



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Labor and
Workforce Development**

Labor Standards and Safety

Post Office Box 111149
Juneau, Alaska 99811
Main: 907.465.4855
Fax: 907.465.6012

July 24, 2014

Mr. Ken Nishiyama Atha
Acting Regional Administrator, Region X
Occupational Safety and Health Administration
U.S. Department of Labor
300 Fifth Avenue, Suite 1280
Seattle, WA 98104-2397

RE: FFY 2014 Federal Annual Monitoring and Evaluation Report - AKOSH

Dear Mr. Atha,

Thank you for your July 10, 2015, letter regarding the FFY 2014 Federal Annual Monitoring and Evaluation (FAME) report for the Alaska Occupational Safety and Health (AKOSH) program. I appreciate the opportunity to work together with federal OSHA to reduce workplace illnesses, injuries and fatalities in Alaska. Commissioner Drygas asked me to provide you with a response to be posted along with the FY 2014 FAME recommendations. We are currently working on completing formal responses to the corrective action plan (CAP) document and will provide them to you by the August 10, 2015 deadline.

I want to thank you and your staff for your efforts to improve the effectiveness of AKOSH. It is critical that our agencies work together to maintain positive relationships that build the foundation for outstanding performance. This letter addresses several issues with the FY 2014 FAME for your consideration that we hope to work together to resolve in future evaluations.

Introduction (Executive Summary)

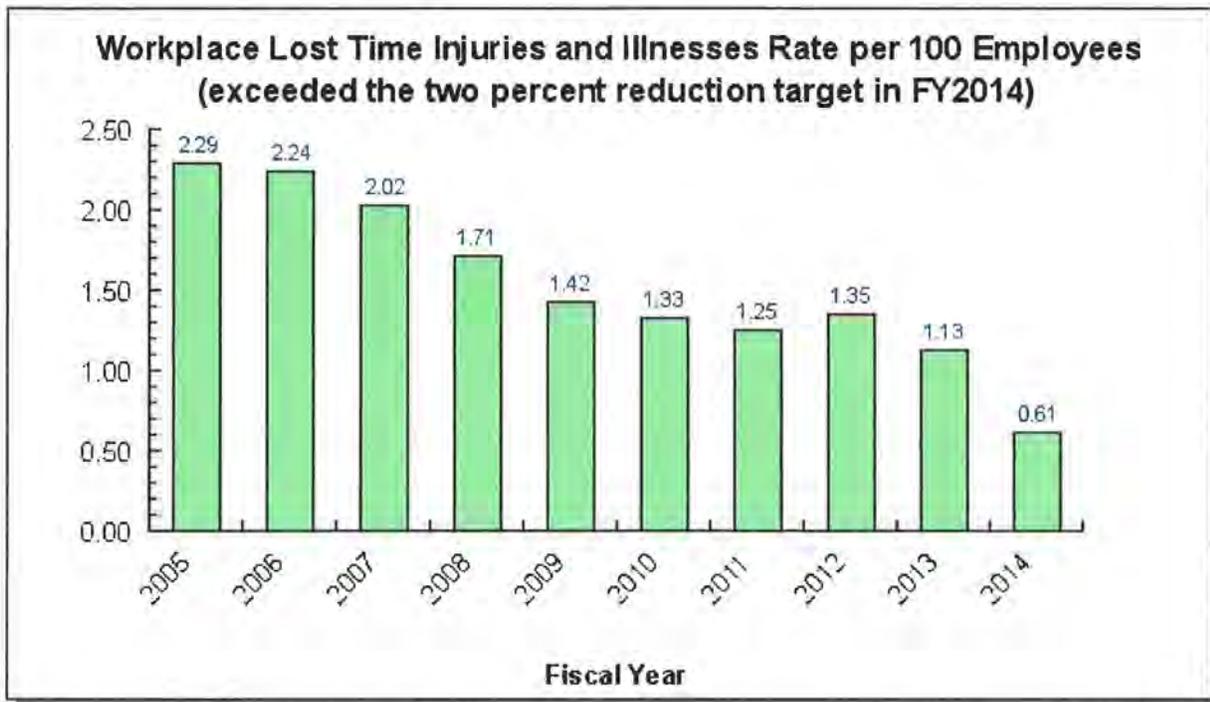
I'm pleased to report that AKOSH has already taken corrective actions to resolve most of the findings established in the FY 2014 FAME report. As mentioned in the report, AKOSH experienced significant turnover in enforcement officer positions approaching 50 percent in FY 2014 and in FY 2012. The Consultation and Training Section experienced a similar level of turnover at the same time. While we agree with several of the findings established in the FY 2014 FAME report and have already taken corrective actions, the assertion that AKOSH's overall performance and implementation of policies and regulations are in need of significant improvement seems severe and fails to adequately acknowledge the extraordinary rate of turnover in enforcement officer positions. For the past several years, the oil and gas industry in Alaska has significantly expanded its workforce and former AKOSH inspectors have found lucrative employment opportunities upon completing initial training and accumulating experience associated with the first two years of employment. The impacts of such sustained high employee turnover seem to have been marginalized by federal OSHA monitors.

