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Governor

# State of Wyoming Department of Workforce Services

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Regional Administrator Baxter;

This letter is our response to the FY 2016 Federal Annual Monitoring and Evaluation (FAME) report. Wyoming OSHA requests this letter be posted with the FAME report as our official response.

Let me start by saying our staff feels it has been a pleasure working with your Region VIII Staff. I recently took the position of Workforce Standards & Compliance Administrator and have been getting more familiar with both the compliance and consultation/compliance assistance programs as I settle in to my position. 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 continue to have with Region VIII. We appreciate that Region VIII recognizes the impact on the entire system from the high turnover/continuity of Compliance Officers and staff, which has been ongoing for years. This has certainly been a contributing factor associated with any findings and observations.

Our responses to the findings and observations are filed in the Wyoming FY 2016 Corrective Action Plan (CAP). Wyoming OSHA recognizes the need for improvement associated with any findings and observations and is committed to correct them whenever possible.

It should not go without stating the many major positive findings for FY 2016, which support worker protection in Wyoming:



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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 but one (1) of the serious hazards that were identified of (1,331) were corrected in a timely manner.
2. MARC 4D shows that 96.55% 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 continues to provide considerable excess funding beyond that required by the grant.
4. The negotiated number of days for Wyoming OSHA to open complaint inspections is 16. In FY 2016, the average number of days to initiate a complaint inspection was 5.48 according to SAMM # 1(A).
5. Federal OSHA continues to recognize that a large proportion of Wyoming's workforce is employed in industries such as agriculture, oil and gas extraction, construction, heavy manufacturing, mining 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 continues to appropriately identified high-hazard industries within their jurisdiction and proactively tries to address issues before they become an issue/accident.
7. According to the SAMM Report item #9, the percentage of inspections without citations in FY 2016 for safety was 29.20% and for health was 25%. These numbers can be compared to the national averages of 29.51% for safety and 36.08% 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 2.46 for Serious, Willful or Repeat, and 1.04 for Other-than-Serious. These average numbers can be compared to the national data for FY 2016, which showed 1.86 for Serious, Willful or Repeat, and 0.99 for Other-than-Serious. The percentage of inspections with Serious, Willful or Repeat citations is approximately 25% 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 2016, Wyoming OSHA continued supporting the Health and Safety Consultation Employer Discount Program, which encourages employers to request consultation visits or enroll into an exemption program (EVTAP and SHARP).

Continued areas of concern for Wyoming OSHA:

1. Wyoming continues to provide excess funding to the program in the amount of \$977,953, which is 65% 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 \$699,568, 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 continued failure to provide equivalent resources to state programs, yet impose the same requirements for results, continues to be of great concern and creates an injustice within state programs. A prime recent example is the increase being given for Compliance Assistance to Federal OSHA and not being shared with State Plans. My concern that has also been a past concern is "How is Wyoming OSHA to provide the same levels of service as Federal OSHA when not resourced/funded 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 continues to not take this into consideration. Again, the requirements are the same; however, the funding is substantially different. Again, my question is "How is Wyoming OSHA to provide the same outcomes and levels of service as Federal OSHA when not resourced/funded and staffed at the same level?"

Accomplishments:

1. Wyoming OSHA is still 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 event "Wyoming Safety & Workforce 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.



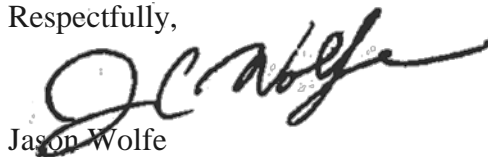
Summary that is repetitive of the previous FY 2015 FAME:

1. Ultimately, Wyoming OSHA would like to have personnel who are highly trained and have significant experience to address the repeated concerns identified. This has been and continues to be 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 has stepped up in past years to give pay increases to OSHA professional staff, it has always been a stopgap measure. There still is the key issue the ability to pay staff at levels comparable level to Federal OSHA to reduce mostly insufficient deficiencies.
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 continues to be more unbalanced over the years. As we and now you have learned from the Consultation Grant, there is a tipping point at which we 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 continues to be concentrated on our main goals of; helping employers reduce accidents, injuries, and fatalities. Additionally we continue to 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 as part of their annual performance goals. Ultimately, if Wyoming OSHA has a choice between administrative issues over employee health and safety the later will always take precedent in Wyoming.

Since taking on this position, I have been told by the OSHA staff that our division feels like there is a positive working relationship with the region, which 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. Please let me know if you have any questions.

Respectfully,



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