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October 26, 2010

Mr. Dean Ikeda
Acting Regional Administrator
Occupational Safety and Health Administration
U.S. Department of Labor
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212

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OSHA-REGION X
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RE: FY 2009 Enhanced Federal Annual Monitoring and Evaluation Report

Dear Mr. Ikeda,

Commissioner Bishop asked that I respond to your letter dated September 13, 2010 regarding the FY 2009 Enhanced Federal Annual Monitoring and Evaluation report (EFAME). We are pleased with OSHA's overall conclusion that, "AKOSH is doing a good job of Investigating fatalities and accidents within its jurisdiction," and we agree that there are areas for improvement. AKOSH has enjoyed a good working relationship with OSHA's Region X staff and appreciates the time devoted to reviewing AKOSH activities, inspection case files and performance over the years. In the past, Region X has been timely with recommendations, so that issues could be corrected to improve the program. It is somewhat disheartening that the FY 2009 EFAME report and new recommendations for improvement were not made available to AKOSH early enough to allow for corrections during FY 2010. Consequently, these same issues may appear in OSHA's FY 2010 evaluation of the AKOSH program. We intend to implement the necessary adjustments in FY 2011.

The EFAME provided several recommendations for improvement and AKOSH's responses are listed below.

OSHA Recommendation 1: Factually document employer knowledge in case files with as much specificity as feasible.

AKOSH Response: AKOSH will instruct Enforcement Officers to work harder to collect and document available evidence, such as witness statements and/or documents, to demonstrate employer knowledge of an alleged hazardous condition. Enforcement Officers will be instructed to avoid reliance solely on the "reasonable diligence" standard to establish employer knowledge of an alleged hazardous condition.

OSHA Recommendation 2: Use a structured informal conference worksheet to document the employer's position with regard to cited violations as well as the Chief's rationale for proposing settlement.

AKOSH Response: The need for a structured informal conference worksheet is unclear. OSHA's evaluation of AKOSH's informal conference process reflected that, "For cases where informal

conferences were held, adequate notes were in the file to document the decision-making process behind violation deletions, abatement date revisions, or penalty reductions.” The only issue appears to be that OSHA found it difficult, in some cases, to determine the employer’s position with respect to the citation and the rationale for proposing settlement. This recommendation does not appear to produce a critical impact on the effectiveness of the AKOSH program in terms of the primary goal to reduce workplace illnesses, injuries and fatalities, but is aimed more at improving the efficiency of OSHA’s ability to review AKOSH performance. Nevertheless, AKOSH will consider using a form provided that it does not have a significant impact on the complexity of the informal conference documentation process. AKOSH requests that OSHA provide a format that would be acceptable to minimize future difficulties or misunderstandings.

OSHA Recommendation 3: Ensure that condolence letters are sent in every fatality case. At the conclusion of fatality investigations, apprise next of kin, in writing, of investigation outcomes and provide copies of citations. Insert copies of all such correspondence in case file.

AKOSH Response: AKOSH will implement this recommendation.

OSHA Recommendation 4: Ensure an effective presence in private and public sector workplaces by increasing the number of programmed enforcement inspections using targeting tools such as the High Hazard Targeting plan, the Construction List, and Special Emphasis Programs.

AKOSH Response: AKOSH will strive to implement this recommendation. However, staff turnover and other issues with human resources or mandated changes in policies or procedures may have a negative impact on efforts to increase inspections in the future.

As indicated in the EFAME, recommendations #5 - #11 are restated from OSHA’s 2009 audit of the AKOSH discrimination program. AKOSH responded to these recommendations on January 22, 2010 and OSHA deemed the responses acceptable. With the exception of recommendation #5, AKOSH has already implemented all of OSHA’s recommendations associated with discrimination investigations. With respect to recommendation #5, OSHA agreed with AKOSH’s recommendation to communicate in writing regarding a concurrently filed discrimination complaint and come to mutual agreement about who should investigate the complaint.

OSHA Recommendation 5: In cases where a complainant files 11(c) complaints concurrently with AKOSH and OSHA, AKOSH should relinquish jurisdiction.

AKOSH Response: AKOSH recommends that communications between AKOSH and OSHA concerning whistleblower complaints filed with AKOSH and OSHA be made in writing to avoid confusion. AKOSH is willing to consider entering a written agreement to allow OSHA to perform the sole investigation of a particular 11(c) complaint that is subject to Alaska Statute 18.60.089. The agreement must allow AKOSH timely access to OSHA’s investigation documents and findings to determine whether AKOSH is in agreement or whether concurrent or alternative action should be pursued under Alaska law.

OSHA Recommendation 6: AKOSH should refrain from including provisions in its settlement agreements that allow for deducting Unemployment Insurance benefits.

AKOSH Response: AKOSH has implemented this recommendation.

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OSHA Recommendation 7: Closing letters to the parties should state that the complaint was settled and copies should be kept in the file.

AKOSH Response: AKOSH has implemented this recommendation.

OSHA Recommendation 8: Discontinue the practices of using statements submitted by complainants and witnesses as substitutes for interviews.

AKOSH Response: AKOSH will vigorously pursue witness interviews in lieu of using statements submitted by complainants and witnesses. When conditions prohibit witness interviews, AKOSH will use statements submitted by complainants and/or witnesses as evidence.

OSHA Recommendation 9: Ensure that witness interviews cover the four prima facie elements.

AKOSH Response: AKOSH has implemented this recommendation.

OSHA Recommendation 10: The FIR should include the date the complaint was filed with AKOSH. The date should be written on the first page of the FIR.

AKOSH Response: AKOSH has included this date in the chronology in the past but will add the complaint date to the first page of the FIR in accordance with this recommendation.

OSHA Recommendation 11: The coverage description in the FIR should include information that is similar to what is described in a safety and health inspection report, i.e., the number of employees, whether the employer is private or public, and union status, (along with a brief description of the company.)

AKOSH Response: AKOSH will implement this recommendation and include background information about the respondent.

AKOSH is focused on providing an effective occupational safety and health program. We encourage OSHA to conduct regular evaluations and provide timely results to allow for continuous improvements toward our mutual goal of reducing workplace illnesses, injuries and fatalities.

Sincerely,

/Signed/

Grey Mitchell
Director

cc: Clark Bishop, Commissioner
Steve Standley, AKOSH Chief of Enforcement