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August 22, 2014

Mr. Ken Atha  
Regional Administrator  
90 – 7<sup>th</sup> Street, Suite 18100  
San Francisco, CA 94103

Dear Mr. Atha:

HIOSH would like to respond to the *Comprehensive FY 2013 Federal Annual Monitoring and Evaluation Report*. We appreciate the cooperative manner in which the onsite portion of the evaluation was conducted. Our office took steps to address each of the valid recommendations in the final report which we received on July 22, 2013. We consider this letter to be the State's official response to the FY 2013 EFAME and request that it be posted along with the FAME on your public web site.

We would like to preface all of the remarks below with the comment that we received the FY 2013 EFAME on July 22, 2014, one third of the way into the final quarter of FY 2014 which gave HIOSH nine weeks to implement the recommendations in the 2013 EFAME.

*Recommendation 13-1: Review the case file management process to identify and eliminate bottlenecks or other inefficiencies.*

*Response 13-1: HIOSH will ensure that Branch Managers use the Citations Pending report to track lapse time and will give inspectors due dates when they return files to inspectors for correction.*

*Recommendation 13-2: Ensure verification of abatement is completed.*

*Response 13-2: HIOSH will ensure that Branch Managers use the Violation Abatement report to track abatement verification.*

*Recommendation 13-3: Utilize IMIS reports to track abatement and, per 29 Code of Federal Regulations (CFR) 1903.19, issue "Failure to Abate" citations to employers when appropriate*

*Response 13-3:* This is 13-02 stated a different way. HIOSH will ensure that Branch Managers use the *Violation Abatement* report to track abatement verification.

*Recommendation 13-4:* *Ensure that unions are provided copies of citations and participation or declination of participation is done and clearly indicated in the case file.*

*Response 13-4:* Unions are provided copies of citations, are notified of inspections and are faxed notification of informal conferences. HIOSH has reminded staff to document all attempts to involve unions in the inspection and citation processes. As of August 2014, unions have participated in two informal conferences and have not chosen to participate in the majority of cases where calls have been made informing them that an inspection is occurring.

*Recommendation 13-5:* *Ensure standards and Federal Program Changes are responded to and adopted within the required timeframes.*

*Response 13-5:* Staff will be reminded of HIOSH's obligation to respond to standards and Federal Program Changes in a timely fashion.

*Recommendation 13-6:* *HIOSH should follow its own procedures to ensure that whistleblower information is accurately and timely entered into web-IMIS.*

*Response 13-6:* Staff will be reminded to record dates and determinations accurately. HIOSH will more carefully review case files before closing them.

*Recommendation 13-7:* *HIOSH should follow its own procedures by investigating whether there is a causal link between the protected activity and the adverse action where nexus is at issue in the discrimination investigation and evaluate the facts presented in the Final Investigation Report as they relate to the four elements of a violation.*

*Response 13-7:* HIOSH plans to bring the Whistleblower training class to Hawaii in March 2015. HIOSH will increase its oversight of review of discrimination cases to ensure that the correct conclusions are drawn and that the FIRs are written correctly.

*Recommendation 13-8:* *HIOSH has no procedures to support cases deemed meritorious and should develop such a process which could include litigating the claim in State Plan court or representing the agency in front of the HLRB.*

*Response 13-8:* HIOSH has procedures which have remained unchanged since the plan was granted initial approval in 1973 and final approval in 1984. The description of the process in the EFAME on pg. 16 is incorrect as was pointed out to OSHA when the draft EFAME was reviewed by HIOSH. If a merit finding is contested by the respondent, the Attorney General represents HIOSH to support the merit finding.

*Recommendation 13-9:* *HIOSH should follow its own procedures to ensure that protected activity, employer knowledge, adverse action, and nexus are properly analyzed.*

*Response 13-9:* HIOSH is working with OTI to have the Whistleblower training class presented in Hawaii in March 2015. HIOSH will increase its oversight of review of discrimination cases to ensure that the correct conclusions are drawn and that the FIRs are written correctly.

*Recommendation 13-10:* Develop Consultation Program promotional strategies that target public sector employers.

*Response 13-10:* Public sector consultation will be promoted during public sector inspections, during informal conferences held with public sector employers and during all public forums and speeches where HIOSH and public sector employers intersect.