Employee turnover affects every aspect of AKOSH operations. Not only are new staff members unable to perform at the level of an experienced enforcement officer, experienced officer productivity is also

negatively impacted by turnover due to the need for mentorship and increased supervision from management.

The overall evaluation of a state plan's performance should rest primarily on its achievement or improvements toward annual and strategic goals and mandated activities. However, AKOSH's significant achievements of annual and strategic goals and mandated activities, in spite of tremendous employee turnover, are not mentioned in the executive summary.

On page 13, the FAME report acknowledges that AKOSH exceeded more than half of its annual performance goals and made significant improvement with respect to every goal except compliance officer training. Goals missed by AKOSH were missed by slight margins, yet the executive summary leads readers to conclude that AKOSH performance is in shambles. AKOSH contends that the FAME should have more readily acknowledged the state plan's achievements in spite of significant turnover. After all, these performance goals and measures are the primary measures of state plan effectiveness. Not only did AKOSH have a positive impact on accident rates in every targeted industry except construction, the overall loss time rate based on Workers' Compensation Insurance data reached the lowest level in Alaska's recorded history at .61 incidents per 100 employees (see chart below). The positive aspects of AKOSH's performance during FY 2014 should have been more readily recognized in the executive summary.



Case File Reviews (Executive Summary)

Another significant issue with the 2014 FAME pertains to the lack of specificity in terms of findings identified in case file reviews conducted by OSHA monitors. OSHA monitors did not conduct a closing conference with AKOSH to discuss the findings upon completing the case file reviews. Information related to case file reviews was not provided until it was specifically requested.

In April of 2015, nearly six months after the cases were reviewed, AKOSH received a general summary of the issues identified in each case file. AKOSH management then evaluated the summary and had questions about several issues raised, but was not granted the opportunity to review the more detailed information contained in case file evaluation forms. In order for AKOSH to make timely corrections and adequately address issues raised by federal monitors, we respectfully request that future reviews include a closing conference to discuss issues and a reasonable opportunity to review actual case file evaluation forms.

OSHA monitors identified three cases of 47 reviewed in which AKOSH did not appear to adequately conduct an on-site inspection. The AKOSH Field Operations Manual (FOM) provides authority for the Chief of AKOSH Enforcement to determine whether to conduct an on-site investigation or inspection in connection with unprogrammed inspections (see AKOSH FOM, Ch. 2, Section IV). In two of the three cases referenced in the executive summary where AKOSH determined to conduct a records only inspection for failure to report, AKOSH did not receive timely notice and the actual site of the accident appeared to be in OSHA's inspection jurisdiction. This includes the highlighted case where a worker fell through a roof and suffered serious injuries, which occurred on a US Coast Guard Base. In another case, the victim was in a skiff on a navigable waterway in a remote area of Alaska when he was struck by a float plane during a take-off attempt. AKOSH did not refer the cases to OSHA, due to the late notice of the accident and because at the time OSHA did not have a regulation in place to require reporting. At the time, OSHA typically would not inspect an accident where less than three employees were hospitalized. AKOSH was unable to clearly identify the third case referenced in the FAME executive summary. The Fame report is not consistent with the executive summary in that Finding 2014-10 only references two instances where AKOSH did not conduct an on-site inspection in response to an incident where an employee was hospitalized.

