justification given for not issuing citations related to the injury. The

review sheets on several of the fatality/accident investigations indicated that employer knowledge was not being well documented due to the employer representative not being interviewed properly. (This issue is addressed in the recommendations for Section 8, Program Administration under Training.)

The following numbers of citations by classification were issued for case files reviewed during the on-site visit: 79 serious, 10 other and 6 repeat.

Seven of the top ten frequently cited violations in Utah for 2009 were general in nature: one dealing with using the correct recordkeeping form, one dealing with housekeeping, two out of the general section of the Utah code dealing with following UOSH regulations and UOSH poster requirements, and the remaining three dealing with scaffold training, certification for fall protection and procedures for lock-out. While the last three are viable hazards, it is not expected that these three would be on the top ten list without the more serious hazards for these industries also being high on the list. This list of violations being most frequently cited, along with the high in-compliance rate in fatalities and accidents, indicates a potential problem with hazard recognition skills in the compliance staff, particularly in the area of safety. This shortcoming may also be impacted by hiring difficulties due to low CSHO salaries. (See Program Administration for more detail.)

### Conclusions

- There were frequent discrepancies between the case file documentation and the outcome of the inspections which made it difficult to determine what happened. This practice undermines the work of UOSH.
- A video taken by a CSHO showed trenching violations, but no citations were issued and the case file did not include a justification as to the reason.
- Hazard communication violations were addressed but not cited. The worksheets for citations (Forms IB) were in case files but, citations were not issued. There was no documentation in this case file to explain this discrepancy. No justification was given for an in-compliance case related to an injury.
- Utah experienced a high rate of in-compliance (IC) for fatality and accident inspections. This raises concerns about hazard recognition skills.

### Recommendations

- 24. Implement and utilize a management review process that ensures the documentation of the case file is reconciled with the outcome of the inspection.**
- 25. Issue citations for a documented violation. If for some reason a supervisor decided not to issue, that reason should be noted in the case file. Review the instances noted above for appropriate follow up action if necessary.**
- 26. Review the case that involved an injury where no citation was issued for discrepancies.**
- 27. Prior to implementation, provide a written copy of any program used for on-site abatement, in lieu of “quick fix.” Clearly define the parameters of that program and inform the Region when that type of program will be used.**

**28. Utilize the “Most Frequency Cited Violation Report” as a tool to track hazard recognition. This report can be used to track individual hazard recognition problems and identify individual training needs.**

**Abatement**

The abatement process used by Utah is described in Chapter V of the Utah FOM. Utah also adopted the Abatement Verification Directive which has been incorporated into the FOM, Chapter VII. Utah employers are given a 30 day contest period. Even though less restrictive than federal OSHA, the extended contest period was an approved part of the original state plan.

**Findings**

Abatement extensions were granted in only three of the cases reviewed. In one case involving a chlorine leak from pressurized piping, the employer requested an abatement extension after the expiration of the abatement date. Utah granted the extension by issuing an amended citation instead of requiring a petition for modification of abatement. No informal conference was held. On the second case, an amended citation was again issued. Exposures to styrene, silica dust and MEK were documented. The PRSA was signed by the employer and a follow-up inspection was conducted. The third case involved extending the abatement dates 13 days for completing the abatement on several hazard communication violations.

Certification sheets were included in most files, but there was not adequate proof of abatement in three of the files reviewed. One of the files without adequate proof of abatement was on a non-fatal accident investigation. In the second file, it appears that the employer went out of business before they submitted proof of abatement. In the third instance, there was no reason given on the case file review sheet as to why no proof of abatement was received.

There was confusion about the requirements of verification: documentation versus certification. Certification was being accepted for all high gravity serious violations without documentation as to the reasons being included in the case file for high gravity serious violations. Abatement verification was not being implemented in accordance with 29 CFR 1903.19. Citations did not indicate what violations needed abatement verification, including whether it needed certification and/or documentation. The abatement certification form does not clearly tell the employer what abatement verification is required. Repeat citations did not indicate that abatement documentation was required.

In three of the files reviewed, the employer was reminded to comply with the abatement dates. On two of these occasions, dunning letters were sent.

**Conclusions**

- The abatement certification form used by Utah is not clear as to the type of abatement certification required.
- The requirement for abatement documentation was not noted on repeat and high gravity serious violations.

- Abatement extensions were granted, after the expiration of the contest period, without being filed in writing. An amended citation was issued in order to extend abatement that was requested after the abatement date was passed.
- There was not proof of abatement in two cases where the employer was not out of business.

### **Recommendations**

- 29. Revise the abatement certification form so the employer is clear as to the type of abatement verification required for each violation.**
- 30. Note verification in the form of documentation on all willful and repeat violations as required in Chapter 7, Section VI, C of the FOM. If documentation is not requested for high gravity serious violations, the reason for that decision needs to be noted in the case file.**
- 31. Follow the procedures in Chapter 7, Part III for Petitions for Modification of Abatement in the federal FOM for granting abatement extensions following the contest period. This language should be inserted or referenced in the new state FOM when completed.**
- 32. Utah must implement an abatement tracking process that will ensure that all hazards are abated and that all the required information gets put into both the case file and the database**

### **Penalty Reduction Programs**

#### **Findings**

Penalties were reduced at a percentage of 64.6% in Utah during the 2009 fiscal year, which is much higher than the 43.7% for federal OSHA. According to the SIR, Indicator 7, violations in Utah were vacated 3.2% of the time as compared to federal OSHA's 5.1%. Utah reclassified violations during informal settlements .3% of the time, compared to 4.8% for federal OSHA according to SIR indicator 8.

Penalty Reduction Settlement Agreement (PRSA) documents were sent to the employer on almost all files with citations reviewed. This was the main penalty reduction program being used. If this document was signed by the employer, it was not counted as an informal conference. In all but 10 instances of the reviewed case files, the PRSA offering a 60% penalty reduction was signed and returned by the employer.

#### **Conclusion**

- Penalties reductions in Utah are excessive. One factor that contributes to this higher rate is the PRSA which offers an automatic 60% penalty reduction.

#### **Recommendation**

- 33. Adjust penalty reductions to come into compliance with OSHA's new penalty policy.**

## **Review Procedures**

### ***Informal conferences***

As stated previously, employers in Utah have 30 days to submit a written notice of contest to the Adjudication Division. Settlements reached between UOSH and the employer before that 30 days are considered informal settlement agreements with the exception of the PRSA. Utah does not consider the PRSA an informal settlement agreement. All informal conferences are conducted by the Compliance Manager.

### **Findings**

Ten informal conferences were reviewed. These informal conferences resulted in an average penalty reduction of approximately 70%.

### **Conclusion**

- Penalty reductions at informal conferences averaged 70%.

### **Recommendation**

**34. See recommendation #33.**

### ***Formal Review of Citations (Independent Review Board/Commissions/Others)***

Contested cases in Utah are assigned to an Administrative Law Judge (ALJ) for hearing. Appealed decisions of the ALJ automatically move forward to the Labor Commissioner, unless the appeal is required to be heard before the Labor Commission Appeal Board. This board is composed of three members: one employer, one employee and an unidentified member. Each board member is selected by the Governor and serves a six year term. No more than two members can be of the same political affiliation. Decisions by the Board are majority decisions. Appealed decisions of either the Board or the Commissioner are heard in the Utah Court of Appeals.

### **Public Employer Programs**

According to the Utah 2009 grant application, approximately 14.6% of employees in Utah work in the public sector. Utah projected 31 public sector inspections for FY 2009.

### **Findings**

For the 2009 fiscal year, Utah conducted 22 inspections in the public sector (according to SAMM Indicator 11), which is only 3.7% of their total inspections and nine inspections less than projected by the State for the fiscal year. The baseline, for the SAMM indicator uses the average of public sector inspections in Utah during the last three years which was 37. Utah does not assess penalties in the public sector. UOSH currently is working to maintain a greater presence in the public sector. The public sector consultation program effectively

marketed their program during 2009 to state and local entities. (See New Issues) There are no immediate concerns, as UOSH has decided to adopt an emphasis program in the state and local governments during FY 2010 to raise awareness of safety and health issues in this sector.

## **Tracking Systems & Information Management**

### **NCR Management and IMIS Management Reports**

#### **Findings**

A thorough review of the management of the NCR system in Salt Lake City as well as the Information Management Information System (IMIS) Reports was conducted to determine the effectiveness of the Utah OSHA's information management programs.

All transmissions to the host computer (e.g., End-of-Day [EOD] and Start-of-Day [SOD]) are conducted on a daily basis. In addition, system backups are performed daily, weekly and monthly, respectively.

