



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
OCCUPATIONAL SAFETY AND HEALTH
220 FRENCH LANDING DRIVE
NASHVILLE, TENNESSEE 37243-1002
(615) 741-2793

October 28, 2010

Ms. Cindy Coe
Region IV Administrator
Occupational Safety and Health Administration
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303

Dear Ms. Coe:

This letter contains our corrective action plan for the nine recommendations that were contained in the Enhanced Federal Annual Monitoring and Evaluation (EFAME) report that was issued last month. We have implemented several changes due to these recommendations and we appreciate the guidance of your staff during this process. I want to thank you and your staff on the professionalism and courtesy shown during the evaluation process. This cooperative spirit shown by all of you has made it possible for TOSHA to continue our mission of a safer and healthy workplace for all Tennesseans.

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.

The Tennessee OSHA Field Operations Manual states in Chapter 5, under XII, A. 2, *Original field notes, if retained by the CSHO, are part of the inspection record and shall be maintained in the file.* The TOSHA attorney has instructed all field personnel to either destroy their field notes or include them as part of the official file. This issue has never been challenged by any company that we are aware of. No contested case has ever been lost before the TOSHA Review Commission because of this issue.

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 was implemented on July 16, 2010. TN OSHA has had, for many years, an activity log included in its case file.

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 was implemented on February 15, 2010 at the conclusion of the onsite eFAME to allow some valid formal complaints to be investigated by the phone/fax procedure as documented in the Field Operations Manual. TN OSHA has instructed all supervisors to thoroughly evaluate all complaints to utilize the resources that we have.

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 has always sent 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. TN OSHA implemented this recommendation on October 1, 2010 by adopting the letters recommended by OSHA and will send these the next-of-kin letters at the appropriate times.

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. Every current case file now contains copies of the OSHA 300 logs where required unless citations are being issued for failure to keep the logs. This recommendation was implemented on February 15, 2010, at the conclusion of the eFame onsite.

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. TN OSHA will continue to insure that all violations are properly classified and documented according to the guidelines contained in its Field Operations Manual. The recommendation was implemented on Sept. 15, 2010, following receipt of the eFAME report.

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

Response: TN OSHA has not experienced difficulty in defending citations based on the documentation of employer knowledge. A staff meeting was held with all compliance managers, immediately following the conclusion of the onsite eFAME visit to assure supervisors 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 Administrator periodically to discuss the status of the program. TN OSHA believes current over-site of the program is adequate.

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: TN OSHA will establish audit teams consisting of supervisors and managers and will audit two field offices per fiscal year. Each field office will be audited every three years. The Administrator will assure these audits covers all pertinent areas. On-going evaluations will continue to be conducted by managers and supervisors as they review the case files and other documents as part of their job duties. This recommendation will be implemented during the current federal fiscal year.

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I will once again thank you for the open communication that was shown by your staff during this process. TOSHA will continue to work with you and your leadership to provide a program that we all can take pride in. Please feel free to contact me or my staff for any additional information that may be needed.

Sincerely,

/signed/

John Winkler
Administrator

JW/ft