



THE STATE OF WYOMING

DAVE FREUDENTHAL
GOVERNOR

DEPARTMENT OF EMPLOYMENT

WORKERS' SAFETY - OSHA

Cheyenne Business Center, 1510 East Pershing Blvd., Cheyenne WY 82002
(307) 777-7786 Fax: (307) 777-3646

October 28, 2010

Gregory J. Baxter
Regional Administrator, VIII
OSHA
1999 Broadway, Ste. 1690
Denver, CO 80202

Dear Mr. Baxter:

Enclosed you will find Wyoming OSHA's response to the findings and recommendation of the Wyoming FY 2009 EFAME report. As previously stated, there are some instances and information in the Wyoming FY 09 EFAME report that supports Wyoming Workers' Safety out performs the Federal OSHA inspection process in several aspects despite the limited funding provided by Federal OSHA.

It is always Wyoming Workers' Safety's intention to provide the most effective compliance program for employees working in Wyoming and welcome any helpful constructive analysis to achieve this goal. We are committed to implementing the recommendations to the extent plausible. We look forward to working together in the coming months to achieve our common goals. If you have any question, please call.

Sincerely,

J.D. Danni
OSHA Program Manager
Wyoming Workers' Safety & Compensation

Enclosure



Wyoming OSHA Response to the E-FAME

General Case File Information

Recommendation #1. Use a diary sheet in each case file to provide a historical record of all activities done during the life of the file as stipulated in the FOM, Chapter 5, Section X. This would eliminate the need for multiple checklists. It is suggested the State consider using a consistent order with tabs, as well as color coding, for fatalities, safety and health files, and ensure there are no loose papers in the file.

Wyoming OSHA does have and use a diary sheet called a “casefile summary sheet”. It is used to document important events or actions relating to the casefile. We will ensure it is in all casefiles when appropriate. All inspectors were briefed on this issue.

Recommendation #2. Employee exposure information, employer knowledge and employee interviews need to be documented and included in every case file.

Wyoming OSHA saw the issue relating to our documentation last year and have instituted documentation criteria over the last year that will ensure this documentation is included relating to employer knowledge and employee interviews are available in the case files. The case file narrative is now in a template format which includes and addresses employer knowledge, employee exposure, and an employee interview form is being formalized which will be included in the casefile.

Recommendation #3. Follow the guidelines in Chapter 6, Section III (A)(1) of the FOM when assessing severity.

Wyoming OSHA does follow the guideline in Chapter 6, Section III (A)(1) and welcomes being provided examples of where we did not, so that we can recognize areas for improvement. **We would like the audit sheets or written notes relating to this issue so that we can determine why you feel the severity was inappropriately used and what additional criteria Federal OSHA officers follow for determining a lower severity because the FOM does not give examples similar to the Probability section.**

Recommendation #4. Include information that specifically identifies the location, identity and an actual description of the hazard in the AVD. This information assists the employer at effectively abating the hazard.

In Wyoming we work very closely with the employer to ensure they understand what needs to be abated during the inspection and through follow-up phone calls. When asked, we provide a copy of the photo taken relating to the issue to assist with abatement concerns. Wyoming OSHA will improve in this area to document the location and actual description of the hazard in the AVD.

Recommendation #5. Collect the OSHA 300 for the last three years, insert it in the case file and enter the information into the database.

Since the new FOM, we have been collecting the three years of data and entering it into the NCR.

Recommendation #6. Follow the FOM, Chapter 5, Sections B(5) and B(11) as well as Section C (2)(g) for requirements of contact information.

Wyoming OSHA collects contact information for each person interviewed relating to fatal accidents and catastrophes which is documented in the casefile. A form has been developed to seek personal information from employees during routine inspections. This document will be included in the casefile. Entering this information into the NCR is redundant.

Un-programmed Activity

Recommendation #7. Wyoming employees who file complaints need to be notified about the results of the complaint within 20 days of issuing the citations 100% of the time. (SAMM Indicator 3).

Wyoming OSHA has adjusted to this issue and the compliance supervisor makes a concerted effort to review and approve the case file narrative for release to the complainant after the certified mail receipt is returned to our office that shows the citations were delivered to the employer.

Recommendation #8. Document in the case file the reasons for administratively closing the case.

Based on the information provided so far we are not sure this is an issue. We do make a concerted effort to document why we are administratively closing a case file. **We would like the audit sheets and or notes relating to this issue so that we can determine how you came to this conclusion and make changes to our process if needed.**

Recommendation #9. Using the complaint received date on the “Complaint Query Report along with the date of the original letter “D” from their case file, the State should calculate the SAMM 2 “Response Time to Initiate Complaint Investigations.”