With regards to the maintenance of data forms, it was noted that the Utah State Plan has a significant number of draft/incomplete records. Excluding OSHA-1B worksheets within six months, which is the statute of limitations for issuing citations and may remain in draft until citations are issued, the Utah State Plan had 465 draft forms that should have been finalized in order for these forms and their data to be transmitted to the host computer in Washington, D.C. Many of these forms date back to 2004 since the last time they were accessed. The following table outlines the form types and numbers found in draft format:

<b>Form Type</b>	<b>Total</b>
OSHA-1 - Inspection Record	16
OSHA-1B – Citation Worksheet <i>(beyond the six-month statute of limitations from the report run date)</i>	31
OSHA-170 – Accident Investigation Summary Report	11
OSHA-36 – Accident/Event Report	24
OSHA-7 – Complaint Report	4
OSHA-90 – Referral Report	6
OSHA-31 – Program Activity	72
OSHA-55 – Intervention Report	104
Health Forms (91, 92, 93)	155
OSHA-168 – Assignment Form	31
<b>Totals</b>	<b>454</b>

Based on these findings, it is imperative that the Utah OSHA Program conduct a comprehensive review and cleanup of their IMIS database systems. Some onsite training was provided to management and IT personnel. It is recommended that additional IMIS data

processing training be conducted to all staff, including compliance and administration personnel, in order to maintain accurate, effective data processing and operating procedures.

With regard to the handling of forms rejected by the host computer in Washington, D.C., there were no rejected forms. The Utah State Plan is managing their rejected forms in an effective manner.

A review of the State's Strategic codes was conducted. It was noted that the currently active codes were not available in the IMIS and that old, expired codes were still listed. Onsite training was conducted to management and IT personnel, using the State's own Strategic and Annual Performance Plans, to show them how to add new codes and to "expire" codes no longer in effect.

### IMIS Management Reports

A review of the local management reports menu system was made to determine if the Utah OSHA management team has a system for review of the most widely used management reports. The time period used for these reports is January 1, 1980 (beginning of the database system) through March 1, 2010 (the first date for this special study time frame) with the exception of the Area Office Complaint Log - Auditing Report, which ran from October 1, 2008 through September 30, 2009, the time frame range for this special study. The reason for this time frame selection is that the IMIS system is a historical tracking program and many items left behind for multiple years may have a serious effect on the overall performance and reliability of the information management system. A historical Complaint Audit Log report is lengthier than the one reviewed; thus, this timeframe was used to obtain a "snapshot" of Utah's handling of complaint responses.

It was noted that some reports are being managed effectively while others are not. In discussions with management, it became clear that they are not familiar with most of the management reports available in the system to effectively monitor and control the flow of agency operations. This has also been evidenced by the individual review of these reports where significant deficiencies were noted and explained below. Onsite training to managers and IT personnel was conducted and the findings of this study were discussed.

The following are the findings of the review of the IMIS management reports:

#### Enforcement

**Complaint - Employer Response Due Report** – This report lists all complaint inquiries where the employer's response to OSHA's request to investigate the complaint allegations has not been received. This report is used for management to contact the employer and remind them of their past due response, or schedule the complaint for an inspection due to the lack of a response. There were no outstanding complaints where the employer failed to respond. No vulnerabilities were found in this report.

**Complaint – OSHA-7 for Signature** – This report lists all complaint inquiries where the employee's requested signature has not been received. This report is used for management to contact the employee and remind them of their past due signature request, or maintain the

“non-formal” classification due to the lack of the employee’s signature. There were no outstanding complaints where the employee failed to respond to UOSH’s request for a signature. No vulnerabilities found in this report.

**Unsatisfied Activity Report** – This report lists all complaint, referral, accident/event and assignment records that have been selected for an inspection yet an inspection has not been initiated or not properly “linked” together. A total of 127 records were listed on this report, as follows: six accident records, 11 complaints, 14 referrals and 96 assignment forms. Many of these records, including all accident reports, were well past due with dates ranging back to 2003, 2005, 2007, 2008 and 2009.

**Citations Pending Report** – This report lists all open inspections where the citations have not been issued. This report is used by management to keep track of the six-month statute of limitations on issuing citations. There were 10 cases greater than 90 days, the half-way point. Inspection categories included accident, complaint, referral, and programmed inspections. Only one case had draft citations in IMIS. During the audit visit, one of these cases was being removed as duplicate from the system. During an interview with management, it was noted that they are aware of the status of these cases and are working on them, thus, no vulnerabilities were found in this report.

**Violation Abatement Report** – This report lists all cases with past due violation(s) and it is used by management to contact the employer and remind them of their past due abatement, or schedule a follow-up inspection due the lack of the employer’s abatement response. A total of 87 cases were listed, including 27 cases with abatement dates greater than one year past due, as follows: six cases greater than five years; four cases greater than four years; three cases greater than three years; eight cases greater than two years and six cases greater than one year past due. Of these 27 cases, four had “repeat” violations yet unabated. Of the 60 cases less than one year past due, four had “repeat” violations yet unabated. No willful violations were found with past due abatement.

**Open Inspection Report** – This report lists all open inspections for the program. For audit purposes, this report is reviewed to determine if case file management is being handled properly. A review is conducted to identify all cases that have all abatements completed and all penalties paid, so that these cases can be effectively closed. A total of 553 inspections were listed as still “open” in IMIS. A random sample of 85 cases was selected to determine if these cases could have been closed. Of these 85 “open” cases, 28 (33%) were found to be ready for closure. Most of these could have been closed in 2007, 2008 and 2009, and two cases could have been closed back in 1998. In addition, 51 cases were noted with penalty still outstanding and six cases were noted with questionable data entry. Many of these penalty and questionable cases were not updated in IMIS to show either that the past due penalty was referred to the legal division for collection or the cases were in contest. Also, changes to the original citation, due to informal or formal settlement agreements, are not being entered into IMIS either. This was confirmed via interviews with management and IT personnel and training was provided onsite.

**Area Office Complaint Log – Auditing Report** - This report lists all complaints for a specific period of time and is used to ensure that complainants are notified of the results of inquiry or inspection. Two separate reports were generated in each office, one for complaint inquiries

and one for complaint inspections.

*Complaint Inquiry Reports:*

A total of 74 complaint inquiries were listed. All 74 complaints were found with notifications sent to the complainants regarding the results of the inquiry, for a 100% response rate. The Utah OSHA program is effectively managing this important requirement. No vulnerabilities were found in this report, but some discrepancies were found in files reviewed.

*Complaint Inspection Reports:*

A total of 95 complaint inspections were listed with only one noted as anonymous (complainant contact information was blank). Of the remaining 94 complaints listed, 91 were found as having a Letter H (Inspection Results) in IMIS, informing the complainant of the results of the inspection. Of the remaining three cases, two of them had the Letter H in the case file and one case did not. It was asked that the two cases with letters in the case file be updated in IMIS, which was done while the evaluator was onsite. In summary, the Utah OSHA program had notified all but one complainant of the results of the inspection, for a 99% response rate according to the IMIS.

**Debt Collection Report** – This report lists all cases with outstanding penalties that require action by the office. This is used by management and/or administrative staff to pursue the collection of penalties and refer cases to their State Collection Department when local collection attempts fail. A total of 285 cases were listed with past due penalty, dating as far back as 2002. None of these cases had the penalty due date entered into IMIS. Without a penalty due date in the IMIS it is extremely difficult to track, pursue and refer outstanding penalty cases for collection. It was noted that the Utah State Plan keeps a separate tracking system for penalty collection through their State Collection Department; however, no updates are being made to IMIS, creating an even longer report, showing that no collection efforts are being made. Onsite training was conducted with the Administrative Assistant responsible for collection procedures on how to properly and accurately update the IMIS system.

**Intervention Report** – This report lists all intervention activities conducted by the Program, using the OSHA-55 report. A total 612 intervention records were listed on this report. It was noted that several entries were duplicate, that is, two separate entries were made for the same activity. It was discussed with management and IT personnel that only one OSHA-55 is to be entered per activity, regardless of the number of OSHA personnel involved, and that the “team leader” for a particular event is the person to enter the record, use his/her CSHO ID # and share the OSHA-55 number with all other team members for purposes of entering the OSHA-31, Time report.

**Request Pending Report** – This report lists all outstanding requests for consultation. A total of 11 past due requests were listed on this report, dating back to 2002. It was noted during a discussion with management that these requests were processed but the IMIS was not properly updated. The consultation program began updating these records during this onsite visit.

**Written-Reports Pending Report** – This report lists all visits completed where the Written Report to the Employer (WRE) has not yet been completed and sent to the employer. Only one case was listed and it refers back to a case from the request pending report, where the report was actually issued but the IMIS was not properly updated.

**Uncorrected Hazards Report** – This report lists all hazards cited where the abatement has not been completed and is past due. No unabated hazards were listed on this report. No vulnerabilities were noted.

### **Recommendations**

- 35. Utah OSHA must perform a review and cleanup of the IMIS database records to ensure that all draft forms are finalized and transmitted to the host computer as expeditiously as possible, except for OSHA-1Bs less than six-month old since they may still be modified before the citations are issued. A system must be developed to ensure that periodic review of draft and rejected IMIS forms are conducted to maintain a viable information system.**
- 36. Utah must ensure that all outliers on the unsatisfied activity report, violation abatement report and debt collection report are properly addressed.**
- 37. Utah OSHA must establish a comprehensive system for the proper handling of the IMIS management reports system. An automated report setup program will assist the agency in securing that the most widely used reports are automatically generated, reviewed and acted-upon on a periodic basis, either weekly, bi-weekly or monthly), based on the importance of the specific report and its volume of cases to be reviewed and monitored.**
- 38. Utah OSHA must review the findings outlined in this segment and take corrective action to cleanup the deficiencies noted in the IMIS management reports noted herein.**

### **BLS Rates**

BLS tracks the fatalities of all employees in Utah. For the calendar year 2003 through 2008, Utah's Total Case Rate (TCR) was consistently higher than the national average. For the same years, the DART rate was lower than the national average in 2003, 2004, and 2006. It was equal to the national average in 2007. In the years of 2005 and 2008, it was only slightly above the national average.

