

STATE OF ALASKA

Department of Labor and Workforce Development

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August 1, 2011

Mr. Dean Ikeda
Acting Regional Administrator
Occupational Safety and Health Administration
U.S. Department of Labor
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212

RE: FFY 2010 Enhanced Federal Annual Monitoring and Evaluation Report

Dear Mr. Ikeda,

Thank you for your July 18, 2011, letter regarding the FY 2010 Enhanced Federal Annual Monitoring and Evaluation report (EFAME). I am providing a statement for your consideration and on-line posting with the EFAME report.

We agree with OSHA's primary conclusion that, "The state (of Alaska) is operating at an acceptable program level overall" and appreciate OSHA's recognition that the "repeat" recommendations outlined in the report were provided so late that they could not effectively be addressed or implemented in FFY 2010. The Alaska Occupational Safety and Health (AKOSH) program takes pride in its responsiveness to issues and recommendations outlined in the EFAME reports. The FFY 2010 report has been presented more timely, but it would be ideal if the EFAME were provided within the first quarter of the following federal fiscal year to allow ample time to make adjustments and take corrective action. AKOSH agrees with the EFAME process to the extent that the goal is to improve performance rather than a means of publicly criticizing state occupational safety and health plans without providing an adequate period for adjustment and correction.

The EFAME provided several recommendations for improvement and AKOSH's responses are listed below.

Recommendation 10-1: AKOSH enforcement started sending next of kin follow-up appraisal letters for fatality investigations in FFY 2011.

Recommendation 10-2: AKOSH enforcement met this recommendation from FFY 2009 by conducting more enforcement inspections in FFY2010. The recommendation did not state that the goal of 465 inspections must be met or exceeded. AKOSH has achieved improvements in the number of inspections while maintaining quality.

Recommendation 10-3: Training to improve factual documentation of employer knowledge was provided to AKOSH CSHOs in January 2011. As a result, this issue is not expected to continue for the remainder of in FFY 2011.

Recommendation 10-4: AKOSH has taken action in FFY 2011 to train CSHO's to improve clarity and understanding regarding classification of "serious" hazards, so this issue is not expected to continue in FFY 2011.

Recommendation 10-5: AKOSH will provide additional training to all CSHO's in the coming months to improve complete documentation of probability and severity on the OSHA 1B for both "serious" and "other than serious" alleged violations.

Recommendation 10-6: All inspection files with exception of "Contested Cases" have abatement documentation included in file. AKOSH contends that this was a data entry error rather than a more serious error of failing to ensure hazard abatement. AKOSH has taken steps to ensure that hazard abatement verification is properly documented and entered into the data base.

Recommendation 10-7: AKOSH will provide training and inspection monitoring to all CSHOS in the coming months to improve documentation of measurements and description of safety or health hazards in the alleged violation description.

Recommendation 10-8: This recommendation pertains to a single inspection rather than a systemic identified deficiency. AKOSH will make efforts to ensure that adequate sampling is conducted when a complaint item dictates that sampling should be performed to establish exposure levels.

Recommendation 10-9: AKOSH has a long-established process where enforcement inspection activity at a VPP site is shared with the Chief of Consultation to evaluate continuing VPP status. OSHA did not identify any specific or general instances where enforcement inspection information at a VPP site was not shared with the Chief of Consultation.

Recommendation 10-10: AKOSH continuously works to improve citation lapse times. By establishing a new mid-level management position in FFY 2011, AKOSH hopes to experience improvement in citation lapse times.

Recommendation 10-11: AKOSH has implemented use of the prima facie screening sheet and letter notifications to complainants regarding a screened out complaint.

Recommendation 10-12: AKOSH will dismiss complaints that are not timely filed. OSHA focused on a single instance of an error in connection with this recommendation. AKOSH questions whether a singular issue warrants a recommendation.

Recommendation 10-13: AKOSH reserves its right to collect written statements as a substitute for a formal interview. However, when appropriate under the circumstances, AKOSH will make efforts to conduct formal interviews.

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Recommendation 10-14: AKOSH agrees that Final Investigative Reports (FIR) should document relevant evidence with sufficient specificity. However, in some cases the information or additional detail is simply not available within the time constraints of the investigation process. AKOSH will make every effort to adequately document relevant evidence in the FIR.

Recommendation 10-15: AKOSH agrees to document in the FIR considerations of inferred knowledge evidence (i.e., Small Workplace Doctrine) if there is no evidence of actual employer knowledge of a protected activity.

Recommendation 10-16: AKOSH has historically documented employer knowledge of each protected activity. AKOSH will focus efforts to ensure that adequate employer knowledge of each protected activity is more thoroughly documented.

Recommendation 10-17: AKOSH settlements are subject to legal guidance from the Alaska Department of Law in accordance with Alaska statute. To the extent supported by AKOSH's legal counsel, AKOSH agrees to consider OSHA's guidelines for settlements, but does not consider these guidelines to be universally mandatory for AKOSH to achieve settlement.

AKOSH is focused on providing an effective occupational safety and health program. We encourage OSHA to conduct regular evaluations and provide timely results to allow for continuous improvements toward our mutual goal of reducing workplace illnesses, injuries and fatalities.

Sincerely,

Clark Bishop
Commissioner

cc: Grey Mitchell, Director Labor Standards and Safety Division
Steve Standley, AKOSH Chief of Enforcement