



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
Michigan Occupational Safety & Health Administration
(MIOSHA)

ANDREW S. LEVIN
ACTING DIRECTOR

October 28, 2010

Mr. Michael Connors, Regional Administrator
Region V
Occupational Safety and Health Administration
United States Department of Labor
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604

Subject: Comprehensive Action Plan Response to Final FY 2009 Michigan Enhanced Federal Annual Monitoring and Evaluation (EFAME) Report October 1, 2008 to September 30, 2009

Dear Mr. Connors:

Attached is Michigan's Comprehensive Action plan in response to the Enhanced Federal Annual monitoring and Evaluation Report. The action plan includes milestone dates, where appropriate.

We appreciate the opportunity to prepare this action plan. I am sure MIOSHA will be discussing our plans and progress toward goals as part of the ongoing quarterly meetings with your staff.

If you have questions or would like additional information, please contact me at 517.322.1817.

Sincerely,

Douglas J. Kalinowski
Director

Attachment

cc: Andrew S. Levin, Acting Director, DELEG
Susan Corbin, Deputy Director, DELEG
Cynthia Hutchens-Smith, Director, Lansing Area Office, OSHA
Martha Yoder, Deputy Director, MIOSHA



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7150 HARRIS DRIVE • P.O. BOX 30643 • LANSING, MICHIGAN 48909
www.michigan.gov • (517) 322-1817



**Comprehensive Action Plan Response to Final FY 2009 Michigan Enhanced Federal
Annual Monitoring and Evaluation (EFAME) Report
October 1, 2008 to September 30, 2009**

The Michigan program for occupational safety and health has been highly effective in protecting Michigan workers from on-the-job injuries, illnesses, and exposures. Michigan Occupational Safety and Health Administration (MIOSHA) program effectiveness was confirmed in the EFAME report, which states “. . . Michigan continues to operate an effective program and actively works in a positive manner to continuously improve program effectiveness.”

MIOSHA presence in the workplace is a very important aspect of protecting the health and safety of Michigan’s working men and women. MIOSHA processes, procedures, and guidelines are designed to increase efficiency to allow field staff to spend more time in the field. Although some processes and procedures differ from those established by federal OSHA, they are effective in addressing hazards in Michigan workplaces. MIOSHA is a continuous improvement organization and appreciates all opportunities to improve.

Special Study Findings and Recommendations

- **Finding 1:** MIOSHA did not enter abatement verification into IMIS System. Instead it is entered into an Excel spreadsheet. (pages 14-15, 24-26, and 29-30)
- **Recommendation 1:** MIOSHA should enter abatement verification into the IMIS system as this is a Mandated Measure.
- **MIOSHA Action:** The federal EFAME determined that the Excel spreadsheet used by MIOSHA to track abatement is monitored closely and ensures abatement documentation is received. The report stated that “. . . while this system is different from OSHA’s, it appears to be an effective tracking tool.” Entering abatement verification information into the IMIS would be redundant and reduce efficiency. The information is also entered into the case file notes. IMIS will be replaced by OIS in the near future and we will revisit this recommendation at that time. Anticipated timeframe to complete review is April 2011.

- **Finding 2:** MIOSHA penalty calculation policy has resulted in low average penalty assessments. MIOSHA’s initial penalty, per serious violation, is \$692.37, which is below the national reference data by 51.9%. (pages 14-15)
- **Recommendation 2:** MIOSHA should follow their penalty calculation policy.
- **MIOSHA Action:** MIOSHA’s initial penalty, per serious violation, is 51.9% of the national reference data which is actually 48.1% below the national data. In April and June of 2010, MIOSHA issued a revised FOM which adopts penalty assessment policy established by Federal OSHA. Such changes include size reduction based on the number of employees nationwide and adoption of the OSHA policy for assessing penalties for willful violations. Staff has been trained on these procedures. MIOSHA is already seeing penalties increase. MIOSHA provides staff training on hazard classification,

gravity assessment and penalty calculation on an ongoing basis. Ongoing training and policy review is occurring and anticipated to continue through FY 2011.