Bureau of Labor Statistics data exists for some of Utah's emphasis programs. Data exists for construction, residential and non-residential, lumber and wood products, and metal fabrication. There was no Utah BLS data available for the oil and gas, petroleum refinery, and materials handling industries.

Data for residential construction rates was limited to 2005 and 2008. Construction rates for non-residential construction were higher in 2008 than in 2003. Highway, street and bridge construction rates have steadily declined since 2004. Data did not exist for lumber and wood products for 2005 and 2007. The TCR and DART rates were significantly lower for 2008 compared to 2003 but remained high compared to the overall national rates for all injuries and illnesses. Both TCR and DART rates have been inconsistent since 2003. The rates for 2008 are lower than 2003 but continue to be above the national averages. The BLS data supports all areas being targeted by Utah in their local emphasis programs.

The following is a table provides TCR and DART rates for 2008 compared to the national averages of 3.9 and 2.0 respectively.

INDUSTRY	TCR (3.9-Nation)	DART (2.0 Nation)
Residential Construction	3.8	3.3
Non-residential Construction	4.7	2.2
Highway, Street, Bridge Construction	3.1	0.8
Wood Products / Lumber	10.0	4.2
Metal Fabrication	5.7	3.2

**Conclusions:**

- TCR rates were higher than the national average for non-residential construction, lumber and wood products, and metal fabrication. Residential construction was only slightly lower.
- DART rates were higher for all emphasis areas except highway, street and bridge construction.

**Recommendation**

**39. Based on the BLS data, Utah should continue focusing resources in all of their current emphasis areas with the possible exception of highway, street, and bridge construction.**

**Stakeholder Interviews**

Three stakeholders were interviewed from Utah: one labor representative, one employer representative and one representative from the Worker’s Compensation Fund.

All stakeholders have had direct contact with UOSH and overall feel the staff is competent. One worked with the UOSH Administrator on the Coalition for Multicultural Health and Safety. The goal of the coalition was to provide outreach to hard to reach workers and employers. One stakeholder has participated in the inspection process with UOSH staff. The process was conducted in a fair and impartial manner. One of the stakeholder’s organizations works in a cooperative manner with UOSH to address issues and has an informal partnership. However, it is not documented in writing. One stakeholder felt UOSH should have more compliance officers so that more resources could be devoted to programmed inspections. One stakeholder indicated that his organization uses many UOSH services such as the website and UOSH booklets on various safety and health issues are very useful. One person indicated that UOSH’s preference is to work with employers to bring them into compliance through the consultation program. Overall, they feel UOSH has a good presence in the state of Utah through enforcement, consultation, work on various committees, and participation in stakeholder meetings.

**2. Standards and Plan Changes**

Standards and changes to standards are, for the most part, effectively adopted by the State within the time-frame allowed. There are two types of standards changes: substantive and non-substantive. Non-substantive changes go immediately to Administrative Rules and are published for a 30 day comment period. If there are no comments to be addressed, the change

becomes a final rule and is published. Non-substantive changes usually involve revision to an existing standards or an updating of supporting documents. Substantive changes take a bit longer, as they must be presented at an open Labor Commission Meeting, along all the appropriate impact information. Once the Labor Commission addresses any issues and decides to move the rule forward, the process is the same as that for the non-substantive changes described above. There is more of a chance to have comments on new rule-making than on changes. If comments come in during the comment period, they must be appropriately resolved before moving the process forward.

## **Standards Adoption**

The following represent standards changes during FY 2009 and the State's actions:

Electrical Installation Standard 1910 Subpart S: Clarification and Correction – The State made the changes to this previously adopted standard.

Long-shoring & Marine Terminal Vertical Tandem Lifts – The State of Utah does not have jurisdiction in maritime.

Clarification of Employer Duty to Provide Personal Equipment & Train Employees – The State adopted this change. The change was non-substantive for Utah and, therefore, was immediate.

Updating OSHA Standards based on National Consensus Standards: PPE – This was a required change. This change was adopted on 03/09/10.

During FY 2009, at the request of the Regional Office, the State started the regulatory process to alter the height requirement for fall protection in their Oil and Gas Well Drilling standard from six feet to the more restricted four foot height used by federal OSHA. The State has since completed this process and adopted the change on 11/01/09.

## **Federal Program/State plan Initiated Changes**

The following represent federal program initiated changes during FY 2009 and the State's actions:

CPL02-00-148 Field Operation Manual (FOM) – The State plans to adopt an altered version based on state processes and procedures. A supplement will be sent to Regional Office by 09/30/10.

09-06 (CPL 02) Site Specific Targeting 2009 – Utah did not adopt. The State targets according to the annual performance plan, goal #2.

09-06 (CPL 02) PSM Covered Chemical Facilities NEP – Utah did not adopt this NEP.

CPL 03/00/010 Petro Refinery NEP (extension) – Utah did not adopt the original NEP due to extended timeframes needed to complete their refinery inspections, but did adopt the NEP with extended timeframes. Inspections have been conducted at three out of five refineries.

CPL 02-01-046 Recession of OSHA's de Minimis policies relating to floors, nets & shear connectors (Revision to OSHA Instruction CPL 02-01-034 – Utah does not cite de Minimis and, therefore, was not using this policy.

09-08 (CPL 02) Injury & Illness Recordkeeping NEP – The State has adopted this NEP.

### **3. Variances**

Utah currently has one permanent variance with chimney construction company Alberici Mid-Atlantic LLC which was granted on August 2, 2008.

### **4. Public Sector Consultation**

UOSH has one public sector consultant. In the 2009 grant application, the State projected a total of 42 visits to be conducted in the public sector. According to the MARC, UOSH conducted a total of 50 visits which is an increase of eleven visits from last fiscal year. UOSH exceeded their projection for public sector visits by eight visits. Thirty-three visits were initial visits, two were follow-up visits and 15 were training classes. One hundred twenty-eight hazards were identified during these visits. Of those hazards, 70.3% (90) were corrected within the original time frame and 38 were corrected with an extension time frame. The rate of correction within the original time frame increased significantly from 27.7% last fiscal year.

The Public Sector Consultant conducted extensive marketing strategies this year as described above in “Major New Issues.” The Consultant also acted as a speaker at numerous engagements, conducted outreach to various groups, monitored the UOSH booth at several shows and act as the UOSH representative on the Utah Labor Commission Risk Management Committee and the Salt Lake County Environmental Task Force.

At this time, there are no public sector participants in SHARP. No vulnerabilities were found in the public sector consultation program this fiscal year.

### **5. Discrimination Program**

Chapter XII in the Utah FOM addresses the Discrimination Process, but UOSH has most recently revised their Policies and Procedures Manual for discrimination work. Utah uses rules similar to the discrimination procedures outlined in the federal whistleblower directive but reference specific state titles and procedures.

According to SAMM indicator 13, Utah investigated 15 cases that had determination dates in fiscal year 2009. Seven of those cases had the determination made within the reference standard of 90 days. One of the 15 determinations had merit and the one case that had merit was settled.

That State has taken appropriate action since this on-site visit was conducted. Additional personnel were added to handle investigations and new managers were trained by the Region in the requirements of this program. The UTAH discrimination supervisor worked actively

with the federal Regional Supervisory Investigator (RSI) to get the UOSH program back on track.

### **Findings**

An on-site review was not conducted at the time of the special study, because an extensive on-site audit had been conducted during the 2008 and 2009 fiscal years. That activity and the highlights of the recommendations are described in the paragraphs below.

During an April 23-24, 2008, monitoring visit, it was determined that the discrimination program underwent significant management and personnel changes that resulted in program concerns. In December 2008, UOSH and Region VIII established a work plan to improve the management of the program. This plan included changes to the screening process, investigation process, case file documentation, data entry, management oversight, and training.

In October 2008, a monitoring visit for the discrimination program was conducted to evaluate policies and procedures in processing discrimination complaints, case file reviews and training. Overall, UOSH had significantly improved the management oversight of the program. This includes developing and utilizing a quality assurance checklist, drafting a policies and procedures manual, and monitoring the screening and investigation process. Continued oversight over case file investigations, documentation and analysis is essential.

Of the 15 cases reviewed, 53% of the cases were closed past the 90-day target period. The case files were properly organized, but there were discrepancies in documentation. The following are some of the identified discrepancies:

### **Conclusions**

- Two cases were untimely filed, but were docketed and investigated.
- Several files did not contain documented interviews and/or the recordings were corrupted.
- Files did not adequately document inspection activity.
- One case file contained information that Complainant decided to withdraw his complaint, but did not document the reasons for the withdrawal. This raises a concern because Complainant had presented a strong prima facie showing.
- Several case files did not contain a Final Investigation Report.
- Several Final Investigation Reports contained inadequate information and/or the analysis was incorrect.
- Full field investigations were rare.