AKOSH has a duty to ensure that occupational safety and health resources are used efficiently and effectively. Sending an inspector to investigate a stale accident site or other employer location where the scene is not intact, workers are no longer present and/or witness recollections of the event are clouded by the passage of time may not be a good use of limited resources. As outlined in Chapter 2 of the AKOSH FOM, the decision rests with the Chief of AKOSH Enforcement based on consideration of the factors associated with the accident and staffing concerns (e.g. inspectors need to be available to respond to high priority imminent danger situations). To provide more clarity for federal reviewers, AKOSH will list the specific reasons why an inspection or investigation was not conducted under the "Walk Around" section of the inspection narrative (Form 1A). It could be useful if OSHA implemented a similar protocol and kept track of the percentage of reportable accidents that do not result in an investigation or site inspection to allow for a more valid discussion about comparative effectiveness on this subject.

Inspection Goals and Timeliness (Executive Summary)

AKOSH recognized that staff turnover would create problems for meeting annual inspection goals during FY 2014 and requested an adjustment to establish more realistic goals. During the 2nd Quarter monitoring meeting for FY 2014, AKOSH provided notice to OSHA that performance goals were not likely to be met due to significant employee turnover. On July 1, 2014, AKOSH mailed a letter to the Acting Regional Administrator for Region X to request a reduction from 420 to 320 total inspections, but did not receive a response.

At the close of FY 2014, AKOSH was tasked with migrating from the IMIS case file management system to the new OIS system. This, coupled with the inexperience of AKOSH staff caused several case files to not be counted as completed in FY 2014. Despite communications about the disparity between the end

of year numbers reflected in the end of year SAMM report (283 inspections) and the Inspection Summary Report (331 inspections), OSHA did not accept AKOSH's request to consider more accurate numbers. The FY 2014 FAME acknowledged that there were cases that should have been counted and established a separate finding rather than using this information to mitigate the apparent deficiency in inspection counts. Had OSHA allowed for a more accurate count of AKOSH inspections in FY 2014 and approved AKOSH's request for a 17 percent adjustment to inspection goals based on staff turnover approaching 50 percent, the revised goal of 320 total inspections would have been achieved.

Findings and Recommendations

In the following paragraphs you will find responses to each of the findings and recommendations identified in the FY 2014 FAME.

Finding 2014-1

AKOSH adjusts penalty reductions for purposes of settlement at informal conferences by modifying the initial probability and severity of violations post-issuance, which is not a routinely acceptable practice.

OSHA Recommendation: Ensure all penalty adjustments made for purposes of settlement at informal conferences are modified appropriately and documented in the inspection case file.

AKOSH Response: AKOSH agrees with the recommendation and will ensure that probability or severity adjustments are not made solely for settlement purposes. In the unusual case that adjustments are made, AKOSH will ensure adequate documentation regarding the reasons is in the case file.

Finding 2014-2

AKOSH allows public employers to remit cost receipts for safety and health program improvements in lieu of penalty payments.

OSHA Recommendation: Ensure only monetary penalties are collected from public employers as appropriate.

AKOSH Response: AKOSH disagrees with this recommendation. Although not in the AKOSH FOM, the practice of allowing a public sector employer to resolve penalties through investments that improve safety and health is a longstanding policy. Despite this longstanding practice, this is the first time OSHA monitors have raised this issue as a problem in terms of AKOSH effectiveness. OSHA does not have jurisdiction over public sector employers and does not typically issue monetary penalties to federal agencies found in violation. In the case of the State of Alaska, it serves little purpose to require the state to pay a penalty to itself. Similarly, most political subdivisions in Alaska receive operating funding from the State. AKOSH formalized a written enforcement policy on April 30, 2015, to resolve any future confusion from OSHA monitors about the propriety of settlement agreements that allow a public sector employer to resolve penalties through investments in workplace safety and health.

