



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

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COMMISSIONER

September 20, 2010

Cindy A. Coe
Regional Administrator
U. S. Department of Labor
Occupational Safety and Health Administration
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303

Dear Ms. Coe:

Thank you for the opportunity to respond to the recommendations offered in the 2009 enhanced Federal Annual Monitoring Evaluation. Our TN OSHA staff is committed to maintaining an effective and efficient program and will consider how best to implement these recommendations. Our staff may seek guidance from your office on how best to execute the two recommendations concerning self-audits.

The evaluation was conducted in an open and cooperative environment. The enhanced FAME did not identify major issues and, when taken as a whole, validates the effectiveness of the TN OSHA program.

In response to the recommendations, TN OSHA offers the following responses:

***Recommendation 1:** In accordance with the state's Field Operations Manual, all field notes, diagrams, photos, and any other documentation obtained or produced during inspections should be included in the case file.*

Response: All pertinent information, including photographs required to substantiate violations, are transferred from field notes to the 1-B citation form. Field notes will be included if the TN OSHA attorney determines it is in the best interest (legally) to include them in the case file.

***Recommendation 2:** Tennessee's case file should include a diary to document: significant actions; communication between management and the CSHO; communication between TOSHA and the employer.*

Response: TN OSHA has developed a standard case file diary to be used in all case files. This recommendation has been implemented.

Recommendation 3: Management should evaluate complaints including formal complaints to determine when an investigation would be more appropriate to allow a more effective use of their resources.

Response: TN OSHA previously interpreted the Field Operations Manual to require inspections of valid formal complaints. This recommendation has been implemented to allow some valid formal complaints to be investigated by the phone/fax procedure as documented in the Field Operations Manual.

Recommendation 4: At the conclusion of a fatality investigation the state should send the next-of-kin a letter and a copy of any citation(s) issued, or a letter advising them that no violations were found. The next-of-kin should be informed of informal conferences and hearings, as well as any changes in the citations as a result of a settlement or hearing. A copy of the letter should be maintained in the file.

Response: TN OSHA currently sends a letter to the next-of-kin at the beginning of the inspection providing the family with contact information. TN OSHA has always taken communication with family members of fatality victims seriously and always communicates openly and honestly when requested. Communication with victims' families is important and this recommendation will be implemented.

Recommendation 5: Tennessee should assure that each case file includes documentation of the company's injury and illness experiences and that the data is entered into the IMIS.

Response: The enhanced FAME documents OSHA 300 logs were reviewed by the compliance officer during the inspection, however, a copy of the logs were not always included in the case file. The number or percentage of files that did not include the OSHA 300 logs is not given. All compliance officers, supervisors, and managers have been instructed to include copies of the OSHA 300 logs in all case files and enter the data into the IMIS system.

Recommendation 6: Tennessee should assure that each violation is documented accurately for severity and probability and reviewed for proper classification.

Response: All violations are reviewed by the area office supervisor, section manager, and the TN OSHA Administrator, for proper classification. Proper classification of alleged violations is an issue TN OSHA takes seriously and will implement this recommendation.

Recommendation 7: Tennessee should require compliance officers to establish and document specific knowledge to support violations.

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Response: TN OSHA has not experienced difficulty in defending citations based on the documentation of employer knowledge. Supervisors will reiterate the importance of documenting actual employer knowledge when such knowledge exists.

Recommendation 8: TOSHA should develop and effectively implement an internal self-evaluation program to assess the overall performance of the VP Program and ensure that proper controls are in place.

Response: Since the inception of the program TN OSHA has always held the admission standard to the VPP Volunteer Star program at a very high level. All reports and supporting documentation are reviewed, independently, by the Administrator and Assistant Administrator, to assure a thorough evaluation was conducted. The federal corporate pilot was never adopted by TN OSHA and each site is evaluated completely and independently. Each evaluation team is headed by the VPP manager and is composed of highly-qualified compliance officers, selected by matching their expertise with anticipated hazards at the work site. Special government employees have been used on a limited basis. The VPP manager reviews each annual self-evaluation, including the injury and illness rates, to assure the site continues to maintain the program. No participant in the Volunteer Star program has experienced an increase in injury and illness rates that exceeded their industry average and most all are well below the industry average. The VPP manager meets with the Administrator periodically to discuss the status of the program. TN OSHA believes current oversight of the program is adequate; however, TN OSHA will seek guidance from the local and regional office on how to best implement this recommendation.

Recommendation 9: Tennessee should develop and implement a formal internal self-evaluation program. The procedure should assure that internal evaluations possess integrity and independence. The resulting report from these evaluations should be made available to federal OSHA.

Response: A formal self-audit program will be developed and implemented to augment and validate current management practices and controls.

Thank you and your staff for the professional and open manner in which the evaluation was conducted.

Sincerely,
/signed/

James G. Neeley

JGN:sbm

cc: Bill Cochran, Area Director, Nashville