### **Recommendation**

#### **40. Track and rectify any outstanding items identified, in the discrimination program.**

A full on-site review of this program will be conducted in FY 11 to ensure this program is working effectively.

## **6. CASPAs**

Utah had two complaints filed against the state program administration (CASPA) during fiscal year 2009. One of those complaints was enforcement related and one was discrimination related. Both CASPAs contained valid allegations.

In the enforcement related CASPA the State did not follow adequate procedures in making their decision on whether to conduct a fatality inspection. The State was timely at providing the requested information to the region and in their response to the Region's final report. At this time, the State has effectively completed all the actions recommended and/or required by federal OSHA.

The discrimination CASPA is related to a previous enforcement CASPA where the Region determined that the State followed the appropriate procedures. In regard to the discrimination complaint, the Region does not feel the State collected sufficient information to support the protected activity. The Region has turned this case over to the federal solicitors for a legal opinion on how to proceed with this case. When that opinion is rendered, the Region will forward a letter to the State identifying any corrective actions required.

## **7. Strategic Management Plan / Performance Goals**

Fiscal year 2009 marked the first year of the Utah Strategic Management Plan (2009-2013).

**Five Year Goal 1: Achieve an effective impact in the reduction of the Utah fatality rate for industries that are under UOSH jurisdiction by 2013, measured by the most current BLS fatality data available for the state.**

**Annual Performance Goal #1:** Achieve a rate of fatalities lower than the baseline of 1.5.

Utah experienced 14 fatalities during fiscal year 2009 as compared to 15 fatalities in FY 2008. Nine fatalities occurred in general industry and five in construction. This calculates to a rate of 1.2, which is .3 below the targeted baseline or a 26.7% reduction. The primary cause of fatalities this year in Utah was "struck by."

**Five Year Goal 2: Achieve an effective impact in the reduction of injuries and illnesses, in industries that are under UOSH jurisdiction measured by the most current average of BLS total recordable case rate (TRC) from 2009-2013.**

**Annual Performance Goal #2:** Using the baseline of 5.5 achieve an annual reduction of 0.1 (5.4) of the BLS recordable cases rate.

Activity indicators of 599 inspections and 612 assistance interventions (form 55) were used for this goal, but since there is a delay in BLS rates for one year, the outcome results for this fiscal year will not be available until next fiscal year. However, last year's results, which were available this fiscal year, showed a 2008 TRC of 4.9. This was a reduction of 0.6 from the baseline of 5.5 (10.9% reduction). This is also a larger decrease than the 2007 TRC of 5.0,

which was a 2% reduction. Utah made progress toward achieving this goal, but the results cannot be determined until next fiscal year.

**Five Year Goal 3: Promote a safety and health culture through increased participation in Consultation Services, VPP, SHARP and Compliance Assistance.**

**Annual Performance Goal #3:** Increase by 1% the number of consultation services, workshops, presentations, VPP applications, SHARP applications and compliance assistance activities.

Private sector consultation visits increased by 29.5% (378 visits) this fiscal year and public sector visits increased by 233% (50 visits) from the baseline. Outreach was up as demonstrated by the number of consultation interventions (+75.6%) and the number of enforcement interventions (+43.7%). There are no changes in the number of VPP applications and VPP presentations were down by 40%. SHARP presentations were down by 60% and SHARP applications decreased by 50%. Utah made adequate progress toward this goal, but needs to increase outreach to market their exemption programs.

**8. Voluntary Compliance Programs**

Currently there is no Compliance Assistance Specialist in Utah due to funding limitations. A decision will be made on reclassifying this position in 2010 with the increase in funding. Critical functions such as VPP, speaking engagements and presentations have been assigned to management personnel and consultants. Outreach initiatives this fiscal year were focused mainly on Youth Worker initiatives and outreach to the public schools.

**Partnerships**

**Findings**

Through discussion with the Regional Office and during the stakeholder interviews, it became apparent that Utah was working in partnership with some employers. Utah did not adopt the Federal OSHA Strategic Partnership Program and does not have an equivalent procedure at this time.

**Conclusion**

- Cooperative relationships in the Utah compliance program did not follow the guidelines of a formal program.

**Recommendation**

41. For existing cooperative relationships, document the guidelines being used and ensure that appropriate compliance protocol is being followed. Submit a copy to the Regional Office. The Regional Office should be apprised of any cooperative relationship that impacts compliance.

## VPP

### Findings

Utah administers a Voluntary Protection Program out of their State following the Guidelines of the federal Voluntary Protection Program Manual (CSP 03-01-003). Utah had five VPP sites at the end of fiscal year 2009. During the fiscal year, UOSH completed evaluations at three additional sites and received three new applications. The three sites evaluated during FY 2009 were not approved in that year. Both VPP Coordinators attended the VPP Regional Conference in FY 2009.

The Regional VPP manager conducted an evaluation of the UOSH VPP program for this special study. For review of VPP, the regional representative used an in-house audit template that assures compliance with the directive. VPP was, for the most part being effectively managed. There were some deficiencies in process that will be easily rectified by the State. The on-site visit provided an opportunity for the Regional VPP Manager to share information and processes that can positively impact the State program. The following is a list of findings and recommendations that will bring the program into alignment with the requirements of the VPP Manual.

### Conclusions

- The application used by UOSH does not include trade secrets or employee privacy issues.
- The VPP Manager does not formally acknowledge receipt of the application within 15 days of receipt for applications that are dropped at the office.
- UOSH Managers conduct a review of the applicant's enforcement history for the time period of three years prior to the application.
- VPP evaluations are scheduled within 6 months, but report preparation and approval are not done in a timely manner.
- The template being used by UOSH for evaluation for VPP status is not current and therefore is missing newer criteria.
- The State is experiencing increased applications and interest in VPP. Due to resource issues, the State is not marketing the program at this time.
- The State is not ensuring the annual report is submitted by February 15<sup>th</sup> of each year. The State is not reviewing the VPP reports or providing feedback to the sites for improvement.
- PSM sites are not submitting the PSM Supplement B questionnaire with their annual report.

### Recommendations

- 42. The OSHA VPP website clearly instructs prospective sites to exclude trade secret and personal information; therefore, this requirement should be followed in the application process.**

- 43. Initiate a process to formally acknowledge receipt of an application no matter how it is delivered. This acknowledgment can be sent either by letter or electronic mail.**
- 44. Use the standardized VPP report and worksheet template to ensure all application criteria is documented. If this recommendation is not taken, the State needs to include documentation of enforcement history in their current process. The standardized worksheet includes all the required criteria which includes a brief section on enforcement history**
- 45. At a minimum, compile a draft report while doing the on-site audit so it can be left with the employer. This change in process will also serve to improve the timeliness of the report.**
- 46. Adopt the federal template or update the current UOSH template to cover current criteria.**
- 47. Address the resource issue by making use of the Special Government Employee program in order to effectively serve Utah companies interested in VPP status.**
- 48. Follow the required February 15<sup>th</sup> due date for submission of the annual reports from VPP companies. In addition, UOSH needs to devote resource to analysis of the reports and provide feedback to the sites. Sites that do not submit an annual report must be removed from the program.**
- 49. The State needs to require the use of the PSM Supplement B from PSM facilities annually.**

## **9. Program Administration**

### **Funding/Benchmarks/Furloughs**

The Utah Occupational Safety and Health Division overmatched the 2009 final grant by \$185,406, in order to support the UOSH program. The State of Utah continues to experience budget cuts, which ultimately affects funds for operations of the Utah State Plan. The compliance assistance specialist position was lost during FY 2009 due to state budget issues. Despite that loss, UOSH continues to staff all benchmarked positions. With the increase in federal and matching funds during 2010, UOSH will add four additional enforcement personnel. UOSH compliance positions are classified by the State at a low level of salary when compared to the private sector or even to other states. This makes it difficult for UOSH to not only retain personnel once trained, but to secure experienced personnel. Utah OSHA is frequently forced to hire personnel with very little background and/or training in safety or health in order to maintain their benchmark.

The State of Utah continues to mandate the UOSH program to operate under “the Working 4 Utah” program.” This is a four day, ten hours per day, work week. This means that the state government building and associated equipment cannot be used on Fridays. The latest report out of Utah indicates some success with the program with some energy saving costs as well as overtime costs. Emissions have been reduced due to fewer commuters on Fridays. State citizens like the extended hours of the state government and participants in the program like the four day workweek. While this pilot year for this program has ended, results indicate the four day work week will continue to be followed.

In order to maintain the integrity of the UOSH program while operating under the Working 4 Utah” plan, the UOSH administrator has expanded his telecommuting program. This program has enabled some UOSH personnel to effectively work on Fridays out of their homes. This means there are UOSH enforcement personnel in the field five days a week.

Utah, a State with final 18(e) approval, continues to meet the required benchmarks, with all allocated positions on board.

