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August 1, 2016

Mr. Ken Atha
Regional Administrator
OSHA Region V
John C. Kluczynski Federal Building
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604

Suzanne M. Smith, Director
Office of State Programs
U.S. Department of Labor
Occupational Safety and Health Administration (OSHA)
200 Constitution Avenue, N.W. Room N3700
Washington, D.C. 20210

RE: Indiana OSHA response to the FY 2015 FAME

Dear Regional Administrator Atha and Ms. Smith:

The Indiana Occupational Safety and Health Administration (IOSHA) operates a federal Occupational Safety and Health Administration (OSHA)-approved [State Plan](#). IOSHA is charged with enforcing workplace safety and health standards in Indiana.

Federal OSHA-approved State Plan status is critical for Hoosier workplaces. State and local government agency employees are not covered by federal OSHA but have protections under the Occupational Safety and Health Act (OSH Act) if they work in states with an OSHA-approved State Plan. As Indiana operates an OSHA-approved State Plan, this protection is afforded to public sector workers in Indiana. OSHA-approved State Plans also have the ability to develop initiatives to emphasize industry-specific or unique hazards within their states. These emphasis initiatives can be furthered through education, outreach, onsite workplace safety and health consultation visits and enforcement efforts.

More than 40 years ago, IOSHA participated in a rigorous 12-year State Plan approval process and received initial approval on February 25, 1974, state plan certification on October 16, 1981, and final approval on September 26, 1986. This year, IOSHA celebrates the 30th anniversary of federal OSHA-approved State Plan status and the efforts made to *advance the safety, health, and prosperity of Hoosiers in the workplace*.

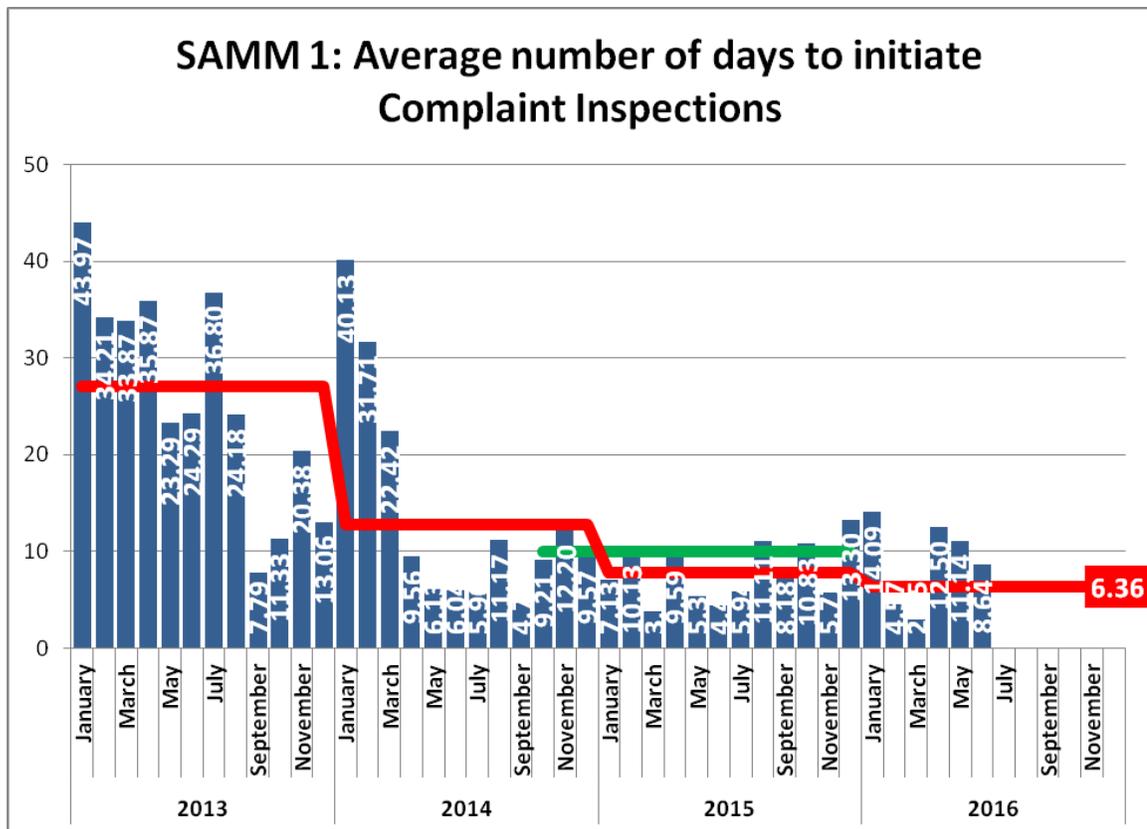
IOSHA appreciates the opportunity to comment and respond to the information included in the fiscal year (FY) 2015 Federal Annual Monitoring Evaluation (FAME) Report. IOSHA welcomes the FAME audit, which helps Indiana identify strengths and weaknesses in our program and changes IOSHA can implement to improve.

