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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
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August 1, 2011

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: MIOSHA's Statement in Response to Final FY 2010 Federal Annual Monitoring and Evaluation (FAME) Report - October 1, 2009 to September 30, 2010

Dear Mr. Connors:

We appreciate the opportunity to participate in the OSHA FAME 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 MIOSHA's statement in response to the Fiscal Year 2010 FAME report. We request this letter be posted with the FAME report on the OSHA webpage.

#### MIOSHA Program Effectiveness

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 and illness have followed the downward trend seen in national averages. In this same time frame, Michigan's fatality rates have been lower than 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).
- Implementation of special enforcement and outreach initiatives to address emerging trends or special needs.

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- Three-year recipient of the Alfred P. Sloan Award for Workplace Flexibility recognizing MIOSHA as a great place to work.

We are pleased the FAME acknowledges that MIOSHA's overall implementation of its enforcement program is viewed as positive.

### **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 2010 was the second year of MIOSHA's third strategic plan. 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.
- 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 continues to maintain 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.

### **Comments on Specific FAME Findings**

**Violation Classification and Penalties:** 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 have increased 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. The Construction

Safety and Health Division (CSHD) and the General Industry Safety and Health Division (GISHD) held training in April 2011 and both divisions are planning additional training in August 2011. We believe these changes address several findings related to hazard classification and penalty assessment.

**Staffing Levels:** The FAME 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 four fiscal years. Numerous requests have been made for the data; however, there has been no response to these requests. MIOSHA continues to be eager to work with OSHA to review and establish updated staffing levels.

**Employee Participation:** 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.

**Diary Sheet:** MIOSHA is piloting use of a diary sheet to track actions taken on case files as recommended by OSHA.

**Staff Training:** OSHA recommended additional training to ensure staff are identifying and classifying violations according to our Field Operations Manual. Staff have been trained. CSHD and GISHD were trained in April and will have additional training in August.

**Internal Audit:** MIOSHA is also in the process of implementing an internal auditing program at the Agency and division level. The CSHD will conduct an audit to verify that appropriate documentation is included in files to support changes to violations for penalties.

There are several statements in the FAME that are not correct.

- The Executive Summary and Introduction reference 65 staff funded by the 23(g) grant. The 65 references only field staff positions. In total, 201.5 positions receive funding through the 23(g) grant.
- The Fiscal Year 2010 State Enforcement Mandated Activities Section references nine days to initiate complaint inspections. The negotiated days are ten for complaint inspections.

## Conclusions

MIOSHA appreciated working with the evaluation team. The team was courteous in working with our staff.

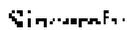
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Please know that MIOSHA's commitment to providing a comprehensive and effective program remains firm. MIOSHA has established firm and fair enforcement, effective consultation, education and training, adoption of relevant fact-based standards, and meaningful 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 a statement in response to the FAME report. If you have questions or would like additional information, please contact me at (517) 322-1817.



Douglas J. Kafinowski  
Director

DJK:mtl

cc: Steve Arwood, Deputy Director, LARA  
Robert Bonack, Director, Lansing Area Office, OSHA  
Michael Mason, Acting Deputy Director, MIOSHA