All four quarterly meetings, between the State and the Region, were held during FY 2009. Three meetings were held on-site, all three at the UOSH office in Salt Lake City, and the remaining third quarter meeting was held via telephone conferencing. A set agenda was used for the quarterly calls. Items on the agenda included a review of: the status of state plan changes, the SAMM indicators and other appropriate data, state strategic goal progress, as well as discussion of other program issues and technical updates. Action items were tracked for completion and minutes were taken and distributed by the regional State Plan Monitor.

## **Training**

Training in Utah is done in-house due to restricted funds to travel out of state. UOSH has a well documented training program that is tailored to last approximately six months. The training program consists of three parts:

- Classroom training - includes review of: 29CFR1910, 29CFR1926, the Utah Administrative Code, the Utah Field Operations Manual, instructions on using the OSHA website and IMIS training. The CDs provided to the State Plans by the OSHA Training Institute (OTI) are also used during this training.
- Hands-on Training - includes manuals and CDs in the form of a “Compliance Kit” from American Safety Training, on-line training from Costal Training Technologies Corporation which provides 35 interactive courses, completion of the OSHA e-tools and interactive sessions where scenarios are presented using video and pictures from inspection. This training is conducted by the team leaders.
- Field Training - occurs when a new hire accompanies a senior CSHO on an inspection. A CSHO will observe approximately 20 inspections before being released to the field alone assuming progressively more responsibility with each inspection.

Training activities are tracked individually using an access data base table. CSHOs use a calendar to mark items completed as they finish them. Material review quizzes are used throughout the process. Once a new hire has completed their training, they are required to complete three final tests which assess their knowledge of the material presented. They are then interviewed by a board consisting of: the Compliance manager, the Compliance Team Leader and either a Senior Safety or a Senior Health CSHO, depending on the discipline of the new hire. The Board then recommends either release to the field, more in-house training or more field training.

A training record is maintained, which includes the new hire training, for each CSHO throughout their career at UOSH. All future training classes attended are inserted into the training record.

UOSH requests training from the OTI each year. They usually get at least one training class, but it is not always the one they requested. OTI training is attended by all compliance personnel, including new hires. Although UOSH also makes use of the OSHA extension at the University of Utah Rocky Mountain Center for Occupational and Environmental Health for intermittent CSHO training, Education Center courses are not intended to provide basic CSHO training.

### **Findings**

The on-site review of interview statements taken during inspections by CSHOs showed some problems with CSHO investigative skills. Questions asked were often directive and not open ended. Answers were not questioned or discussed in order to get to the root cause of a violation. This practice had some effect on the number and seriousness of citations being issued as well as on what was actually cited and on employer knowledge. More general sections of the Utah code and the federal CFR were frequently being cited, which may indicate a problem with hazard recognition. A recommendation concerning this can be found under the section titled "Citations and Penalties."

### **Conclusion**

- Based on the on-site review of files, extensive problems were noted with the investigative skills of CSHOs. Open-ended interview questions pertinent to the existing violations were not asked which prevented investigators from identifying the root cause of the violations so the appropriate regulation could be cited.

### **Recommendations**

- 50. Include training on investigation skills in the UOSH new hire training program. Since resources are limited at this time, one staff member could attend the OTI course on investigations in a train the trainer mode and subsequently train the rest of the enforcement staff.**
- 51. Assess interview skills of the compliance staff and conduct training on how to effectively interview employers and employees to get to the root cause of the violation.**

## **10. State Internal Evaluation Program**

Per the 2010 Grant Agreement, the State is required to implement a State Internal Evaluation Program (SIEP). Utah began this process with the formation of an Internal Review Team. This team is composed of the four members of the management team. The SIEP is comprised of the following topics: case file reviews, program measures (SAMM & MARC), CSHO interviews, data reporting review and a quarterly program review each calendar year. A case file audit form has been created as well as questions about processes used during inspections. UOSH projected conducting an evaluation of their fatality process and fatality case files this year, but with the decision of federal OSHA to conduct the special studies, it was decided not to duplicate the effort of reviewing fatalities. At this point, UOSH has not implemented their

new process. Once the process is implemented, the State agrees to share results with the Region.

The evaluation program requires that current policies and procedures are being used. UOSH uses two guidance documents for enforcement processes. The first is the Utah FOM, which was discussed in the “State Plan Changes” section of this report. UOSH will adopt the federal FOM with the only differences being in following some state specific processes (such as debt collection), in referencing the federal directives and guidance documents and in state specific titles. This directive should be implemented by September 30, 2010. The second guidance document used by UOSH is the Utah “Policies and Procedures Manual.” This manual is divided into five sections: Administration, Compliance, Consultation, Data/Reporting and General. UOSH is currently working on updating these processes and will continue to update as deemed necessary from information found in their evaluations and due to changes to the federal or state process.

### **Conclusions**

- The State has created an internal evaluation program, but has not yet implemented it.
- The State is in the process of adopting the federal FOM with minor non-substantive changes and in updating their Policies and Procedures Manual.

### **Recommendations**

- 52. The State needs to implement the evaluation part of their SIEP, sharing the results with the federal regional office.**
- 53. Complete the updating of UOSH guidance documents this fiscal year.**

### **11. Appendices**

Appendix A – Findings and Recommendations Chart  
Appendix B – Enforcement Comparison Chart  
Appendix C – FY 2009 State Activity Mandated Measures (SAMM)  
Appendix D – FY 2009 State Information Report (SIR)  
Appendix E – FY 2009 Public Sector MARC  
Appendix F – FY 2009 Combined SOAR (Available Upon Request)

**Appendix A**  
 FY 2009 Utah State Plan (UOSH) Enhanced FAME Report  
 Prepared by Region VIII

**Summary of Findings and Recommendations**

	<b>Findings- General Case File Management</b>	<b>Recommendations- General Case File Management</b>
1	The Case File Management checklist in the case file is not consistently used by management to ensure post citation actions are completed.	Ensure post citation actions are completed. Complete the Case File Management checklist in all case files.
2	There are overall organization problems with safety case files and some of these are missing documentation.	Ensure that safety case files are organized and are completely documented.
3	A follow-up inspection done at a later date was not attached to the original case file.	Include the follow-up inspection information with the original case.
	<b>Findings- Un Programmed Activity</b>	<b>Recommendations- Un Programmed Activity</b>
4	One referral was not responded to in a timely manner as required by the Complaint Directive adopted by Utah, which is now part of the federal FOM, Chapter 9, Section I, B.	Ensure all referral inspections are opened in a timely manner.
5	Three unprogrammed inspections were missing notifications to the complainant. This was due to the contact information not being documented in the case file. According to the Utah FOM, Chapter XI Section 11(d), “the complainant should be informed of the results” of the complaint after the completion of an inspection.	Ensure complainants are notified of the results of the inspection for all complaints not filed anonymously. Document contact information in the file for all non-anonymous complainants in order to provide the results of the inspection.
6	One local government agency inspection addressed hazards that were not cited.	Perform a review of the local government agency inspection file to determine if any follow-up action is necessary.
	<b>Findings- Inquiries</b>	<b>Recommendations- Inquiries</b>
7	There was not consistent documentation in case files that the complainant was advised of the employer’s response to the inquiry as stipulated in the Utah FOM, Chapter XI, Section A(5)(d) and or in the federal FOM, Chapter 9, Section I(I)(6).	Place documentation of complainant’s notification of the employer’s response in the case files of inquiries.
8	Negotiated abatement times for employers to respond to inquiries were exceeded without documentation that the employer had requested more time and the conditions around that request.	Enforce the newly negotiated five day abatement period for phone and fax. Document the reasoning and extension period in the case file, as required by the federal FOM, Chapter 9, Section I(I)(5), when an inspection is not scheduled because of overdue abatement. Enter extensions for abatement of inquiries in the computer database as required.
9	Inquiries, instead of inspections, were sometimes scheduled to address serious hazards and prompt abatement was not required.	Ensure that serious hazards are abated quickly. Follow the guidelines in the federal FOM, Chapter 9, Section I(I)(3)(b) for inquiries, which provide the latitude to decrease response times based on circumstances of the complaint.
10	Proof of abatement in cases with serious hazards was not sufficient.	Follow the guidelines in Chapter 9, Section I (I)(3)(c) for proof of abatement.
11	Some complaint items were vague and non-specific, making it difficult for employers to	Follow the procedures in the Utah FOM, Chapter XI, Section A(3)(a)(3) which stipulates “determine

