

# State of Wyoming

## Department of Workforce Services



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Regional Administrator Baxter;

This letter is our response to the FY 2015 Comprehensive Federal Annual Monitoring Evaluation (FAME) report. Wyoming OSHA requests this letter be posted with the FAME report as our official response.

Let me start by saying it was a pleasure working with your Region VIII Staff. I realize the goal is to make our state program as effective as possible in providing a safe workplace for all covered Wyoming employees. I know this process is time consuming for both of our staffs and Federal OSHA wants to ensure Wyoming OSHA is following all established guidelines and requirements. Wyoming OSHA also appreciates the working relationship we've established with Region VIII. We appreciate that Region VIII recognizes the impact on the entire system from the high turnover of Compliance Officers and staff which we've experienced. This has certainly been a contributing factor associated with the findings and observations.

Following are our responses to the findings:

FY 2015-1; Finding: Wyoming OSHA has not developed and implemented a formal internal evaluation program or process.

Response: It should be noted that during prior audits by Region VIII, the non-formal evaluation system in place by Wyoming OSHA had always been acceptable and effective. It appears Region VIII has changed the standard without any communication to us. We strongly feel this should be an observation rather than a finding as it has been acceptable in the past. To show our good-faith to comply, we have provided a formal document to the Region which addresses this concern.



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FY 2015-2; Finding: Wyoming OSHA does not consistently follow the policies and procedures for handling complaints.

Response: We recognize this concern which is directly tied to Wyoming OSHA's high turnover. We have tried various ways to try and ensure consistency and we will continue to work on addressing nonformal complaint paperwork, complaints issues, and work on providing closure letters in a timely manner. We now have a consistent administrative staff and I'm confident this issue is addressed. I would like to point out that this is an administrative function and our emphasis has been on conducting inspections for formal complaints, and referrals.

FY 2015-3; Findings: Wyoming OSHA does not consistently follow policies and procedures necessary to complete an adequate fatality investigation. None of the Wyoming OSHA Compliance Officers have completed training associated with fatalities. A strategy should be developed to ensure both management and employees are provided training on the detailed nature of fatality investigations.

Response: I would like to note that several Wyoming OSHA management and seven of the eight (one new employee that is being scheduled) employees have completed fatality investigation training. Wyoming OSHA has had the OSHA Training Institute and conducted the fatality investigation training for all assigned Compliance Officers in FY 2016. It should be noted that for all fatality investigations, the appropriate citations were identified and issued. At issue is the administrative portion of the casefile, not the protection of Wyoming Workers.

FY 2015-4; Findings: The development of Local Emphasis Programs is not formalized to include written LEPs, the reason for the LEPs, how to target the LEP, how to determine if the LEP is effective and whether to continue the LEP. Wyoming OSHA should formalize its LEPs and conduct regular evaluation of its targeting and LEPs to determine that its LEPs are effective.

Response: It should be noted that during prior audits by Region VIII, the LEP review process used by Wyoming OSHA had always been acceptable and effective. It appears Region VIII has changed the standard without any communication to us. Wyoming OSHA has developed a LEP process which uses Workers Compensation and the review and input from our State Epidemiologist. Wyoming's Workers' Compensation system is monopolistic and run by our agency. This arrangement allows us unrestricted access to safety and health information for all covered employees in the entire state. I strongly believe this should be an observation rather than a finding. However, immediately after the audit, we did provide Region VIII with two (2) formal documents to address this issue. The first one is an LEP based on Workers' Compensation Data and the second is an LEP for the Oil & Gas industry.

FY 2015-5; Finding: Wyoming OSHA has not developed an effective system to account for the collection of penalties. Wyoming OSHA must implement a debt collection system to ensure employers are held accountable for paying penalties associated with any citations they receive.



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Response: Wyoming OSHA has recognized this as an issue. The specific challenge for Wyoming OSHA is that the penalties actually belong to the school district in which the violation occurred. Wyoming OSHA does not have the authority to pursue collection of these debts. Wyoming OSHA has worked with the Department and has finalized a contract with a collection agency to collect unpaid penalties. We feel this will be an effective solution. Wyoming OSHA greatly appreciates the support from the region on this matter.

FY 2015-6; Finding: Wyoming OSHA does not consistently review case files to ensure legal sufficiency. Wyoming OSHA should provide in depth training to the management staff specific to the case file review process.

Response: Wyoming OSHA had scheduled compliance management staff to attend the OSHA Training Institute for this training. Since the audit, compliance management and several staff have attended this training and are developing procedures to ensure paperwork is complete and legally sufficient. It should be noted that Wyoming's citation vacate rate for citations issued and the number of contested cases from the program is lower than most OSHA programs. While we recognize there is room for improvement, the review does show that citations were proper and appropriate for the circumstances and helped to protect Wyoming Workers.

FY 2015-7; Findings: Wyoming OSHA does not consistently address health hazards. Wyoming OSHA Should focus management and employee training on recognizing and addressing health-related hazards.