Finding 2014-3

The State Plan did not maintain accurate data in IMIS as 55 unresolved draft and rejected inspection forms were identified uncorrected in IMIS at the end of FY 2014.

OSHA Recommendation: Ensure AKOSH data is accurate by training administrative and compliance staff to correct all reject forms and save inspections appropriately as "final" once entered into IMIS.

AKOSH Response: The IMIS was replaced by the OIS in FY 2014 and AKOSH transitioned to the new data base at the end of FY 2014. AKOSH agrees that new staff were having difficulties with entering cases into IMIS while at the same time transitioning to the new OIS platform. In FY 15, AKOSH was successful in coordinating OIS training with Region X in May of 2015. This training is expected to assist AKOSH staff ensure that inspections are correctly entered into and processed in OIS.

Finding 2014-4

In 50 percent of formal complaint case files reviewed, AKOSH did not ensure letters were sent to complainants providing the results of the inspections.

OSHA Recommendation: Ensure all complainants are sent letters regarding the results of formal complaint inspections.

AKOSH Response: AKOSH agrees with the recommendation and that this is an important issue to resolve through a documented observation in the FAME, but disagrees that this issue constitutes the basis for a finding. Based on the SOAR and the SAMM reports, AKOSH achieved a 99 percent timely response rate to worker complaints in FY 2014 despite significant staff turnover. AKOSH contends that complainants did receive investigation results and that the issue is primarily administrative (clerical error) rather than program effectiveness. AKOSH will ensure that copies of letters to complainants at the conclusion of the investigation are included in the case file.

Finding 2014-5

In 20 percent of case files reviewed, citations were not issued for all violations of hazards observed during the inspection and documented in the case file.

OSHA Recommendation: Ensure management conducts a comprehensive and thorough review of all case files prior to issuance of citations.

AKOSH Response: AKOSH was not provided with enough specific information to evaluate the validity of this finding and recommendation. The review summary was limited to a review of apparent violations identified in photographs, but did not address other elements such as employee exposure or employer knowledge. It would be extremely helpful if OSHA monitors provided AKOSH specific case file review information in a timely fashion and conducted a closing conference to allow for a better evaluation of the issues and necessary corrective actions. AKOSH management will continue to conduct a comprehensive and thorough review of case files before citations are issued.

It is noteworthy that AKOSH performance on SAMM Report measure 9, exceeded the national rate for identifying serious, willful and repeat violations per inspection by more than 26 percent. The AKOSH rate was 2.27 violations per inspection, while the national rate was 1.8 violations per inspection.

Finding 2014-6

Condolence letters and inspection results were not sent to the next-of-kin in two of four fatality cases reviewed.

OSHA Recommendation: Ensure next-of-kin are sent condolence letters and inspection results at the completion of fatality investigations and copies of the letters are maintained in the case file.

AKOSH Response: AKOSH agrees with the recommendation and that this is an important issue to resolve through a documented observation in the FAME, but disagrees that this issue constitutes the basis for a finding. Based on the SOAR and SAMM reports, AKOSH achieved a 100 percent timely response rate to fatalities and accidents involving inpatient hospitalization. AKOSH contends that the victim's next-of-kin were provided investigation results and that the problem is primarily administrative (clerical error) rather than program effectiveness. AKOSH will ensure that letters to next of kin concerning inspection results are included in the case file.

Finding 2014-7

The State Plan has not implemented Program Directive 09-02 in that five compliance officers have not completed or are not on track to complete eight core development courses through the OSHA Training Institute in their first three years of employment.

OSHA Recommendation: Develop and implement a training plan to ensure all compliance staff completes core training within the established three-year timeframe.