	properly abate the hazards.	the exact nature of the alleged violation.”
12	An inquiry, instead of an inspection, was scheduled to address a past exposure that was alleged to cause a permanent illness.	Schedule inspections in accordance with Chapter XI, Section A(2)(f), when “The complaint alleges that physical harm, such as disabling injuries and illnesses has occurred as a result of the complained of hazards and that there is reason to believe that the hazard or related hazard still exists.” This criteria is reiterated in the federal FOM, Chapter 9, Section I(C) (3).
	<b>Findings- Fatalities</b>	<b>Recommendations- Fatalities</b>
13	UOSH is not consistently sending letters and copies of the citations to the victims’ families as required in the federal FOM, Chapter 11, Part II, Section G, Families of Victims.	Follow the procedures in the federal FOM concerning proper notification to families of victims.
14	The standard 60% PRSA was given on two of the fatalities. An average 50% penalty reduction was given for fatality inspections during the FY2009.	Follow the guidance in the federal FOM, Chapter 11, Part II, and Section L (1) (d) that states: “insure that settlement terms are appropriate, including violation reclassification, penalty reductions, and additional abatement language.”
15	A fatality that was not reported in one day was not cited during the inspection.	Cite any fatality that is not reported by the employer to OSHA in one day.
16	Fatality cases were not appropriately documented and interviews were not thoroughly conducted.	Follow the procedures in the federal FOM, Chapter 11, Part II, Section C, Investigative Procedures and D, Interview Procedures.
	The cause of employer knowledge and exposure was not well documented.	[See Recommendations #50 and #51 in Section 8, Program Administration/Training.]
	<b>Findings- Targeting Programmed Inspections</b>	<b>Recommendations- Targeting Programmed Inspections</b>
17	Utah has no coding instructions in ENF-006 to ensure coding is consistent when entering the activity into the federal database.	Add instructions to ENF-006 on how to code the various emphasis areas each year.
18	There are extensive problems with coding of programmed and un-programmed inspections. Utah has 166 programmed inspections out of 597 inspections. This calculates to about a 28% programmed rate which differs greatly from the 55% rate or 328 inspections designated as programmed in the enforcement report. While these numbers do not include inspections from the amputation and trenching NEP, it is doubtful those two hazards would account for over 250 inspections.	Accurately code inspections. At the end of the fiscal year, tally inspection numbers and reconcile those numbers with those from the Integrated Management System (IMIS). This will ensure inspections are being correctly coded.
19	Utah had one sawmill inspection and four material handling inspections.	Reassess targeted areas for effectiveness. If the data supports continued targeting, resources should be redirected to these high hazard industries.
20	The number of citations per construction inspection was considerably below the national average.	Place emphasis on hazard recognition skills, particularly in the area of construction, for the compliance staff.
21	The accident reporting utilizes significant resources and effectively gets UOSH into the right places.	Consider using the accident inspections, generated by legislation, as a formal emphasis program. Refine this program and track the number and types of violations cited during these inspections.

	<b>Findings- Employee and Union Involvement</b>	<b>Recommendations- Employee and Union Involvement</b>
22	Employee representatives were not consistently involved in both the opening and closing conferences of inspections.	For union involvement follow the guidance in the Utah FOM, Chapter IV, Sections B (2), B (10) (b) and D. If the union waives involvement, document the circumstances in the narrative of the case file.
23	A sufficient number of employees are not being interviewed during inspections including fatality inspections.	Follow the guidance in the Utah FOM, Chapter IV, Section C (1) (d) for conducting employee interviews. On fatality inspections follow federal FOM, Chapter 11, Part II Section D.
	<b>Findings- Citations and Penalties</b>	<b>Recommendations- Citations and Penalties</b>
24	There were frequent discrepancies between the case file documentation and the outcome of the inspections which made it difficult to determine what happened. This practice undermines the work of UOSH.	Implement and utilize a management review process that ensures the documentation of the case file is reconciled with the outcome of the inspection.
25	A video taken by a CSHO showed trenching violations, but no citations were issued and the case file did not include a justification as to the reason.	Issue citations for a documented violation. If for some reason a supervisor decided not to issue, that reason should be noted in the case file. Review the instances noted above for appropriate follow up action if necessary.
26	Hazard communication violations were addressed but not cited. The worksheets for citations (Forms IB) were in case files but, citations were not issued. There was no documentation in this case file to explain this discrepancy. No justification was given for an in-compliance case related to an injury.	Review the case that involved an injury where no citation was issued for discrepancies.
27	Utah experienced a high rate of in-compliance (IC) for fatality and accident inspections. This raises concerns about hazard recognition skills.	Prior to implementation, provide a written copy of any program used for on-site abatement, in lieu of "quick fix." Clearly define the parameters of that program and inform the Region when that type of program will be used.
28		Utilize the "Most Frequency Cited Violation Report" as a tool to track hazard recognition. This report can be used to track individual hazard recognition problems and identity individual training needs.
	<b>Findings- Abatement</b>	<b>Recommendations- Abatement</b>
29	The abatement certification form used by Utah is not clear as to the type of abatement certification required.	Revise the abatement certification form so the employer is clear as to the type of abatement verification required for each violation.
30	The requirement for abatement documentation was not noted on repeat and high gravity serious violations.	Note verification in the form of documentation on all willful and repeat violations as required in Chapter 7, Section VI, C of the FOM. If documentation is not requested for high gravity serious violations, the reason for that decision needs to be noted in the case file.
31	Abatement extensions were granted, after the expiration of the contest period, without being filed in writing. An amended citation was issued in order to extend abatement that was requested after the abatement date was passed.	Follow the procedures in Chapter 7, Part III for Petitions for Modification of Abatement in the federal FOM for granting abatement extensions following the contest period. This language should be inserted or referenced in the new state FOM when completed.

32	There was not proof of abatement in two cases where the employer was not out of business.	Utah must implement an abatement tracking process that will ensure that all hazards are abated and that all the required information gets put into both the case file and the database.
	<b>Findings- Penalty Reduction Programs</b>	<b>Recommendations- Penalty Reduction Programs</b>
33	Penalties reductions in Utah are excessive. One factor that contributes to this higher rate is the PRSA which offers an automatic 60% penalty reduction.	Adjust penalty reductions to come into compliance with OSHA's new penalty policy.
	<b>Findings- Review Procedures</b>	<b>Recommendations- Review Procedures</b>
34	Penalty reductions at informal conferences averaged 70%.	[See recommendation #33.]
	<b>Findings- Tracking Systems and Information Mgmt.</b>	<b>Recommendations- Tracking Systems and Info. Mgmt.</b>
35	The Utah State Plan has a significant number of draft/incomplete records.	Utah OSHA must perform a review and cleanup of the IMIS database records to ensure that all draft forms are finalized and transmitted to the host computer as expeditiously as possible, except for OSHA-1Bs less than six-month old since they may still be modified before the citations are issued. A system must be developed to ensure that periodic review of draft and rejected IMIS forms are conducted to maintain a viable information system.
36	A total of 127 records were listed on the [Unsatisfied Activity Report]... Many of these records, including all accident reports, were well past due...	Utah must ensure that all outliers on the unsatisfied activity report, violation abatement report and debt collection report are properly addressed.
37	In discussions with management, it became clear that they are not familiar with most of the management reports available in the system to effectively monitor and control the flow of agency operations.	Utah OSHA must establish a comprehensive system for the proper handling of the IMIS management reports system. An automated report setup program will assist the agency in securing that the most widely used reports are automatically generated, reviewed and acted-upon on a periodic basis, either weekly, bi-weekly or monthly), based on the importance of the specific report and its volume of cases to be reviewed and monitored.
38	[Problems were noted with individual tracking reports].	Utah OSHA must review the findings outlined in this segment and take corrective action to cleanup the deficiencies noted in the IMIS management reports noted herein.
	<b>Findings – BLS Rates</b>	<b>Recommendation- BLS Rates</b>
39	TCR rates were higher than the national average for non-residential construction, lumber and wood products, and metal fabrication. Residential construction was only slightly lower.	Based on the BLS data, Utah should continue focusing resources in all of their current emphasis areas with the possible exception of highway, street, and bridge construction.
	DART rates were higher for all emphasis areas except highway, street and bridge construction.	
	<b>Findings- Discrimination Program</b>	<b>Recommendations- Discrimination Program</b>
40	Two cases were untimely filed, but were docketed and investigated.	Track and rectify any outstanding items identified, in the discrimination program.
	Several files did not contain documented interviews and/or the recordings were corrupted.	
	Files did not adequately document inspection activity.	