Response: As previously noted, our high turnover has contributed to this concern. Wyoming OSHA has developed a program to schedule compliance officers to attend the OSHA Training Institute for health training. Management has briefed and educated compliance officers to address potential health issues. To date Compliance Officers have been sent to the OSHA Training Institute multiple times to help them be able to conduct the health inspections the region has felt were necessary.

FY 2015-8; Finding: Wyoming OSHA does not consistently use a case file activity diary sheet. Wyoming OSHA should revisit their CSHO training to ensure the use of a diary sheet for all cases.

Response: Wyoming OSHA recognizes this as an issue and has developed a casefile checklist for Compliance Officers. It is now a requirement for Compliance Officers to use the case file activity diary sheet. The Compliance Manager audits these casefiles to ensure a summary sheet is in each case file.

FY 2015-9; Findings: The lapse time for safety inspections in FY 2015, 62.07 days is significantly above the reference standard of 42.78. Wyoming OSHA must reduce lapse time by ensuring inspections are completed and citations issued in a timely manner.

Response: Due to high turnover of Compliance Officers, I anticipate this will continue to be an issue. Wyoming OSHA recognizes the importance to getting citations issued as soon as possible and is working diligently towards issuing citations within 45 days.



FY 2015-10; Findings: Wyoming OSHA allows for an excessive amount of time when obtaining abatement from employers. The staffing issues have created problems for obtaining abatement. Wyoming OSHA should implement a system to ensure Informal Conferences are held timely so abatement is promptly obtained.

Response: Currently, Wyoming OSHA has a backlog of inspections awaiting informal settlement conferences. To assist in controlling this issue, we have reorganized several aspects of the Division. The Operations Manager, Deputy Administrator, and administrative staff are currently assisting the Compliance Manager with informal settlement conferences and abatement follow-up. OSHA Management is working with Compliance Officers to have employers send in abatement prior to the issuance of citations. Compliance Officers are now responsible for tracking their own casefiles for abatement to ensure prompt abatement is in place.

FY 2015-11; Findings: Wyoming OSHA does not ensure case files contain documentation of employee interviews taken as part of the investigative process. Some files do contain information in the Narrative that interviews were conducted. Wyoming OSHA should ensure CSOs are provided with training and information on the importance of conducting and documenting employee interviews.

Response: It should be noted that during discussions with Compliance Officers they had always conducted interviews but have not always documented those interviews in the case file. Wyoming OSHA had recognized this prior to the audit and had contacted the OSHA Training Institute. Wyoming OSHA recognizes this could be an issue if citations are challenged. The use of the casefile checklist by Compliance Officers will also help ensure compliance on this issue. Compliance Officers have now completed OSHA Training Institute interview training and new compliance officers will be schedule to attend this training within their first year of employment with Wyoming OSHA.

FY 2015-12; Finding: Throughout 2015, the whistleblower program had significant programmatic deficiencies involving the receipt, processing and disposition of whistleblower complaints. Wyoming OSHA should ensure that the program has proper management oversight and appropriate training for managers and investigators.

Response: Wyoming OSHA had identified this prior to the audit and scheduled both a compliance officer and an administrative support person for discrimination training. Both parties completed the training and left shortly thereafter. The Division will have to identify new individuals for this important function. Wyoming OSHA was excited to hear during OSHSPA and OSHCON meetings from the National Office that states were finally going to get full-time employees for discrimination investigations which would be similar to Federal OSHA. Currently this is a dual duty for Compliance Officers. During the course of FY 2016, Wyoming OSHA was informed by the Regional Office that this plan has changed. Wyoming OSHA considers this a major setback since it would have provided both the funding and personnel to adequately support this program.

Observations: Wyoming OSHA recognizes the need for improvement associated with observations and is committed to try and correct them whenever possible. Wyoming OSHA appreciates that Region VIII has reconsidered some findings and changed them to observations. The OSHA Compliance and Operations



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Managers have been reviewing files much more closely and are working with Compliance Officers to improve case file documentation and other areas identified.

It shouldn't go without stating the many major positive findings this audit identified which support worker protection in Wyoming:

1. The Mandated Activities Report for Consultation (MARC), metric 3, indicates that Wyoming consulted with workers in 100% of the public sector initial visits. MARC 4A shows that all of the serious hazards that were identified (313) were corrected in a timely manner.
2. MARC 40 shows that 96% of the identified serious hazards were corrected within the original timeframe or during the on-site visit; the federal goal is 65%.
3. Region VIII recognizes that the Governor and Legislators have funded one compliance officer position above the regulatory benchmark. Additionally, Wyoming provides considerable excess funding above and beyond that required by the grant.
4. The negotiated number of days for Wyoming OSHA to open complaint inspections is 16. In FY 2015 the average number of days to initiate a complaint inspection was 9.68.
5. Federal OSHA recognizes that a large proportion of Wyoming's workforce is employed in industries such as agriculture, mining and oil and gas extraction, construction, manufacturing, and transportation. These industries have historically experienced higher rates of occupational fatalities and injuries than other industries due to the inherently high risk hazards of these occupations.
6. Based on targeting NEP/LEPs it appears Wyoming OSHA has appropriately identified high-hazard industries within their jurisdiction.
7. According to the SAMM, the percentage of inspections without citations in FY 2015 for safety was 18.95% and for health was 21.43%. These numbers can be compared to the national averages of 28.52% for safety and 33.39% for health. Based on these findings Wyoming OSHA is able to identify hazards at a higher percentage as compared to other State Plans and federal OSHA.
8. The average number of violations per inspection was 2.60 for Serious, Willful or Repeat, and 0.68 for Other-than-Serious. These average numbers can be compared to the national data for FY 2015 which showed 1.92 for Serious, Willful or Repeat, and 0.87 for Other-than-Serious. The percentage of inspections with Serious, Willful or Repeat citations is approximately 35% above the national average noted in the SAMM. This supports the efficacy of the targeting systems and the competence of our Compliance Officers.
9. In FY 2015, Wyoming OSHA continued the Health and Safety Consultation Employer Discount Program which encourages employers to request consultation visits or enroll into an exemption program (EVTAP and SHARP).



