

CHERIE K. BERRY
COMMISSIONER OF LABOR



ALLEN MCNEELY
DEPUTY COMMISSIONER/DIRECTOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

July, 19, 2016

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

Re: North Carolina's Response to the FY 2015 Federal Annual Monitoring and Evaluation (FAME) Report

Dear Mr. Petermeyer:

North Carolina has received the FY 2015 Comprehensive FAME final report. The State does not believe that the findings and observations contained in the report rise to the level of requiring action in order for the State to maintain its "at least as effective" as status. Nevertheless, the State appreciates the review of our OSH program and the feedback provided. OSHNC's goal is to always strive for continuous improvement and we will take all actions that we feel are appropriate for our program.

The actions taken by the State in response to the FY 2015 FAME include:

- scheduling meetings with all compliance Bureau Chiefs and supervisors to discuss the FAME findings and observations,
- completing a review of state policies and procedures to determine their adequacy regarding the findings and observations,
- ensuring training associated with technical writing and other in-house courses adequately cover procedures associated with findings and observations, as appropriate, and
- sharing findings and observations with OSHNC field staff during individual coaching sessions, at district meetings, and via the Division newsletter

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 two findings in the FY 2015 FAME.

Finding FY 2015-01: Some case files were either missing copies of the OSHA 300 logs or an analysis of the data found on the OSHA 300 log was not adequately reviewed. In addition, citations were not issued to the employer for OSHA 300 log deficiencies.

Recommendation FY 2015-01: OSHNC should ensure that compliance officers request and include copies of the OSHA 300 log in the case file for each inspection for the last three years and review trends and hazards recorded on the logs. OSHNC should also ensure that case files are reviewed to ensure that citations are issued to employers for OSHA-300 log deficiencies.

State Comments: North Carolina procedures require that the current and the three most recent calendar years of OSHA 300 logs are reviewed and recorded, and that citations are issued for OSHA 300 log violations. We will address any deficiencies noted in this area. State procedures do not require that the CSHO document the review of any trends and hazards that are discovered while reviewing the OSHA 300 logs. Our CSHOs are trained to review 300 logs and address any issues discovered. It is not a requirement that the review of injury and illness information must be documented. It appears that OSHA wants the state to document whenever any OSHA-300 logs were reviewed and, if no issues or trends were noted, to indicate such. In other words, OSHA wants documentation in the narrative when no violations were noted, so OSHA can determine that this was covered by the compliance officer. Although, OSHNC disagrees with this finding and the recommendation, our staff has now been instructed to document their review of OSHA-300 logs and ensure that OSHA-300 data is included in the reports, as appropriate. OSHNC issues citations for OSHA-300 log deficiencies, as appropriate. All inspection reports and findings are currently reviewed by supervisors, senior compliance officers and/or Bureau Chiefs.

This is an issue that does not seem to meet the definition of “finding” since there is not an effectiveness issue involved.

Finding FY 2015-02: Thorough Process Safety Management evaluations as referenced under OSHA’s CPL 03-00-014- PSM Covered Chemical Facilities National Emphasis Program were not conducted by Consultative Services for appropriate public sector facilities.

Recommendation FY 2015-02: Implement a system to ensure that OSHA’s CPL 03-00-014- PSM Covered Chemical Facilities National Emphasis Program is utilized.

State Comments: Policies have been adopted and PSM evaluations will be conducted consistent with CPL 03-00-014.

Although not required as part of the Corrective Action Plan (CAP) per the revised State Plan Policies and Procedures Manual, the following formal response is provided to you to specifically address the observations noted in the FY 2015 FAME.

Observation FY 2015-OB--01: In 14.4 percent of the case files (13 out of 90 inspection files) reviewed, similar nonserious violations were not grouped as a serious violation as referenced in Chapter V of the NC Field Operations Manual (FOM).

State Comments: The NC FOM does not require the grouping of similar nonserious items to create a serious violation. The FOM only indicates that these items may be grouped together. As we indicated during the audit process, we have recently provided additional grouping training in conjunction with the technical writing training courses.

Since the items are being cited and abated whether grouped or not, this does not seem to be an effectiveness issue.

Observation FY 2015-OB-02: Interview statements were not always obtained to document an apparent violation.

State Comments: North Carolina procedures require that CSHOs obtain interview statements when the statement would be useful in documenting adequately an apparent violation and for other reasons included in the FOM. This would include witness statements from persons with firsthand knowledge of an accident being investigated. Employee interviews are often conducted and information collected without obtaining a witness statement. The determination as to when a witness statement should be secured is generally left up to the professional judgement of the CSHO. The State will address any instances where CSHOs failed to obtain all required information to determine whether or not a standard was violated, or for other reasons included in the FOM.

Observation FY 2015-OB--03: Where abatements were classified as “Corrected During Inspection (CDI)” for serious hazards identified, the CSHO did not document in the casefile the specific corrective actions taken by the employer to abate the hazard.

State Comments: We welcome the opportunity to address this issue. The state’s procedures do require that observed abatements are documented on the OSHA 1B for each violation. Observed abatement is also documented on the citations.

Observation FY 2015-OB-04: Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files.

State Comments: The current FOM procedures require Informal Conference (IC) notes to include rationale that supports or explains the reasons citations and/or penalties have been modified. This issue will be addressed with the supervisors regarding identified case files with inadequate informal conference notes. OSHA Express contains summary tabs and OSH has also developed an IC form for appropriate notations, in accordance with the FOM.

Observation FY2015-OB-05: Cases were not docketed in IMIS when notification letters were sent to the parties. Where complainants request a “Right to Sue” letter prior to a determination being issued the case should be recorded in IMIS as “withdrawn”.

State Comments: This issue has been addressed. We appreciate Federal OSHA's assistance with this item.

Observation FY2015-OB-06: Three cases determined as "Merit/ Litigation" resulted in complainants being provided a merit Right-to-Sue (RTS) letter for North Carolina courts. This may warrant a review of each case's merits as to why litigation did not occur.

State Comments: The EDB Bureau Chief coordinates with the Legal Affairs Division when making a decision to either litigate or issue a merit right-to-sue letter. North Carolina procedures currently provide that the Bureau Chief can direct merit cases to the Legal Affairs Division for possible litigation.

Observation FY 2015-OB--07: Field notes in some of the state and local government consultation files did not provide a detailed description of hazards observed or evidence that employees were interviewed.

State Comments: We agree that improvement is needed in this area as reflected in some case files. We appreciate the fact that you recognized that the Consultative Services generally "offer expert service to public sector clients."

We appreciate the opportunity to respond to these findings and observations and the ongoing dialogue we have with you.

Sincerely,

A handwritten signature in black ink that reads "Allen McNeely". The signature is written in a cursive, flowing style.

Allen McNeely
Deputy Commissioner of Labor

cc: Kim Morton, OSHA Area Director, Raleigh
Doug Kalinowski, Director of the Office of State Plans
Thomas T. Bosley, State Plan Manager