

John M. Hermanson  
Regional Administrator, OSHA  
U.S. Department of Labor  
The Curtis center  
170 South Independence Mall West  
Suite 740 West  
Philadelphia, Pennsylvania 19106-3309

Dear Regional Administrator Hermanson:

Thank you for providing the recently completed FY 2009 Baseline Evaluation Report for the State of Maryland and for notifying of us the intention of OSHA to issue the report during the week of September 20, 2010. I truly believe that there are issues that should be addressed between our program and your office, or the national office, before the release of the report. We all share the goal of providing safe and healthful workplaces to the nation's workers. Ensuring that the relationship between state plans and OSHA is strong is critical in that process.

Let me begin by thanking you for the professionalism exhibited by you and your staff during the conduct of this review. I believe that there are areas of need that have been identified in the report and I stand ready to address them. With limited time to respond and a request to keep statements short, we will again highlight a few concerns and follow up with a more detailed description of concerns within the 30 day time frame.

- ✚ There are several bullets that are included in the Executive Summary that are simply wrong and unsubstantiated. We would like to see those removed from the report and the Executive Summary prior to release of the report. This was the first time that we saw the Executive Summary and we request that it be changed prior to release.
- A specific example of this is on page 5, 7<sup>th</sup> bullet, where there is a mention that violations were cited as OTS and should have been serious. During the audit we requested a list of such cases, when the list was provided all instances were explained and no discrepancies found. The audit team accepted our explanation and nothing further was mentioned. Our inspectors do not misclassify, nor are they encouraged, to classify an other-than-serious violation to a serious violation. In addition, our inspectors also cite all hazards, regardless of classification so the percent that are serious is affected by also citing the other-than-serious rather than “walking” away from them on site.
- This misstated finding is repeated in a different way in Recommendation 6 where training on hazard classification is required. We stand behind our statement that our inspectors are well trained and are properly classifying violations.

- 🚩 We believe there continues to be a lack of appreciation for MOSH's practice with regard to OTS violations and that the language in this report points to an incorrect conclusion.
- 🚩 The way that our penalty policies were the lead off issue in the "problems identified section" signals an unwillingness to appreciate the spirit of being at least as effective as OSHA. The Employer Incentive Program is one that has proven successful in ensuring that violations are quickly abated and lives are saved. Revoking this policy will negatively impact employee safety and health in our state.

The Maryland Occupational Safety and Health (MOSH) Program offers compliance and consultation services across both private and public sector employers in our state. We are proud of the talent and expertise of our compliance officers and administrative staff who work tirelessly to identify and secure abatement of hazards across our state with the tools available to them. The results of continuous focus on educating employers and employees and securing the abatement of hazardous conditions has resulted in injury and illness rates well below the national average.

We look forward to working with OSHA to improve our program, but truly believe that it is important to allow the states to continue to have policies that differ but are at least as effective as OSHA and to encourage the diversity in state Programs that is the cornerstone of an effective national Occupational Safety and Health system.

Sincerely

J. Ronald DeJuliis  
Commissioner  
Maryland Division of Labor and Industry

Submitted by email  
cc: Steven F. Witt  
Barbara Bryant