	One case file contained information that Complainant decided to withdraw his complaint, but did not document the reasons for the withdrawal. This raises a concern because Complainant had presented a strong prima facie showing.	
	Several case files did not contain a Final Investigation Report.	
	Several Final Investigation Reports contained inadequate information and/or the analysis was incorrect.	
	Full field investigations were rare.	
	<b>Findings- Partnerships</b>	<b>Recommendations- Partnerships</b>
41	Cooperative relationships in the Utah compliance program did not follow the guidelines of a formal program.	For existing cooperative relationships, document the guidelines being used and ensure that appropriate compliance protocol is being followed. Submit a copy to the Regional Office. The Regional Office should be apprised of any cooperative relationship that impacts compliance.
	<b>Findings- VPP</b>	<b>Recommendations- VPP</b>
42	The application used by UOSH does not include trade secrets or employee privacy issues.	The OSHA VPP website clearly instructs prospective sites to exclude trade secret and personal information; therefore, this requirement should be followed in the application process.
43	The VPP Manager does not formally acknowledge receipt of the application within 15 days of receipt for applications that are dropped at the office.	Initiate a process to formally acknowledge receipt of an application no matter how it is delivered. This acknowledgment can be sent either by letter or electronic mail.
44	UOSH Managers conduct a review of the applicant's enforcement history for the time period of three years prior to the application.	Use the standardized VPP report and worksheet template to ensure all application criteria is documented. If this recommendation is not taken, the State needs to include documentation of enforcement history in their current process. The standardized worksheet includes all the required criteria which includes a brief section on enforcement history.
45	VPP evaluations are scheduled within 6 months, but report preparation and approval are not done in a timely manner.	At a minimum, compile a draft report while doing the on-site audit so it can be left with the employer. This change in process will also serve to improve the timeliness of the report.
46	The template being used by UOSH for evaluation for VPP status is not current and therefore is missing newer criteria.	Adopt the federal template or update the current UOSH template to cover current criteria.
47	The State is experiencing increased applications and interest in VPP. Due to resource issues, the State is not marketing the program at this time.	Address the resource issue by making use of the Special Government Employee program in order to effectively serve Utah companies interested in VPP status.
48	The State is not ensuring the annual report is submitted by February 15 <sup>th</sup> of each year. The State is not reviewing the VPP reports or providing feedback to the sites for improvement.	Follow the required February 15 <sup>th</sup> due date for submission of the annual reports from VPP companies. In addition, UOSH needs to devote resource to analysis of the reports and provide feedback to the sites. Sites that do not submit an annual report must be removed from the program.
49	PSM sites are not submitting the PSM Supplement B questionnaire with their annual report.	The State needs to require the use of the PSM Supplement B from PSM facilities annually.

	<b>Findings- Training</b>	<b>Recommendations- Training</b>
50	Based on the on-site review of files, extensive problems were noted with the investigative skills of CSHOs. Open-ended interview questions pertinent to the existing violations were not asked which prevented investigators from identifying the root cause of the violations so the appropriate regulation could be cited.	Include training on investigation skills in the UOSH new hire training program. Since resources are limited at this time, one staff member could attend the OTI course on investigations in a train the trainer mode and subsequently train the rest of the enforcement staff.
51		Assess interview skills of the compliance staff and conduct training on how to effectively interview employers and employees to get to the root cause of the violation.
	<b>Findings- State Internal Evaluation Program</b>	<b>Recommendations- State Internal Evaluation Program</b>
52	The State has created an internal evaluation program, but has not yet implemented it.	The State needs to implement the evaluation part of their SIEP, sharing the results with the federal regional office.
53	The State is in the process of adopting the federal FOM with minor non-substantive changes and in updating their Policies and Procedures Manual.	Complete the updating of UOSH guidance documents this fiscal year.

**Appendix B  
Utah State Plan (UOSH)  
FY 2009 Enforcement Activity**

	Utah	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>597</b>	<b>61,016</b>	<b>39,004</b>
Safety	499	48,002	33,221
<i>% Safety</i>	<i>84%</i>	<i>79%</i>	<i>85%</i>
Health	98	13,014	5,783
<i>% Health</i>	<i>16%</i>	<i>21%</i>	<i>15%</i>
Construction	287	26,103	23,935
<i>% Construction</i>	<i>48%</i>	<i>43%</i>	<i>61%</i>
Public Sector	22	7,749	N/A
<i>% Public Sector</i>	<i>4%</i>	<i>13%</i>	<i>N/A</i>
Programmed	328	39,538	24,316
<i>% Programmed</i>	<i>55%</i>	<i>65%</i>	<i>62%</i>
Complaint	95	8,573	6,661
<i>% Complaint</i>	<i>16%</i>	<i>14%</i>	<i>17%</i>
Accident	108	3,098	836
Insp w/ Viols Cited	370	37,978	27,165
<i>% Insp w/ Viols Cited (NIC)</i>	<i>62%</i>	<i>62%</i>	<i>70%</i>
<i>% NIC w/ Serious Violations</i>	<i>87%</i>	<i>62%</i>	<i>87%</i>
<b>Total Violations</b>	<b>1,026</b>	<b>129,363</b>	<b>87,663</b>
Serious	730	55,309	67,668
<i>% Serious</i>	<i>71%</i>	<i>43%</i>	<i>77%</i>
Willful	5	171	401
Repeat	32	2,040	2,762
Serious/Willful/Repeat	767	57,520	70,831
<i>% S/W/R</i>	<i>78%</i>	<i>44%</i>	<i>81%</i>
Failure to Abate	4	494	207
Other than Serious	255	71,336	16,615
<i>% Other</i>	<i>25%</i>	<i>55%</i>	<i>19%</i>
Avg # Violations/ Initial Inspection	2.5	3.3	3.1
<b>Total Penalties</b>	<b>\$ 1,187,175</b>	<b>\$ 60,556,670</b>	<b>\$ 96,254,766</b>
Avg Current Penalty / Serious Violation	\$ 1,149.70	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 1,175.50	\$ 934.70	\$ 977.50
% Penalty Reduced	64.6%	51.9%	43.7%
<b>% Insp w/ Contested Viols</b>	<b>0.0%</b>	<b>13.0%</b>	<b>7.0%</b>
Avg Case Hrs/Insp- Safety	22.6	15.7	17.7
Avg Case Hrs/Insp- Health	28.0	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	34.7	31.6	34.3
Lapse Days Insp to Citation Issued- Health	58.6	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	96	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*

**Attachment C**  
**State Activity Mandates Measures (SAMM)**

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

OCT 23, 2009  
 PAGE 1 OF 2

State: UTAH

RID: 0854900

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	332 3.49 95	0 .00 1	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	118 1.84 64	3 3.00 1	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	81 91.01 89	4 100.00 4	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	1 100.00 1	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	492 92.66 531	0 .00 2	100%
Public	17 100.00 17	0 0 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	18051 49.18 367	368 52.57 7	2489573 43.8 56880 National Data (1 year)
Health	3501 79.56 44	111 111.00 1	692926 57.4 12071 National Data (1 year)

\*FY09UT

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

OCT 23, 2009  
 PAGE 2 OF 2

State: UTAH

RID: 0854900

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
Safety	224 68.09 329	3 25.00 12	92328 58.6 157566 National Data (3 years)
Health	11 47.83 23	0 0 0	11007 51.2 21510 National Data (3 years)
9. Average Violations per Inspection with Vioations			
S/W/R	795 1.93 411	16 2.00 8	420601 2.1 201241 National Data (3 years)
Other	261 .63 411	5 .62 8	243346 1.2 201241 National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1233375 1675.78 736	21375 1335.93 16	492362261 1335.2 368756 National Data (3 years)
11. Percent of Total Inspections in Public Sector	22 3.70 595	2 11.76 17	64 3.7 1728 Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	2170 723.33 3	0 0 0	4382038 246.1 17807 National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	7 46.67 15	0 0 0	100%
14. Percent of 11c Complaints that are Meritorious	1 6.67 15	0 0 0	1466 20.8 7052 National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	0 .00 1	0 0 0	1263 86.2 1466 National Data (3 years)

| | \*FY09UT

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

## Attachment D State Information Report (SIR)

1100127

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = JANUARY 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = UTAH

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
<b>C. ENFORCEMENT (PRIVATE SECTOR)</b>								
<b>1. PROGRAMMED INSPECTIONS (%)</b>								
A. SAFETY	3954	8	9877	80	21487	254	42545	576
	66.4	12.7	66.8	42.8	67.3	54.3	66.0	60.6
	5952	63	14797	187	31913	468	64489	951
B. HEALTH	441	0	966	5	2008	9	3754	37
	36.9	.0	36.2	16.1	35.5	11.8	34.7	22.7
	1195	10	2670	31	5663	76	10821	163
<b>2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)</b>								
A. SAFETY	3558	7	8259	58	16634	183	32774	452
	70.4	50.0	69.3	54.7	66.1	64.0	66.4	73.5
	5054	14	11919	106	25173	286	49371	615
B. HEALTH	383	0	760	0	1557	7	2904	19
	60.6	.0	57.1	.0	53.4	50.0	54.9	47.5
	632	1	1332	3	2916	14	5292	40
<b>3. SERIOUS VIOLATIONS (%)</b>								
A. SAFETY	13018	40	28380	177	56206	476	112472	1105
	82.5	74.1	82.2	71.7	80.7	70.6	79.8	72.6
	15770	54	34534	247	69639	674	140967	1521
B. HEALTH	2395	8	5143	19	10308	91	19533	181
	71.5	80.0	70.2	65.5	69.7	68.9	68.5	69.3
	3348	10	7323	29	14784	132	28501	261
<b>4. ABATEMENT PERIOD FOR VIOLS</b>								
A. SAFETY PERCENT >30 DAYS	2777	13	5546	102	11848	304	25157	781
	17.9	19.7	16.4	40.3	17.5	40.9	18.4	44.0
	15507	66	33767	253	67676	744	136903	1777
B. HEALTH PERCENT >60 DAYS	168	0	460	0	1188	8	2919	10
	4.9	.0	6.2	.0	8.0	4.4	10.2	2.8
	3447	18	7462	42	14809	183	28648	351

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = JANUARY 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = UTAH