- **Finding 3:** The complaint files, formal and nonformal, did not include a mechanism to track actions taken while handling the file. (pages 15-17)
- **Recommendation 3:** Ensure a tracking mechanism, such as a Diary Sheet, is put in place and used effectively.
- **MIOSHA Action:** Although MIOSHA does not use a Diary Sheet, tracking mechanisms and procedures are in place to capture the case file information to create a chronology if needed. Action complete, no further action is required.

- **Finding 4:** MIOSHA did not always follow their policy and procedure manual. In one case, a complaint inspection was not conducted at a facility employing less than 10 employees. (pages 15-17)
- **Recommendation 4:** Provide refresher inspection training to include small employer exemptions/nonexemptions.
- **MIOSHA Action:** This finding refers to a specific isolated incident, which has been addressed. MIOSHA does follow the policy. Only one case did not follow procedure, the error was caught by MIOSHA, and an inspection was conducted prior to the audit. The employee involved was given refresher training. Action complete, no further action is required.

- **Finding 5:** MIOSHA maintained the initial letters to the next of kin in a separate binder. (pages 17-18)
- **Recommendation 5:** MIOSHA should maintain the next of kin letters in the case file.
- **MIOSHA Action:** MIOSHA now includes a copy of the initial letter to the next of kin in the case file. Action complete, no further action required.

- **Finding 6:** While MIOSHA recognized hazards and issued citations, not all of the hazards were appropriately classified per their FOM. (pages 18-23)
- **Recommendation 6:** Ensure all staff is retrained on hazard classification and penalty assessment guidelines. Training will be provided in April 2011 and throughout FY 2011.
- **MIOSHA Action:** Although MIOSHA provides staff training on hazard classification, gravity assessment, and penalty calculation on an ongoing basis, staff will be retrained on hazard classification and penalty assessment guidelines.

- **Finding 7:** Documentation was not found in the file that copies of citations and/or ISAs were sent to the unions. (pages 23-24)
- **Recommendation 7:** Ensure that all inspection actions are documented and included in the case file.
- **MIOSHA Action:** MIOSHA provides copies of citations and/or ISAs to union representatives when requested. To ensure employee participation during inspections, the MIOASH Act mandates walk-around pay for employee representatives. These activities are documented on the Inspection Guideline sheet that becomes part of the case file. We also attempt to contact union representation to discuss an ISA before expediting.

Because of time limitations, we do not delay the process. MIOSHA provides significant opportunities for employees and their representatives to participate in all aspects of our inspections. Supervisors and staff processing ISA have been reinstructed on the need to contact union representatives and document contact in the case file. Additional monitoring to ensure efforts to contact union representatives is part of the ISA process will continue throughout FY 2011.

- **Finding 8:** While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in all cases. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in all cases. (pages 24-26)
- **Recommendation 8:** Ensure all staff is retrained on hazard classification and penalty assessment guidelines.
- **MIOSHA Action:** See Actions for Findings 2 and 6 above.

- **Finding 9:** There was a lack of documentation that noted that the employee or employee representative had been contacted regarding the final Informal Settlement Agreement. (pages 27-29)
- **Recommendation 9:** MIOSHA should note within the case file when an employee or employee representative has been contacted.
- **MIOSHA Action:** MIOSHA follows the guidelines provided in the FOM. Copies of citations and ISAs are sent to unions when requested. See Action for Finding 7 above.

- **Finding 10:** There was no documentation to support or explain why changes were made to the violations and penalties in some case files. (pages 27-29)
- **Recommendation 10:** Changes that are made to violations and penalties through the first appeal level should be documented in the case file.
- **MIOSHA Action:** MIOSHA will review our process for ensuring that changes to citations made in the first-level appeal process are appropriately documented in the case file. Review will be completed and changes implemented by March 31, 2011.

- **Finding 11:** While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in some case files. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in some case files. (page 29)
- **Recommendation 11:** Ensure all staff is retrained on hazard classification and penalty assessment guidelines.
- **MIOSHA Action:** See Actions for Findings 2 and 6 above.