AKOSH Response: Due to significant turnover, AKOSH experienced difficulties maintaining progress toward training plans for more experienced enforcement officers. The focus was on getting new enforcement officers trained, so that they could begin conducting inspections and contribute toward achieving AKOSH's inspection goals. With such a limited staff of experienced enforcement officers, it has been extremely challenging to send more experienced officers to training while at the same time striving to maintain the necessary presence to cover priorities associated with responding to accidents and complaints. In FY 2015, AKOSH has increased efforts to ensure enforcement officers are receiving adequate training.

Finding 2014-8

In accordance with official end-of-year SAMM data, AKOSH conducted 283 inspections in FY 2014, achieving only 67% of its annual goal of 420 inspections.

OSHA Recommendation: Ensure established annual inspection goals are achieved through adequate planning and execution.

AKOSH Response: OSHA's recommendation is unreasonable in that it fails to adequately recognize significant staff turnover often beyond AKOSH's control. AKOSH's staff turnover has been a significant problem due primarily to substantial imbalances in the wages and benefits offered for safety and health professionals in Alaska's private sector. OSHA's recommendation should include more frequent monitoring with reasonable adjustments to inspection goals to account for turnover rates greater than 10 percent. As established in Finding 2014-3, AKOSH conducted 55 inspections in FY 2014 that were not counted due to errors with the IMIS database. AKOSH would have met inspection goals had OSHA approved a reasonable adjustment and allowed for a more accurate inspection count (rather than solely relying on the end of year SAMM Report).

Finding 2014-9

AKOSH entered and saved 283 inspections into IMIS as indicated by the end-of-year SAMM Report for FY 2014. Per the State Plan's own data, there may be a number of inspections which were not counted in the official SAMM data because the inspections were not correctly entered and saved into IMIS as required.

OSHA Recommendation: Ensure administrative and compliance staff enter and save all inspections correctly into IMIS in order to ensure correct data continuity.

AKOSH Response: Despite enforcement officer turnover of approximately 50 percent and data system migration at the end of FY 2014, AKOSH did not receive credit for 55 completed inspections that had data entry issues as acknowledged in Finding 2014-3. The IMIS system is no longer being used by AKOSH to enter case file information. We appreciate OSHA Region X's efforts to coordinate training in May of 2015 to assist AKOSH staff understand various complexities and nuances of the new OIS system to help avoid similar issues in the future. AKOSH will work to diligently ensure administrative and compliance staff properly enter data into OIS.

Finding 2014-10

It was determined that the state did not perform on-site inspections at two work sites where incidents had occurred, requiring hospitalization of workers.

OSHA Recommendation: In accordance with the AKOSH FOM, ensure that inspections include on-site visits to the incident sites. If the incident site is deemed unsafe, then AKOSH should select an alternative site such as the employer's establishment location.

AKOSH Response: AKOSH disagrees with this finding. Although it is not completely clear which two cases OSHA monitors were referring to, AKOSH contends that there were several reasons for the decision to not conduct an on-site inspection. The reasons included lack of timely reporting, remote travel issues, limited staff availability and concerns that the accidents were in federal OSHA jurisdiction. Had OSHA monitors held a closing conference to discuss case file review findings, these issues could have been clarified. Aside from this problem, AKOSH has other reasons to disagree with this finding.

Under Chapter 2, Section IV(A)(2) of the AKOSH FOM, unprogrammed inspections related to reports of imminent danger situations are the highest priority. During times of staffing shortages, the Chief of AKOSH Enforcement is required to take this into consideration along with other factors to ensure the most efficient use of resources. Sending an inspector to conduct an on-site inspection of an accident scene where there is nothing to inspect could result in AKOSH not having inspection resources available to respond to an imminent danger situation. AKOSH contends that the guidance in Chapter 11, Section II(C) does not trump the Chief of Enforcement's authority to make decisions about when an on-site inspection should be conducted. To clarify this issue in the future, AKOSH intends to provide additional explanation under the "Walk Around" section of the Safety Narrative form to document the reasons for not conducting an on-site inspection.