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	274750	4150	564385	18250	1257266	39975	2599013	87000
OTHER-THAN-SERIOUS	796.4	461.1	855.1	380.2	952.5	344.6	1003.9	361.0
	345	9	660	48	1320	116	2589	241
B. HEALTH								
	102600	250	187900	1650	317050	3800	659280	8450
OTHER-THAN-SERIOUS	908.0	250.0	824.1	330.0	796.6	253.3	851.8	234.7
	113	1	228	5	398	15	774	36
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6897	68	16890	206	36420	500	72688	999
	5.5	2.2	5.5	2.8	5.5	3.2	5.4	3.0
	1244	31	3046	73	6598	158	13570	338
B. HEALTH								
	1413	12	3152	35	6798	83	12758	174
	2.0	1.0	1.8	1.1	1.7	1.1	1.6	1.1
	696	12	1712	33	3886	79	8190	160
7. VIOLATIONS VACATED %								
	767	0	2125	3	4761	35	9866	82
	3.4	.0	4.3	.8	4.8	2.9	4.9	3.0
	22699	100	49281	382	99170	1222	201074	2761
8. VIOLATIONS RECLASSIFIED %								
	668	0	1852	0	4463	2	9176	9
	2.9	.0	3.8	.0	4.5	.2	4.6	.3
	22699	100	49281	382	99170	1222	201074	2761
9. PENALTY RETENTION %								
	11689142	0	25094485	63711	52146953	258226	109315465	838331
	61.3	.0	62.6	50.8	62.4	44.1	62.8	48.5
	19056041	0	40080530	125500	83517835	585700	174071404	1729250

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = JANUARY 2010

INTERIM STATE INDICATOR REPORT

STATE = UTAH

0  
0

PERFORMANCE MEASURE

----- 3 MONTHS-----    ----- 6 MONTHS-----    ----- 12 MONTHS-----    ----- 24 MONTHS-----  
PRIVATE    PUBLIC    PRIVATE    PUBLIC    PRIVATE    PUBLIC    PRIVATE    PUBLIC

D. ENFORCEMENT (PUBLIC SECTOR)

1. PROGRAMMED INSPECTIONS %

	3 MONTHS		6 MONTHS		12 MONTHS		24 MONTHS	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
A. SAFETY	8	1	80	5	254	7	576	7
	12.7	50.0	42.8	55.6	54.3	36.8	60.6	25.9
	63	2	187	9	468	19	951	27
B. HEALTH	0	1	5	2	9	2	37	3
	.0	50.0	16.1	66.7	11.8	33.3	22.7	30.0
	10	2	31	3	76	6	163	10

2. SERIOUS VIOLATIONS (%)

	3 MONTHS		6 MONTHS		12 MONTHS		24 MONTHS	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
A. SAFETY	40	11	177	14	476	21	1105	34
	74.1	61.1	71.7	60.9	70.6	63.6	72.6	73.9
	54	18	247	23	674	33	1521	46
B. HEALTH	8	0	19	0	91	0	181	0
	80.0	.0	65.5	.0	68.9	.0	69.3	.0
	10	0	29	0	132	0	261	0

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = JANUARY 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = UTAH

0  
0

PERFORMANCE MEASURE

----- 3 MONTHS-----    ----- 6 MONTHS-----    ----- 12 MONTHS-----    ----- 24 MONTHS-----  
FED    STATE    FED    STATE    FED    STATE    FED    STATE

E. REVIEW PROCEDURES

1. VIOLATIONS VACATED %

	326	0	736	0	1690	0	3615	2
	17.5	.0	20.4	.0	22.5	.0	23.5	4.8
	1861	0	3615	0	7510	4	15414	42

2. VIOLATIONS RECLASSIFIED %

	227	0	494	0	1110	0	2271	3
	12.2	.0	13.7	.0	14.8	.0	14.7	7.1
	1861	0	3615	0	7510	4	15414	42

3. PENALTY RETENTION %

	2514479	0	4666625	0	8960364	5100	20572449	27379
	53.0	.0	53.7	.0	52.5	85.0	56.2	30.3
	4741736	0	8697786	0	17065292	6000	36622747	90275

## Attachment E

### Mandates Activities Report for Consultation (MARC)

OSHA MARC REPORT  
 REPORT ENDING DATE: DEC 2009  
 QUARTER: 1 FY: 2010  
 - PROJECT NAME: Utah

@ U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 MANDATED ACTIVITIES REPORT FOR CONSULTATION (MARC)  
 (21 (D) PRIVATE)

JAN 06, 2010  
 PAGE 7 OF 2

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	117	117	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	80	80	
Percent	97.56	97.56	
Number of Initial Visits	82	82	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	82	82	
Visits <= 250 Employees in Estab Percent	81 98.78	81 98.78	
Visits <= 500 Employees CB by Empr Percent	82 100.00	82 100.00	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	82	82	
Percent	100.00	100.00	
Number of Initial Visits	82	82	
Follow-Up			
Number with Empe Conferences	6	6	
Percent	100.00	100.00	
Number of Follow-Up Visits	6	6	
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

- PROJECT NAME: Utah (21 (D) PRIVATE)

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	215	215	
Percent	99.54	99.54	
Total Serious Hazards	216	216	
Number of Serious Hazards Verified Corrected:	215	215	
On-Site	36	36	
Within Original Time Frame	171	171	
Within Extension Time Frame	8	8	
Within 14 Days of Latest Correction Due Date	0	0	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	1	1	
Percent	.46	.46	
Total Serious Hazards	216	216	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent	.00	.00	
Total Serious Hazards	216	216	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	207	207	

Percent	95.83	95.83	
Total Serious Hazards	216	216	
Number of Serious Hazards Verified	207	207	
CORRECTED (IN ORIGINAL TIME OR ONSITE)			
On-Site	36	36	
Within Original Time Frame	171	171	
5. Number of Uncorrected Serious Hazards			0
with Correction Date > 90 Days Past Due			
(Open Cases for last 3 Years, excluding			
Current Quarter)			

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

- PROJECT NAME: Utah (21(D) PRIVATE)

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	93	213	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	58	140	
Percent	98.31	97.90	
Number of Initial Visits	59	143	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	59	143	
Visits <= 250 Employees in Estab	56	139	
Percent	94.92	97.20	
Visits <= 500 Employees CB by Empr	58	142	
Percent	98.31	99.30	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	51	135	
Percent	86.44	94.41	
Number of Initial Visits	59	143	
Follow-Up			
Number with Empe Conferences	8	14	
Percent	100.00	100.00	
Number of Follow-Up Visits	8	14	
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

OSHA MARC REPORT  
 REPORT ENDING DATE: MAR 2010  
 QUARTER: 2 FY: 2010

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION  
 U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 MANDATED ACTIVITIES REPORT FOR CONSULTATION (MARC)

APR 06, 2010  
 PAGE 88

- PROJECT NAME: Utah (21(D) PRIVATE)

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	249	473	
Percent	100.00	100.00	
Total Serious Hazards	249	473	
Number of Serious Hazards Verified Corrected:	249	473	
On-Site	21	60	
Within Original Time Frame	190	367	
Within Extension Time Frame	38	46	
Within 14 Days of Latest Correction Due Date	0	0	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	0	
Percent	.00	.00	
Total Serious Hazards	249	473	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent	.00	.00	
Total Serious Hazards	249	473	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%

NUMBER VERIFIED	211	427	
Percent	84.74	90.27	
Total Serious Hazards	249	473	
Number of Serious Hazards Verified	211	427	
CORRECTED (IN ORIGINAL TIME OR ONSITE)			
On-Site	21	60	
Within Original Time Frame	190	367	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

- PROJECT NAME: Utah (21(D) PRIVATE)

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	78	308	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	53	199	
Percent	91.38	94.76	
Number of Initial Visits	58	210	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	58	210	
Visits <= 250 Employees in Estab	58	206	
Percent	100.00	98.10	
Visits <= 500 Employees CB by Empr	58	209	
Percent	100.00	99.52	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	58	210	
Percent	100.00	100.00	
Number of Initial Visits	58	210	
Follow-Up	8	22	
Number with Empe Conferences	100.00	100.00	
Percent	8	22	
Number of Follow-Up Visits			
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	1	1	
Percent	100.00	100.00	
Number of T&A Visits	1	1	

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

- PROJECT NAME: Utah (21(D) PRIVATE)

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	232	690	
Percent	100.00	100.00	
Total Serious Hazards	232	690	
Number of Serious Hazards Verified Corrected:	232	690	
On-Site	30	97	
Within Original Time Frame	174	520	
Within Extension Time Frame	24	69	
Within 14 Days of Latest Correction Due Date	4	4	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	0	
Percent	.00	.00	
Total Serious Hazards	232	690	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent	.00	.00	
Total Serious Hazards	232	690	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%

NUMBER VERIFIED	204	617	
Percent	87.93	89.42	
Total Serious Hazards	232	690	
Number of Serious Hazards Verified	204	617	
CORRECTED (IN ORIGINAL TIME OR ONSITE)			
On-Site	30	97	
Within Original Time Frame	174	520	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

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**APPENDIX F**  
**FY 2009 STATE OSHA ANNUAL REPORT (SOAR)**

(Available separately)