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August 5, 2014

Mr. Kurt Petermeyer, Regional Administrator
United States Department of Labor
Occupational Safety and Health Administration
60 Forsyth Street, Southwest, Room 6T50
Atlanta, Georgia 30303

Re: North Carolina's Response to the FY 2013 Federal Annual Monitoring and Evaluation (FAME) Report

Dear Mr. Petermeyer:

North Carolina has received the findings and recommendations from the FY 2013 FAME report. The State does not believe that these findings rise to the level of requiring action in order for the State to maintain its "at least as effective" as status. Nevertheless, considerable time and effort have been spent and will continue to be spent to address Federal OSHA's concerns.

The actions taken by the State include:

- a review of every case file that was the basis for a FAME finding,
- meetings held with all compliance supervisors to discuss the FAME findings and observations,
- a review of state policies and procedures completed to determine adequacy,
- findings shared with OSHNC personnel during individual coaching sessions, at district meetings, and in the Division newsletter, and
- refresher training scheduled for all compliance personnel relating to violation classification.

We welcome Federal OSHA's continued monitoring of these findings to confirm the state's satisfactory corrective action and to support our belief that there are not a substantial number of case files requiring corrective action.

The following formal response is provided to you to specifically address the three findings in the FY 2013 FAME.

Finding 13-01: Air monitoring, as well as wipe and bulk sampling, was not conducted for several complaint and programmed inspection files.

Recommendation: Review current procedures to ensure that monitoring and sampling are used appropriately as part of an investigation.

Mr. Petermeyer
August 5, 2014
Page Two

State Response: A compliance bureau chief reviewed all eleven health case files that were identified during the audit process as deficient relating to adequate sampling being conducted. Of these eleven case files, the State agreed with Federal OSHA's assessment in six case files and disagreed with five. The State shared the written results of its review with the Area Director and all of the case files were discussed at the closing conference on February 21, 2014. The specific action taken by the State to address the issues with the health case files included: discussing the specific case files with sampling issues with the affected district supervisors who in turn conducted coaching sessions with affected CSHOs, reviewing written sampling procedures to determine if they were adequate, a correction was sent to one employer as a result of a typo in the case file, and a follow-up was completed to address an initial lack of sampling.

To ensure that sampling is conducted when necessary, the State has implemented a revised sampling procedure that requires discussion with the supervisor, if the CSHO decides not to conduct sampling. The reason for not sampling must be documented in the case file. If the reason for not sampling had been included in every case file, this issue might not have risen to the finding level.

The State has also participated in the Region IV quarterly IH conference call. Issues affecting IHs are discussed during this call. This could include IH sampling protocol and technique.

Finding 13-02: Though OSHNC's procedures for determining classification of violations are identical to OSHA, OSHNC classifies a lower percentage of violations as serious.

Recommendation: Review classification of health and safety hazard violations in both Construction and General Industry to ensure consistency with the OSHNC Field Operations Manual.

State Response: The State will continue to take whatever action is necessary to ensure that each violation cited is classified properly. The State has provided ongoing training for compliance personnel and continues to review the classification of safety and health hazard violations in both construction and general industry to ensure compliance with the FOM. Before the end of next fiscal year, all compliance personnel will attend a revised Technical Writing course as a refresher. An area of emphasis in this course is violation classification. Violation classification is also included in the Initial Compliance Course which is attended by all new CSHOs. FAME findings will also continue to be shared with compliance personnel.

OSHNC case files receive extensive review. This includes review by the district supervisor, bureau chief and for high profile cases, review by the Citation Review Committee including the Director, Assistant Director and legal staff. The Citation Review Committee review includes fatalities, willful violations, high penalty, and media involved inspections. The mechanism for the review process will be simplified with the implementation of the data management system, OSHA Express. Management personnel will have easy access to all elements of the inspection process including violation classification.

Beginning on July 1, 2014, an additional level of case file review was initiated. Two Standards officers previously assigned exclusively to Education, Training, and Technical Assistance will now spend time in the Director's Office reviewing certain high profile case files. One of these officers has had over 30 years of experience with Federal and State OSHA monitoring program activity and the other has an industrial hygiene background and field experience. As part of the process, the officers will also conduct annual quality audits of case files. If they discover any trends relating to violation classification, appropriate corrective action can be taken. This could include remedial training or policy revision. The officers will also analyze and evaluate program data. If there is any inappropriate change in the percent serious or classification of violations, the possible cause can be pursued through the state's quality procedures. This includes a mechanism for initiating policy revision.

Mr. Petermeyer
August 5, 2014
Page Three

However, of the 17 case files identified by Federal OSHA as having classification issues, the State only agreed with three of the determinations. The State shared its assessment and explanation in writing with Federal OSHA on the individual case files prior to the closing conference on February 21, 2014. There was not agreement on classification in all of the case files even after the face-to-face discussion at the closing conference.

The State and the Area Director have agreed to discuss the issue of violation classification as the monitoring process is ongoing. Agreement might best be reached on violations determined to be misclassified by Federal OSHA if specific misclassified items can be shared with the State by Federal OSHA. The difference in opinion about violation classification is not unique or limited to state offices. Previous review of violation classification within Federal OSHA indicated that there are also differences in classification between area offices and regions.

Finding 13-03: The Carolina Star policies and procedures manual does not address all enforcement activities at VPP sites.

Recommendation: Ensure that CSP 03-01-003 (VPP Policies and Procedures Manual), chapter VIII or similar language be incorporated into the Carolina Star Policies and Procedures Manual.

State Response: The State has submitted as a plan change a revised Star Program Policies and Procedures Manual to address enforcement activities at Star sites. The language in Section XIV of the state manual is similar to CSP 03-01-003. The Star Program Manager met with the Federal OSHA monitor during the audit, and they agreed on this appropriate response to the recommendation.

We look forward to discussing our strategies for addressing the findings in the FAME with you at any time, and working with you as you begin your new job as Regional Administrator for Region IV.

We have included a link to our 2013 SOAR document, <http://www.nclabor.com/osha/compliance/SOAR.pdf>, and request that the SOAR and this response to the FAME be posted along with the FAME report on the OSHA public website.

Sincerely,

Allen McNeely

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