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RYAN FLYNN
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Deputy Secretary

August 10, 2015

Mr. John Hermanson, Regional Administrator
Occupational Safety and Health Administration
525 Griffin Street, Room 602
Dallas, TX 75202-5024

Dear Mr. Hermanson:

As requested in your letter of July 10, 2015, we hereby submit our formal response to the final report of the FY 2014 Federal Annual Monitoring and Evaluation (FAME) of the New Mexico Occupational Health and Safety Bureau. As you will see, most of the corrective actions to address the recommendations contained in the report have been initiated. We anticipate that with the continued assistance of the Region VI staff, we will be able to timely complete all recommended actions.

Please do not hesitate to contact us if you have any questions or comments regarding our corrective action plan.

Sincerely,

Ryan Flynn
Cabinet Secretary

Enclosure: New Mexico's Response to OSHA's 2014 Federal Annual Monitoring and Evaluation (FAME) Report

Cc: Doug Kalinowski, Cooperative and State Programs
Eric Lahaie, Cooperative and State Programs

**NEW MEXICO'S RESPONSE TO OSHA'S
2013 FEDERAL ANNUAL MONITORING AND EVALUATION (FAME) REPORT
AUGUST 10, 2015**

I. INTRODUCTION

The New Mexico Occupational Health and Safety Bureau (OHSB) is committed to the continued success and improvement of its state plan. Cooperative efforts between federal OSHA and OHSB have facilitated enhancement of the state's operations. OSHA's evaluation for FY2014 identified areas where OHSB can improve its procedures, and highlighted a number of areas where our performance is excellent. Overall, OHSB produces well documented inspection reports, which has contributed to a strong record in sustaining violations. Still, we recognize the importance of improvement and welcome continued federal evaluation. OSHA provided pertinent information through their quarterly and year-end reviews for FY2014 which has enabled OHSB to quickly initiate processes aimed at improving program performance.

II. OHSB RESPONSE AND CORRECTIVE ACTION PLAN

Recommendation 2014-1: New Mexico OHSB should ensure that the OHS Act, OHS regulations, and New Mexico FOM Chapter 13 are followed for all whistleblower investigations.

Response: OHSB is committed to continued improvement of its whistleblower protection program and to working closely with OSHA to ensure appropriate consistency of state with federal investigative procedures. OHSB would like to note state plan grants have not received any portion of the increased federal OSHA budget for whistleblower programs. At the same time, the state is experiencing increased whistleblower complaints as a result of increased nationwide press from OSHA and complaints received through new federal reporting systems. OHSB has shifted staff and budgetary resources to whistleblower activities at the cost of reducing resources in other important programs, including enforcement.

Corrective Action: OHSB is conducting investigations in accordance with the NM FOM. However, a significant increase in the number of whistleblower complaints filed in FY2014 compared to prior years contributed to an investigation backlog. The bureau logged 43 complaints in FY2014, compared to an average of 14 complaints per year for the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the whistleblower program. OHSB expects to complete the backlogged cases and make determinations on new cases within timeframes established in the State Activity Mandated Measures report prior to the end of FY2015.

Actual or Anticipated Completion Date: September 30, 2015.

Status: On-going.

Recommendation 2014-2: New Mexico OHSB should ensure that employer knowledge is documented for all violations.

Response: OHSB has incorporated policies for documenting employer knowledge within its Field Operations Manual (FOM) and provides for continuous supervisory and management review of case files to ensure violations are documented in accordance with the FOM.

Corrective Action: OHSB continues to stress to compliance staff the importance of documenting employer knowledge when establishing violations. OHSB has identified this as an area needing improvement during its state internal evaluations. To drive continuous improvement, the Compliance Program Manager will ensure that case file reviews include checking the adequacy of such documentation on an on-going basis. This issue will be reviewed periodically during internal Compliance Officer (CO) training sessions, employee evaluations, and future SIEP reviews. With the conversion to the OSHA Information System (OIS), OHSB has modified its procedure for documenting employer knowledge to capture additional information on OIS documents.

Actual or Anticipated Completion Date: September 30, 2015.

Status: Ongoing.

Recommendation 2014-3: Average lapse time from inspection open date to issuance date was 70.58 days for safety and 66.44 days for health, which is within the 20% reference range (safety is well outside of the range at 63%). NM OHSB should review processes and policies to identify roadblocks and inefficiencies.

Response: There are a number of factors which have resulted in excessive lapse times for OHSB health citations. These include high caseloads for health officers, inefficiencies in prioritizing of duties by officers, and a health file tracking process which has not facilitated improvements. In addition, the bureau has increased the proportion of investigations which are more complex and time-intensive as compared to past inspection cycles, which has presented an additional challenge to reducing lapse times.

Corrective Action: As part of an ongoing effort to reduce health citation lapse times, OHSB instituted several measures to aid staff in timely closing inspection files. OHSB continued to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. Management closely monitored health inspection assignments to ensure caseloads were reasonable. The Compliance Program Manager reviewed assignment reports to compare with open inspection reports weekly. OHSB also more closely reviewed health referrals alleging serious hazards to identify those where an initial investigation by inquiry was appropriate. OHSB performed a monthly analysis of lapse times for individual Compliance Officers and used lapse times as a major factor during employee performance evaluations. Performance reviews

included an analysis of task prioritization to identify potential improvements, and supervisors coached Compliance Officers on task prioritization. The Compliance Program Manager reviewed file progress weekly and met with Compliance Officers at least monthly on open cases. As a result, OHSB was able to reduce health lapse times to within the 20% reference range compared to national average for FY 2014.

Based on the successes with the health citation lapse time effort, OHSB will use predominantly the same measures to reduce safety citation lapse times.

Actual or Anticipated Completion Date: September 30, 2015.

Status: On-going.

Recommendation 2014-4: There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations. New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).

Response: The initial concerns voiced by OHSB over the presumed inconsistency in the language contained in 11.5.1 NMAC regarding private employee interviews has not resulted in problems in the practice of interviews. The presumption of an inconsistency was made by OHSB based on language contained in the definition section of the state regulation (11.5.1.7 NMAC) promulgated by the Environment Improvement Board (EIB) in 2008; the state presumed that lack of carrying language from the definition section to the inspection procedures section (11.5.1.21 NMAC) by the EIB presented potential inconsistency. OHSB was concerned that conflicting interpretation might arise, although no such interpretations have been made to date.

Corrective Action: OHSB developed procedures including a requirement that personal counsel provided OHSB with non-conflict letters when representing employees during private interviews, which have mitigated the potential for conflict or inconsistency. Based on an ongoing review, OHSB no longer considers any perceived inconsistency in the regulatory language an issue in the effective conduct of private interviews. Although OHSB may seek to amend the private interview regulation when appropriate, our position is that the matter has been sufficiently resolved.

Actual or Anticipated Completion Date: September 30, 2015.

Status: On-going.