*Recommendation 13-11:* Develop and document defensible targeting methods and programs that meet the legal requirement that demonstrate sites are selected according to an administrative plan containing specific neutral criteria such as selection, scheduling cycles, criteria for deletion or addition of sites, and frequency of selection.

*Response 13-11:* HIOSH's targeting system for programmed inspections is described in its FOM, Ch. II.E.2, which OSHA approved. HIOSH plans to continue to follow its current procedures which it believes are defensible and meet the legal requirement that demonstrate sites are selected according to an administrative plan containing specific neutral criteria such as selection, scheduling cycles, criteria for deletion or addition of sites and frequency of selection since it was approved by OSHA. OSHA's targeting system was developed in response to refusal of entry and the fact that warrant requests were sometimes denied by judges. HIOSH has not had that experience during the 40 years the program has been in existence and the current SAMM/SIR data clearly shows that in programmed inspections HIOSH's statistics for S/W/R violations, number of violations/inspection and incompliance rates are equivalent to and/or exceed national data. In addition SAMM measure 5 shows that in all cases where there was a denial of entry that a warrant was obtained.

*Recommendation 13-12:* Ensure that CASPAs are formally responded to by the due date.

*Response 13-12:* CASPAs will be responded to in a timely manner.

*Recommendation 13-13:* Develop Consultation Program promotional strategies that target public sector employers.

*Response 13-13:* Public sector consultation will be promoted during public sector inspections, during informal conferences held with public sector employers and during all public forums and speeches where HIOSH and public sector employers intersect.

*Recommendation 13-14:* Ensure the appropriate grant fund is charged for public sector on-site consultation visits.

*Response 13-14:* HIOSH will remind consultants to charge 23(g) codes when reporting time

spent on public sector consultations.

*Recommendation 13-15: Adhere to the provided timeframes for grant submittal so that problems and issues with the grants can be addressed before they are entered into the system.*

*Response 13-15:* In FY 2013 grant documents were submitted to the Regional Office for review a week before the final grant submission date. OSHA reviewed the documents recommended changes which HIOSH made. Therefore, the sentence in the EFAME that, "Grant documents . . . were not submitted to the Regional Office for review," is inaccurate. In the future HIOSH will adhere to the provided timeframes for grant submittal.

*Recommendation 13-16: Adhere to the provided timeframes for report submission.*

*Response 13-16:* HIOSH will adhere to the provided timeframes for report submission.

The sentence on page 21 which criticizes the State for sending staff to VPPA, "This lack of activity is in sharp contrast to the State Plan sending several compliance staff(six) to the Voluntary Protection Program Participants' Association (VPPA) conference which does not provide training, skills of qualifications needed to conduct VPP evaluation," was directly contradicted by the Regional Administrator on May 5, 2014 when he advised HIOSH to send staff to the VPPA as a training opportunity.

The statement on page 22, "HIOSH staff was given priority in registering for OSHA Training Institute (OTI) training," did not reflect our experience with registration. HIOSH staff attempting to register for OTI classes were treated identically to other applicants.

The statement on page B-1, FY-OB, "The current State Plan travel policy prevents compliance staff from responding to fatalities and imminent danger on the islands without compliance staff within one day," is inaccurate. While the policy is a hindrance HIOSH has always responded to fatalities within one day.

Just as detailed closing conferences are held to discuss OSHA inspections, HIOSH would like to request that in the future a detailed closing conference be held with the State so that the results of case files reviews, areas of concern and areas of strength could be reviewed with the HIOSH staff and prompt action could be given to areas identified during the evaluation. HIOSH recommends that such closing conferences become standard practice in future evaluations.

HIOSH appreciates the opportunity to respond to the specific recommendations included in the FY 2013 EFAME Report. As always, the State is willing to continue to work with federal OSHA to address all valid concerns included in this report. We are also committed to working with OSHA to assure that all audit reports accurately reflect state activity and that they accurately document the effectiveness level of the Hawaii Occupational Safety and Health program. We look forward to a cooperative and mutually supportive relationship with Region IX, and especially with the Honolulu Area Office. Please accept our appreciation for the valuable

services you have provided to the occupational community of Hawaii.

Sincerely,

Dwight Y. Takamine  
Director

Attachments