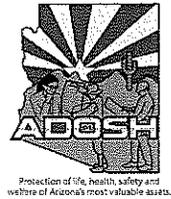




THE INDUSTRIAL COMMISSION OF ARIZONA

DIVISION OF OCCUPATIONAL SAFETY & HEALTH



P.O. BOX 19070
PHOENIX, ARIZONA 85005-9070

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DARIN PERKINS, ADOSH DIRECTOR
(602) 542-1693
FAX (602) 542-1614

LAURA L. MCGRORY, DIRECTOR
TERESA HILTON, SECRETARY

July 28, 2011

Ken Nishiyama Atha
Regional Administrator, OSHA
90 – 7th Street, Suite 18100
San Francisco, CA 94103

RE: Updated response to OSHA's updated FY 2010 follow-up evaluation of ADOSH

Mr. Atha:

This letter is an updated response to OSHA's FY 2010 Enhanced Federal Annual Monitoring and Evaluation (EFAME) Follow-up evaluation of the Arizona Division of Occupational Safety and Health (ADOSH). I am providing it in response to Ms. Flack's request that I do so in response to the recent changes made to the final ADOSH evaluation. This update is not meant to be an exhaustive response to the evaluation, nor is it meant to cover all points of the evaluation with which we disagree. Overall, the report appears to be a fairly accurate assessment of the ADOSH program. Nevertheless, we believe certain findings and recommendations noted in the evaluation are incorrect, or do not paint a complete picture of the ADOSH program. Some of those findings and recommendations are addressed as follows:

Executive Summary – Report Summary: At the bottom of page four, OSHA makes the following statement: "ADOSH needs to address those pending findings and all new findings and recommendations to ensure they are effectively providing safe and healthy workplaces for all workers."

We disagree with this statement insofar as it implies that the ADOSH program is less effective than the federal program if ADOSH does not implement every change or recommendation within the evaluation, no matter how minor such recommendation may be. Notwithstanding areas in need of improvement, the ADOSH state plan is an effective program and there is much data, both objective and subjective, to support this. By and large, the findings noted in OSHA's report do not indicate that the ADOSH program is ineffective.

Finding 09-07 (updated to 10-01): As has already been communicated to Regional personnel, ADOSH declines to implement this recommendation. We do not believe that a diary sheet or daily log will add anything of value to our inspection files. The information contained on such a log would only be duplicative to information already found within the inspection file. Again, it is not necessary for the ADOSH program to be a mirror copy of the federal program for ADOSH to be deemed effective. ADOSH inspection files already contain

a telephone log in addition to other relevant information regarding the activity associated with each file. The lack of a case file diary sheet does not make the ADOSH program ineffective.

Finding 09-20 (updated to 10-05): We have submitted ADOSH's training plan to OSHA (as OSHA acknowledges within the language of this finding) and so we are unclear why this continues to be a finding.

Finding 10-02: This finding is inaccurate and should be removed. ADOSH's penalties are appropriate. Our average penalty for a serious violation is only slightly lower than the federal average and our penalties are assessed in accordance with the FOM.

Finding 10-15: This finding is inconsequential and should be removed. While we certainly recognize the value of verifying 100% of all citations in a timely manner, we believe a verification rate of over 94% represents excellent performance. As an aside, ADOSH staff understands that employers can be cited for failing to provide abatement verification.

Finding 10-16: This finding should be removed. ADOSH's policy for citation classification is in line with the federal and other state programs.

Standards Adoption – Finding 09-19 (updated to 10-04): Contrary to the information within the evaluation, ADOSH *did* adopt the four standards promulgated in FY 2010. ADOSH adopted the Acetylene Direct Final Rule on 1/12/11 and the Hexavalent Chromium, Steel Erection, and Cranes and Derricks standards on 6/13/11.

Federal Program Change(s): Again, contrary to the information in the evaluation, ADOSH *did* adopt the Severe Violator Enforcement Program, effective 10/21/10

In conclusion, while we do not have major disagreement with much of OSHA's evaluation and we are committed to making meaningful improvements to our program, some of the findings should not be included within the report. In some cases, they are not substantive issues in need of addressing. In others, they are simply incorrect. We ask that these items be removed or corrected.



Darin Perkins,
ADOSH Director