IOSHA performance

State Activity Mandated Measures (SAMMs)

IOSHA is performing well against several of the Federal OSHA State Activity Mandated Measures (SAMM).

The chart below indicates a vast improvement in response time to investigate complaint inspections (SAMM 1) from a high of 43.97 days in January 2013 to an average of 7.83 days in FY 2015. IOSHA initiates inspections very quickly to address potential hazards in the workplace. Further, according to a Federal OSHA FY 2016 Q2 report (January – March 2016), IOSHA initiated investigations in 4.94 days, better than the state plan average of 9.32 days and the national average of 6.95 days. Presently, IOSHA is averaging 6.36 days.



Another important measure of performance is the average number of violations written per inspection (SAMM 5). In FY 2015, IOSHA averaged 2.95 violations per inspection. The Federal

OSHA FY 2016 Q2 report (January – March 2016) indicated IOSHA averaged 2.97 violations per inspection, which beats the state plan average of 1.71 violations per inspection, the Federal average of 2.09 and the national average of 1.88. IOSHA invests heavily in training for its inspections. In FY 2015, IOSHA invested \$150,000 in enforcement inspector training. IOSHA is finding and citing hazards at a higher rate than other OSHA programs in the nation.

Another measure that shows the effectiveness of IOSHA to conduct high quality inspections is **SAMM 9**, which measures the “in compliance” rate or the percentage of inspections that have no violations. A lower percentage of “in compliance” indicates inspectors are finding violations in a greater percentage of companies inspected. In the Federal OSHA report FY 2016 Q2 (January – March 2016), IOSHA’s “in compliance” rate was 33.33 percent, which is better than the state plan average of 37.43 percent and approximate to the national average of 31.37 percent. IOSHA inspectors do an outstanding job of identifying and correcting hazards.

Regarding penalty retention (**SAMM 12**), the Federal OSHA report FY 2016 Q2 (January – March 2016) indicates IOSHA retained 71.54 percent of initial penalties proposed. The Federal OSHA average was slightly higher at 73.52 percent for that same period. More recent numbers from Federal OSHA (April – June 2016) indicate IOSHA’s penalty retention was 75.79 percent, which exceeded the Federal average of 69.10 percent for the same period. These numbers reflect IOSHA’s ability to complete quality inspections that result in a greater percentage of penalties recovered.

Since 2013, IOSHA has responded to 100 percent of “imminent danger” complaints and referrals (**SAMM 3**) within 24 hours. This exceeds the Federal OSHA averages of 93.25 percent (January – March 2016) and 92.83 percent (April – June 2016). National averages were 93.89 percent and 95.24 percent respectively.

Indiana continues to focus and improve on the response time to investigate fatalities. Federal OSHA reports (January – March 2016) show IOSHA responded to 85.71 percent of work-related fatalities in 24 hours (**SAMM 10**) compared to the Federal OSHA average of 96.49 percent and the national average of 94.19 percent. IOSHA continues to improve this number and is making the changes necessary to meet the goal of 100 percent.

Indiana Workplace Injury and Illness Rates

As identified through the federal Bureau of Labor Statistics’ (BLS) Survey of Occupational Injuries and Illnesses (SOII), Indiana’s current private and public sector nonfatal injury and illness rate is 4.0 per 100 workers.

- This is the second lowest rate since IOSHA was created and represents a 63 percent decrease in workplace injuries since 1992.
- The state’s overall nonfatal workplace injury and illness rate has decreased more than 35 percent in the last ten years.

