



CHERIE BERRY
COMMISSIONER OF LABOR

ALLEN MCNEELY
DEPUTY COMMISSIONER/DIRECTOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

September 17, 2010

Cindy Coe, Regional Administrator
US Department of Labor
Occupational Safety and Health Administration
60 Forsyth Street, SW, Room 6T50
Atlanta, Georgia 30303

Dear Ms. Coe:

North Carolina is in full support of regular auditing and monitoring of state administered occupational safety and health programs. It is our belief that appropriate auditing and monitoring can be a valuable tool toward ensuring program effectiveness and continuous program improvement. More importantly, the process can aid the state in achieving established outcome goals relating to making places of employment safe and free of recognized health hazards.

In FY 1998, North Carolina was one of the first states to initiate a performance agreement process with federal OSHA that measured program success in terms of achieving mutually agreed upon outcome goals. In this system, the states are able to develop unique strategies and activity goals that best allow the states to achieve performance based outcome goals. Federal OSHA previously embraced this method of outcome based monitoring because it was results oriented and consistent with the intent of the Government Performance and Results Act that was signed into law by Congress in 1993. The initial performance agreements have become the current five year strategic plans. Even with the successes that the states have had with the strategic plans, the current federal administration seems to be more interested in how we do things rather than with program results. However, North Carolina feels that the only valid evaluation of "at least as effective" as status must be based on results oriented goals and not on each state aspiring to be a carbon copy of the federal OSHA program.

The state's 2009 SOAR report that is part of the EFAME, describes the North Carolina method of conducting safety and health activity based on the needs of workers in our state. It also includes outcome results for the state that reflect yearly reductions in injury and illness rates and a reduction in fatalities. North Carolina activity, including numbers of inspections, is also consistently a leader across the country including federal OSHA states. The state's FY 2009 State and Federal Comparisons of Program Statistics documents the state's strong performance compared to federal OSHA activity.

Cindy Coe
US Department of Labor
Page Two

With the documented North Carolina program success and the acknowledgement in the 2009 EFAME that "North Carolina has made significant progress toward the accomplishment of each of its established goals," the state is surprised by a monitoring process that puts so much emphasis on the requirement that state policies and procedures be identical to federal OSHA's. This approach seems to defeat the purpose of the state plan concept envisioned by the OSH Act. This regressive monitoring approach that values activity over outcome and sameness over innovation had been abandoned years ago by previous administrations. The current monitoring approach is not substantially beneficial to the states, federal OSHA, or the citizens that we serve.

The executive summary of the federal OSHA EFAME includes few comments about the overall quality of the state program as documented in the report but rather chooses to place emphasis on the few program areas where OSHA has determined improvements should be made. There is also no attempt to place the so-called problems in the context of overall successful program activity. This is extremely important because many people who pick up the EFAME will not get past the executive summary in determining the EFAME results. The tone and content of the current evaluation are also not consistent with the positive comments and few, if any, recommendations in previous years' audits.

Finally, the audit report did not address federal OSHA's stated primary purpose of the audit process, which is to determine whether a state program is operating at least as effectively as the federal program. We are not sure why no such "at least as effective" determination was made by OSHA; however, North Carolina feels a valid determination cannot be made of any State Plan program without a legitimate definition of "at least as effective." In order to utilize OSHA as the "benchmark" for an effective occupational safety and health program that other programs would be measured against, it would require an independent comprehensive audit of OSHA's program effectiveness in all areas. Following such a baseline audit of OSHA to establish a valid benchmark, there would need to be continuing monitoring of its program on a routine basis to ensure baseline effectiveness is being maintained in all those areas that would be used for comparison against any other program.

Notwithstanding North Carolina's stated concerns with the current monitoring process and 2009 EFAME report, the state will respond appropriately to items in the report. In most cases responses have already been made to recommendations included in a preliminary draft of the EFAME received by the state. This does not include items added to the EFAME after the report was submitted to the National Office that the state has only recently been made aware of.

Cindy Coe
US Department of Labor
Page Three

Our approach over the years has been to use the monitoring process to improve state program activity when suggestions add value, and we will once again utilize that approach in response to the FY 2009 EFAME. Our working relationship with the federal OSHA Regional Office is based on striving for program improvement. A review of state performance will confirm that progress toward our goals is being met and that North Carolina operates one of the best OSHA programs in the nation (state or federal). There are different ways to reach the desired results. Only with strategic planning, measuring outcomes and holding ourselves accountable can we ensure success in providing the best possible protection to North Carolina's workers.

Sincerely,
/signed/

Allen McNeely

cc: Steven F. Witt
Barbara Bryant
Suzanne Street