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## Areas of concern for Wyoming OSHA:

1. Wyoming provided excess funding to the program in the amount of \$980,352 which is 74% of the State's contribution, not the 50% /50% for compliance. Wyoming OSHA has not been provided funds equivalent to FY 2013 which had the state over matching \$692,357 which was only 69%. Wyoming OSHA should be funded at the agreed upon rate of 50% federal/ 50% state funding. Even at that rate, it would still not allow staff to be compensated at the same rate as Federal OSHA.
2. In recent years, Federal OSHA has provided federally run OSHA programs several additional full-time employees (FTE's) for discrimination investigations. The failure to provide equivalent resources to state programs, yet impose the same requirements for results, is of great concern. My question is "How is Wyoming OSHA to provide the same levels of service as Federal OSHA when not resourced and staffed at the same level?"
3. Federal OSHA is designed to pay their employees at competitive wages and offer incentives that are similar to the private sector safety and health professionals, while the funding for state plans does not take this into consideration. Again, the requirements are the same; however, the funding is very different. My question is "How is Wyoming OSHA to provide the same outcomes and levels of service as Federal OSHA when not resourced and staffed at the same level?"

## Accomplishments:

1. Wyoming OSHA is one of the few State Plans that have Oil & Gas Rules which provide additional safety measures for Wyoming workers in this industry. The Division works closely with the Wyoming Oil & Gas Industry Safety Alliance (WOGISA) to reduce accidents, injuries and fatalities in this industry along with several other alliances and coalitions within the state.
2. Wyoming OSHA is also one of the few OSHA Programs that has had an annual Safety Summit. This conference provides Wyoming industries in-depth education on the topics of their concern each year. This service is open to all private and public sector employers and employees.

## Summary:

1. Ultimately Wyoming OSHA would like to have personnel who are highly trained and have significant experience. This is a significant contributing factor to issues identified during the audit. However, due to inadequate funding through the grant process, we have not had that opportunity. While the State of Wyoming stepped up this year and gave significant pay increases to OSHA professional staff, it was a stop-gap measure. A key issue has been and will continue to be, the ability to pay staff at levels comparable level to Federal OSHA.
2. The Department of Workforce Services and Wyoming OSHA efforts have been to provide a significant amount of over-matching funds. The ratio of which has become more unbalanced over the years. As we have learned from the Consultation Grant, there is a tipping point at which we



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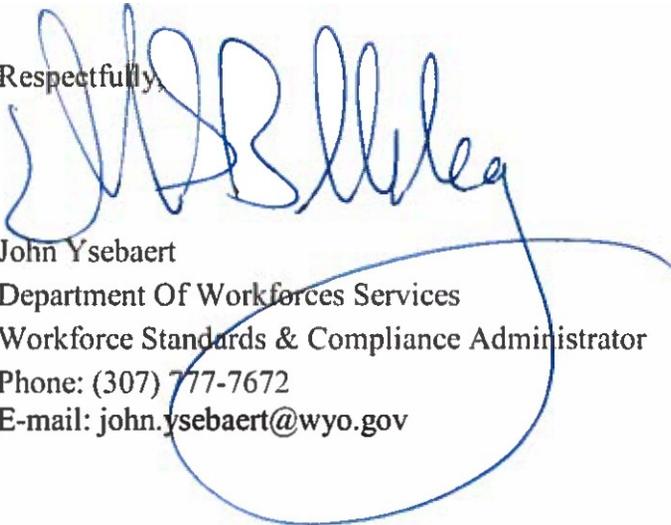


have to consider other creative methods and practices to enhance safety and protect workers. I ask that Federal OSHA consider funding Wyoming OSHA adequately and equitably.

Wyoming OSHA is very focused on our main goals of; helping employers reduce accidents, injuries, and fatalities. Additionally we help employers provide workers with a safe and healthy work environment through enforcement and consultation/compliance assistance. Wyoming OSHA recognizes the importance of the administrative side of things and is committed to addressing these issues.

I would like to mention that we have noticed a more cooperative atmosphere with your staff and it is greatly appreciated. Again, we do appreciate the opportunity to provide feedback regarding this report and will continue to strive to address any findings and observations. As always, please let me know if you have any questions.

Respectfully,



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