Finding 2014-11

During FY 2013, AKOSH citation lapse times were 83 days for safety inspections and 115 for health inspections; and during FY 2014, it was 88 days for safety inspections and 120 days for health inspections.

OSHA Recommendation: Review the citation issuance process to determine the cause of the high occurrence of lapse time between opening inspection and issuance of citation. Develop and implement a resolution to ensure citations are issued timely and employers are put on notice to abate hazards in a timely manner.

AKOSH Response: AKOSH agrees with this finding and has taken steps to ensure that serious hazards identified during the course on an inspection are quickly abated. However, this finding and recommendation needs to acknowledge that citation lapse time is negatively impacted by high staff turnover rates. Not only are new enforcement officers generally slower, they also require on-the-job training, which negatively impacts processing time for more experienced enforcement officers. If AKOSH continues to experience staff turnover rates in excess of 10 percent, citation lapse times may continue to be significantly higher than the national average. AKOSH has instituted internal tracking systems and will be taking other actions to improve citation lapse times in FY 2015.

Finding 2014-12

Legal sufficiency of enforcement citation documentation was not in accordance with the AKOSH FOM in that (1) documentation of hazard duration and frequency was found to be assessed incorrectly in 20% of reviewed case files; and (2) in 10% of case files reviewed, the Alleged Violation Description (AVD) did not accurately describe the hazard and location, nor did it correctly separate the AVD into instances in accordance with the policy.

OSHA Recommendation: Ensure that duration and frequency of hazard exposures are annotated correctly in the case file and AVD are separated out by instance, clearly reflecting the hazard and its respective location according to policy contained in the FOM.

AKOSH Response: AKOSH agrees with the finding. However, the recommendation is somewhat unreasonable in that it appears to require a 100 percent rate of accuracy, without providing the basis for the expected level of performance. AKOSH does not have access to the national rates for these performance areas and OSHA monitors did not conduct a closing conference to allow for additional

discussion of the specific concerns or to clarify potential mischaracterizations of the case file reviews. AKOSH will strive for 100 percent, but contends that this finding should have been presented with a comparison to national performance levels to clarify whether AKOSH performance is “at least as effective as” OSHA’s in this area.

Finding 2014-13

In 10% of all case files reviewed, abatement was not documented.

OSHA Recommendation: Ensure that abatement is received, reviewed, and documented in all case files prior to closure and that all abatements are closed and verified at or prior to the 60-day state negotiated goal.

AKOSH Response: AKOSH agrees with the finding and recommendation. New enforcement officers along with seasoned staff have been coached on the necessity of getting abatement verification documentation in the case file prior to closure and AKOSH will be implementing additional administrative procedures to ensure that adequate abatement verification documentation is in every case file prior to closure.

Finding 2014-14

Alaska’s timely response rate for notification of intent regarding federal program changes and standards is 43% (4/7).

OSHA Recommendation: Ensure responses to OSHA regarding intent of adoption of federal program changes and standards are within the time frame indicated on the Automated Tracking System (ATS) Notice.

AKOSH Response: AKOSH agrees with the finding and acknowledges the importance of maintaining timely responses to OSHA regarding the intent to adopt federal program changes and standards. AKOSH administrative staff met with OSHA Region X representatives to discuss issues with the ATS and to work on improved responsiveness.

Please post this letter along with the 2014 FAME report on OSHA’s public website. Please also post the following link to the FY 2014 AKOSH annual performance report:
<http://labor.alaska.gov/lss/forms/2014-FY-achievement-rpt.pdf>

We appreciate OSHA’s efforts to monitor the AKOSH program and provide meaningful recommendations for improvement and encourage OSHA to conduct regular evaluations and provide timely results to allow for continuous improvements toward our mutual goal of effectively reducing workplace illnesses, injuries and fatalities.

Sincerely,

Grey Mitchell
Director

cc: Heidi Drygas, Commissioner
Greg Cashen, Deputy Commissioner
Keith Bailey, AKOSH Chief of Enforcement
Krystyna Markiewicz, AKOSH Chief of Consultation