



# Indiana

## Department of Labor

*Advancing the safety, health and prosperity of Hoosiers in the workplace.*

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Michael G. Connors  
Regional Administrator, Region V  
Occupational Safety and Health Administration  
230 South Dearborn Street, Room 3244  
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In re: Indiana statement regarding FY 2009 Enhanced Federal Annual  
Monitoring and Evaluation Report

Dear Mr. Connors,

Thank you for the opportunity to comment on the FY 2009 Enhanced Federal Annual Monitoring and Evaluation report (EFAME). The team assigned to conduct the Indiana audit acted in a highly professional manner and we appreciate their hard work and candor. We were surprised, however, at the changes between the draft report as written by your office and the final version rewritten in Washington D.C. Indiana is proud of the fact that we have increased the number of inspections and decreased the number and rate of injuries, while holding the line on our budget.

While the audit team made 45 recommendations, the majority of these were regarding record keeping and documentation, and use of federal management reports. Our IOSHA division maintains that it diligently and competently administers our state plan in a manner that is as effective as federal OSHA. In fact, your report notes that the majority of the 39 fatality files reviewed contained excellent documentation with appropriate violations and that all of the 37 inspection files reviewed had hazards classified appropriately.

Nevertheless, with your team's assistance, we have identified areas for improvement, including abatement verification, follow up inspection scheduling, construction inspection targeting, use of IMIS management reports and data entry, and additional Whistleblower training and protocols.

There are some conclusions in the report, however, with which Indiana does take issue. Those include:

1. Lack of advanced training of compliance officers. We dispute the finding that compliance officers lack advanced OTI training. Rather, during the past year, such attendance was curtailed, so that new hires could receive required training and we could adhere to our budget. A significant percentage of all compliance officers have completed advanced course work over the course of their tenure with IOSHA.
2. Approximately half of all compliance officers work from the Indianapolis or Vincennes offices, and the other half work remotely from home offices. This has shortened travel and response times, and having compliance officers living in the communities in which they work has resulted in positive working relationships. No supervisor works out of a home office, and at least one supervisor is assigned to each office.
3. Case files do not lack necessary documents. Some documents and photographs are stored electronically on an OSHA developed and supported application called the CSHO Application. Those diskettes are kept in the case file. The audit team was not able to view some of these documents because the application uses WordPerfect and is incompatible with Microsoft platforms. Federal OSHA's failure to deliver on the long promised rebuild of the IMIS system has indeed impacted decisions and ability to deliver on some of the recommendations. Indiana enthusiastically awaits the day (after many years of promises) in the near future when a new data system is operational.
4. Victims' families are appropriately notified. While a decision had been made to protect their privacy and place letters in a separate file, we have now included those letters in the respective file. Notwithstanding that, any family who requests documentation, a phone conference or a meeting with the deputy commissioner is accorded as much time as is necessary.
5. We stand by our classification and penalty calculations. We respect that fed OSHA may view some cases differently, but then a paper audit does not always reveal what a compliance officer saw, or how an informal review affected the decision making of the director in according penalty reductions. We agree that abatement verification can be enhanced, and are working on that aspect of follow up.
6. We agree that data entry and coding can be improved.
7. Indiana has NO discrimination (whistleblower) cases that are not completed (dismissed as non-merit, settled or filed in court by the attorney general's office) within 120 days. Indiana OSHA has done an excellent job at being timely (much more timely than the federal government in the administration of its whistleblower cases). Dual filing is encouraged by our intake officer and appropriate contact information provided in our intake acknowledgement letter, but we cannot insist that a complainant file his or her complaint with federal OSHA.
8. It is not true that we have no central filing for participants in our voluntary programs.
9. The state did not fail to respond in any circumstance within 24 hours in a case with imminent danger. Coding errors accounted for any perceived lack of response.

As the report bears out, Indiana met all of its strategic goals for FY 2009, including the most important measure of reducing the injuries and fatalities to Indiana workers. Additionally, in comparison to six years ago, the measures on the SAMM report have improved markedly in nearly every category. In at least three of the areas marked as not meeting goal, the difference between the federal benchmark and Indiana result was about three percentage points.

Following a long period of time marked by a lack of communication and responsiveness between Indiana OSHA and fed OSHA, Governor Daniels' team at the Department of Labor has worked very hard over the last five plus years to open communication, be transparent as to IOSHA progress and challenges, and to rebuild the Indiana state program into a credible, timely and effective state plan. We believe we have been marching in the right direction, and that we will continue to deliver the type of service that our Indiana workers and their families have a right to expect. We will incorporate a number of the suggestions into our protocols, but quite frankly, are not overly concerned about making sure that papers are tacked down, that digital pictures be printed rather than maintained electronically, or that we honor some complainants' request to remain anonymous when fed OSHA would prefer identifying name or address be given.

Indiana OSHA conducted more than 2,200 inspections in calendar year 2009. The fact that the audit team uncovered a handful that did not have paper copies of all fed OSHA required forms is expected. Our focus is on delivery of an enforcement program with technically proficient staff, timely commencement and resolution of cases, and compassionate and responsive compliance officers, managers and leaders that relate to the needs of our stakeholders. We estimate that nearly half of our compliance officers' time is spent trying to fulfill fed OSHA recordkeeping and data entry requirements.

Furthermore, little credit was given in the report for the tremendous improvement shown in the Indiana program; the quality, experience and expertise shown by our compliance officers; and the outcome based results that demonstrate a high performing state plan program.

Nevertheless, there is never a time when benchmarking our program against others and looking at best practices does not make sense. We appreciate the tremendous investment of resources and time in this national project. We have already begun to institute a number of the recommendations and done analysis as to when we fell short of expectations. Further enhancement of the Indiana OSHA program is a positive step for us, for Indiana workers and employers.

Very truly yours,

Lori A. Torres  
Commissioner of Labor

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