- **Finding 12:** MIOSHA does not use IMIS management reports. (pages 29-30)
- **Recommendation 12:** To prevent duplicative work, MIOSHA should use IMIS management reports.
- **MIOSHA Action:** MIOSHA does use certain IMIS reports routinely. However retrieving some data from the IMIS system can be cumbersome and takes more time

when it is needed quickly. MIOSHA uses an equivalent tracking system to IMIS that is readily available and accessible on a daily basis. No further action required.

- **Finding 13:** Review of the cases revealed that MIOSHA's Employee Discrimination Section has adopted their own forms, letters, and Final Investigative Report (FIR) rather than using the forms provided by the OSHA Whistleblower Program. Case file organization does not follow DIS 0-0.9. However, the outcomes of the cases reviewed were appropriate. (pages 35-39)
- **Recommendation 13:** Follow DIS 0-0.9 to ensure consistency with case file organization and contents, including forms, letters and Final Investigative Reports (FIRs).
- **MIOSHA Action:** Although the EFAME indicates that our current forms and process are adequate, we will review DIS 0-0.9 for possible improvements to our process and forms. The EFAME indicated “. . . the outcome of the cases reviewed were appropriate.” MIOSHA will compare current forms, letters and Final Investigative Reports (FIRs) to see whether any changes to existing documents are needed by the end of FY 2011.

- **Finding 14:** While MIOSHA has improved in timely completion of 11(c) investigations, they completed only 68% in 90 days. (pages 35-39)
- **Recommendation 14:** MIOSHA should continue to improve case management to ensure completion of all cases in a timely manner.
- **MIOSHA Action:** MIOSHA has made significant improvements in timeliness and continues to work on improving efficiency. Efforts to improve timeliness are ongoing.

- **Finding 15:** MIOSHA's current policy recognizes the need to obtain medical information during VPP evaluations. However, it did not include procedures for obtaining a WAO. (pages 39-40)
- **Recommendation 15:** Continue revision to VPPPPM that will address WAO order procedures. Train staff on procedures and ensure WAOs are obtained.
- **MIOSHA Action:** Revisions have been made to the MVPP Policy and Procedure Manual. All Consultation Education and Training Division staff involved in evaluations will be re-trained on this instruction and its application to MVPP evaluations. Training will occur by the end of June 2011.

- **Finding 16:** In 35% of the MVPP files, it was noted that the MVPP team observed an excessively high number of 90 day items. (pages 39-40)
- **Recommendation 16:** Review with the MVPP Team Leader the need to assess those sites with a high number of 90 day items to ensure that all MVPP principles are in place.
- **MIOSHA Action:** This finding has been reviewed with the MVPP Managers and MVPP Specialist. A new policy has been implemented for companies that receive a large number of hazards during an MVPP evaluation. . Action completed, no further action required.

- **Finding 17:** Approval letters to the unions, as appropriate, were not consistently sent in all cases. (pages 39-40)
- **Recommendation 17:** Provide refresher training to ensure that approval letters are sent to the union as appropriate and a copy is included in the file.

- **MIOSHA Action:** MVPP Managers and staff support staff have been instructed to include the union contact on MVPP approval letters. Since this report, all approval letters have been sent to unions. Action completed, no further action is required.
- **Finding 18:** MIOSHA's staffing levels are below the currently approved benchmarks. MIOSHA has considered recalculation to lower its benchmark levels as part of the SIEP in each of the past three years. (pages 41-42)
- **Recommendation 18:** The State should continue to work with OSHA, regarding benchmarks, and continue to increase staffing levels to the extent feasible.
- **MIOSHA Action:** The current benchmarks were established approximately 20 years ago and the industry mix in Michigan has dramatically changed since that time. Updating benchmarks for the MIOSHA program has been a program priority for the last three fiscal years. Numerous requests have been made for the data; however, there has been no response to these requests. MIOSHA is eager to work with OSHA to review and establish updated staffing levels. MIOSHA is eager to work with OSHA to review and establish updated staffing levels. If data is received, work to recalculate benchmarks will commence immediately and be completed by December 31, 2011.