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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
LANSING

ANDREW S. LEVIN
ACTING DIRECTOR

September 20, 2010

Mr. Michael Connors, Regional Administrator
Region V
Occupational Safety and Health Administration
United States Department of Labor
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604

Subject: State Response to Final FY 2009 Enhanced Federal Annual Monitoring and Evaluation (EFAME) Report – October 1, 2008 to September 30, 2009

Dear Mr. Connors:

We appreciate the opportunity to participate in the OSHA EFAME evaluation of the Michigan Safety and Health Administration (MIOSHA) state plan program. MIOSHA is a continuous improvement organization and values constructive input and feedback.

This letter provides the State of Michigan initial statement in response to the EFAME report. We request this letter be issued at the same time as the EFAME report and posted on the OSHA webpage. A full response and detailed corrective action plan will be submitted by the 30-day deadline.

MIOSHA Program Effectiveness

The Summary of Report section states that, "...Michigan continues to operate an effective program and actively works in a positive manner to continuously improve program effectiveness." We appreciate this acknowledgement. MIOSHA is committed to administering a program that provides the highest level of workplace safety and health protection.

We believe the Michigan program for occupational safety and health has been highly effective in protecting Michigan workers from on-the-job injuries, illnesses and exposures as evidenced by:

- An ongoing downward trend in both overall injury and illness rates and workplace fatalities. For the most recent five years of data, Michigan's decreases in injury, illness, and fatality rates have equaled or surpassed national averages.
- Ranking as seventh best of all 50 states in ability to inspect high hazard workplaces indicating adequate compliance staffing levels. (AFL-CIO Report, *Death on the Job The Toll of Neglect*, April 2010).
- Partnerships with data that demonstrate effectiveness in significantly reducing injuries and illnesses for these projects.
- Ability to consistently meet or exceed most of the State Activity Mandated Measures (SAMMs).

DELEG is an equal opportunity employer/program.

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

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- Implementation of special enforcement and outreach initiatives to address emerging trends or special needs.
- Three-year recipient of the Alfred P. Sloan Award for Workplace Flexibility recognizing MIOSHA as a great place to work.

MIOSHA Strategic Plan and Initiatives

Michigan operates under five-year strategic plans to guide program activities and resource allocation. The MIOSHA strategic plan focuses on three strategic goals that are consistent with those of federal OSHA. Fiscal Year 2009 was the first year of MIOSHA's third strategic plan. During the plan's first year, MIOSHA implemented a number of new or revised strategies to strengthen the program's effectiveness in protecting Michigan workers including:

- New good faith penalty reductions aimed at more closely assessing an employer's efforts to comply with MIOSHA rules and requirements.
- An aggressive approach for targeting 13 general industries and construction for prioritized outreach and enforcement activity.
- A new safety and health management system evaluation for use in programmed inspections.
- A new safety and health management system evaluation customized for the construction industry.
- An updated customer comment card to obtain ongoing feedback.
- A MIOSHA "Vision and Values" statement for all MIOSHA staff to follow.
- MIOSHA Training Institute courses on specific MIOSHA standards and advanced management track courses for employers and employees in Michigan.
- A "Tough Economic Times" initiative to remind employers of their ongoing obligations to provide workplace safety and health protections and offer assistance to ease economic hardships.
- A "Safety Pays" initiative to remind and discuss with employers the economic value of good safety and health programs.

Relationship with Federal OSHA

MIOSHA has established and maintained a positive and transparent relationship with OSHA. The Lansing Area OSHA Office and Region V are included in the distribution of MIOSHA policy documents, publications, and newsletters and are invited to participate in staff training, meetings, and conferences.

Response to EFAME Key Recommendations

MIOSHA issued an updated Field Operations Manual in April and June of 2010 to adopt the most recent changes to the federal manual. Revisions included significant changes in penalty calculations, which we anticipate will increase MIOSHA penalties. Changes included assessing size reduction based on nationwide employment versus employment at the site, increased multipliers for repeat violations, and adoption of OSHA's size and penalty calculations for willful violations. All staff have been trained on the changes. We believe these changes will address several findings related to hazard classification and penalty assessment.

The EFAME indicated MIOSHA staffing levels are below the currently approved benchmarks. The current benchmarks were established approximately 20 years ago and clearly the industry mix in Michigan has dramatically changed since that time. Updating benchmarks for the MIOSHA program has been a program priority for the last three fiscal years. Numerous requests have been made for the data; however, there has been no response to these requests. MIOSHA is eager to work with OSHA to review and establish updated staffing levels.

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MIOSHA provides significant opportunities for employees and their representatives to participate in all aspects of our inspections and consultations. To ensure employee participation during inspections, the MIOSH Act mandates walk-around pay for employee representatives.

MIOSHA will create a detailed corrective action plan to address all of the findings and recommendations in the EFAME. There are a number of findings that are administrative in nature or based on isolated incidents. We strongly believe these findings do not affect the overall effectiveness of the program.

Conclusions

MIOSHA appreciated working with the special evaluation team. The team was courteous in working with our staff. MIOSHA also enjoyed having the team at our workplace as it also provided an opportunity to discuss a variety of other issues, which was positive.

Please know that MIOSHA's commitment to providing a comprehensive and effective program remains firm. MIOSHA has established firm and fair enforcement, effective consultation, education and training, adoption of relevant fact-based standards, and meaningful cooperative agreements with individual employers, employees, and employer organizations. We continue to believe this comprehensive approach is the most effective way to increase safety and health awareness, gain compliance, and ultimately keep Michigan's working men and women safe on the job.

Thank you for this opportunity to submit comments in response to the special EFAME report. If you have questions or would like additional information, please contact Douglas Kalinowski at 517.322.1817.

Sincerely,

/signed/

Andrew S. Levin

Acting Director

Attachment

cc: Susan Corbin, Deputy Director, DELEG
Cynthia Hutchens-Smith, Director, Lansing Area Office, OSHA
Douglas J. Kalinowski, Director, MIOSHA
Martha Yoder, Deputy Director, MIOSHA