Outreach

IOSHA has one of the finest Voluntary Protection Programs (VPP) in the nation. The Indiana VPP covers more than 25,000 Hoosier workers. On average, Indiana VPP sites have incident rates nearly 70 percent below their industry peers. IOSHA has experienced tremendous growth and excitement in the program and presently has 82 Indiana companies certified in the program

with a goal of 100 certified sites by 2018. IOSHA relies on a volunteer army of 100 Special Government Employees (SGEs) to carry out the VPP mission. IOSHA works closely with the SGEs to bring high quality safety management and performance to many companies in Indiana. This also allows IOSHA's compliance inspectors to focus on enforcement inspections and makes great use of very limited resources.

IOSHA takes the job of reducing workplace injuries and illness very seriously. The team works hard every day to enhance the safety, health and prosperity of Hoosiers in the workplace. IOSHA utilizes its limited resources to the best of its ability and takes advantage of every grant dollar and staff resource to serve Indiana's workforce.

FAME Report Issues

Issue No. 1

On page 11, the FAME report states:

A complaint was received by IOSHA requesting an inspection regarding the over stacking of material in several product bays of the company. IOSHA determined the complaint to be invalid because the complainant, presumably by mistake, indicated that they were the employer, not an employee. The complaint was closed by IOSHA without further inquiry to validate the complaint or the alleged hazards. Several months later, a fatality was reported at this company. During the investigation, the CSHO was informed by the complainant that a complaint was filed several months earlier regarding safety hazards. IOSHA addressed the alleged hazards from the complaint during the fatality investigation.

The company in question manufactures very large tubing products. One of the production lines was scheduled to be shut-down, so the company produced more tubing than would ordinarily be produced. According to the complaint filed by one of the employees, the tubing was stacked too high, which could have created a hazard. When the employee filed the complaint with IOSHA, a couple of significant, but correctable errors, were made. IOSHA contacted the complainant to verify correction of the errors in the complaint. At that time, the excess tubing inventory had already been shipped out of the plant, and the possible hazard no longer existed.

The fatality event occurred several months later when a truck driver entered the facility to have his truck loaded with large tubing. Clearly-posted signs prohibited the driver from being in the loading area when his trailer was loaded. As the truck driver was near his truck trailer during the loading process, part of the steel tubing load fell off the truck bed and fatally injured the driver.

The FAME report implies the fatality was related to the initial complaint. However, an IOSHA investigator who would have investigated the first complaint (over stacking of tubing) would not have been in the loading area and would not have had the opportunity to witness whether the prohibiting signs were being obeyed.

Issue No. 2

On page 12, the FAME report states:

Finding 15-07 (14-06): In all of the 22 (100%) complaint investigation files reviewed, and in seven of 37 (18.9%) complaint inspection files reviewed, proper correspondence to the employer and complainant was lacking. Files did not contain evidence to show that complainants were

contacted and provided the opportunity to formalize their complaint to have an inspection conducted.

The IOSHA duty officer makes contact with every potential complainant who contacts IOSHA (assuming the complainant is still alive and can be contacted) and explains how the complainant can make a formal complaint. This activity is documented in a telephone log maintained by IOSHA.

Issue No. 3

On page 12, the FAME report states:

The referral log provided indicates there were 456 referrals made to IOSHA in FY 2015. Many of these were reported by employers as a result of the new requirements under the recordkeeping standard adopted in 2015 related to severe work-related injuries and illnesses. The log showed that one hundred thirty nine (30%) of the referrals designated to be inspected by IOSHA were not inspected. No action appeared to be taken on 154 (33%) of these referrals, according to the log.

The aforementioned one hundred thirty nine (139) referrals were inspected. The completed inspection files were made available to federal OSHA.

Issue No. 4

On page 14, the FAME report states:

Finding 15-10 (14-07): Reports documented that work-related fatalities were not responded to within one day in eight of the 26 (30.7%) fatalities.

IOSHA responded to all reported fatalities within 24 hours when possible. In four (4) reported fatalities, the work location was closed for the weekend or holiday before IOSHA received notification and the IOSHA inspector arrived at the scene. Several fatalities identified as not being responded to in 24 hours were responded to within 24 hours, but after investigation, the fatality was either determined to be due to natural causes or the fatality was determined to be outside IOSHA's legal jurisdiction to investigate.

The annual FAME audit identifies the strengths of the IOSHA program and areas of weakness where IOSHA can work to improve. This response serves to clarify some information not addressed in the resulting FAME report.



Rick Ruble
Commissioner, Indiana Department of Labor

A handwritten signature in black ink, reading "Timothy E. Maley". The signature is written in a cursive, flowing style.

Timothy E. Maley
Deputy Commissioner, Indiana Department of Labor