As discussed in this report, Wyoming OSHA has adjusted to this issue and are using the proper fields and codes in the NCR now.

Recommendation #10. Create a local policy or emphasis program with a written policy for addressing the amputation referrals from Worker Compensation. The criteria for this policy should be “at least as effective as” the federal national emphasis program and should include guidelines for tracking in the IMIS database. That policy should include a process to assess and document the severity of the hazard.

Wyoming OSHA receives information directly from the Claims Analysts as they become aware of accidents involving amputations with lost time. We also reconcile the information in

the claims system by running a monthly report to ensure we have not missed any such accidents. The information collected as a result of these accidents are handled as referrals. The COSH collects information from the Claims Analysts to assess the severity and circumstances of the amputation. The Compliance Supervisor then reviews each event and makes a determination as to whether an inspection or inquiry is to be done. If an inspection is to be done it is scheduled to be done within in 16 calendar days and an inquiry is handled within 1 day. Wyoming OSHA has a very active amputation targeting tool and has inspected a number of the accidents over the pervious year.

Recommendation #11. The State must take follow up action to secure appropriate abatement for three inquiries involving amputations. The Region will identify the inquiries in question.

Wyoming OSHA has reviewed the three amputations referral inquires and has found more than adequate acceptable abatement documentation.

Recommendation #12. Follow the FOM, Chapter 9, Section I, for Inquiries and assign a five day maximum abatement period to each employer. An extension can be granted if necessary.

Wyoming OSHA is following the FOM on this issue as much as possible. Wyoming recently changed their abatement process whereby the inspector makes one call as a reminder to secure abatement. If abatement is not received within the next five day period, an inspection is scheduled if practical.

Recommendation #13. The State should assess the productivity of doing 10th Letter Inspections. If the violations being periodically found are not related to the violations identified in the inquiry, the program should be considered for cancellation.

This is a deterrent program to support inquiry activity, and provides us with a reason to visit an employer at a later date. In the future we will review EMR and lost run data before making a decision to inspect. If the company has a negative EMR and there is no reason to suspect inadequate reporting we will not inspect. Wyoming OSHA still feels this is an important program and will continue with this program.

Fatalities

Recommendation #14. Ensure a written process is in place to protect personally identifiable information.

Wyoming OSHA will develop a written process when resources allow. Administrative support has been briefed and understands that in the mean time no case file information is released until the Compliance Supervisor has reviewed the information and given approval for release. No personal information is released unless we are in the discovery process associated with a contested case or court order.

Targeting/ Programmed Inspections

Recommendation #15. It is recommended that compliance officers be required to review the worker compensation data prior to visiting a targeted company to better ensure the inspection is focused into areas where the accidents are occurring.

Compliance officers do review the workers compensation data prior to visiting the targeted company and during the inspection they educate the employer on their injuries. Training has been conducted on this issue and the Compliance officers are instructed to document in the casefile the hazards associated with this data (loss run).

Recommendation #16. Wyoming historically conducts significantly less health inspections than the national average. Proactively train safety CSHOs to identify and refer health related construction and oil and gas hazards to the Wyoming health staff.

Wyoming OSHA only has two Compliance Health Officers when fully staffed. This office had a reduced health officer staff over the period assessed and is going to experience it again with the senior health person moving to consultation, leaving compliance with a vacancy that will need to be filled by the end of CY 2010. Also a PSM audit (one of the two Health Officers is the Team Leader) has been started this year resulting in a decrease in health inspections. Safety Officers have been trained and instructed to make health compliance referrals when needed. The health inspection numbers will increase when fully staffed and training has been completed on new hires.

Recommendation #17. Since there were no inspections in two of the local emphasis areas, reassess these targeted areas for effectiveness. If the data supports continued targeting, resources should be redirected to these high hazard industries.

Wyoming OSHA has revised its local emphasis programs and identified new targeted inspection systems. These results will be impacted by the requirements of participating in National Emphasis Programs (NEP) mandated by Federal OSHA.

Recommendations #18. Document the current local emphasis programs, specifying criteria and procedures to be followed.

We will develop documents for current local emphasis programs as resources allow.

Employer and Union Involvement

Recommendations #19. Conduct employee interviews during inspections as dictated in Chapter 5, Section VII, A. of the FOM, "Interview statement of employees and other individuals shall be obtained to adequately document a potential violation."

This recommendation is very similar to Recommendation # 2 and seems redundant. This item has been address and corrected in Recommendation #2.

Recommendation #20. Follow Chapter 5 of the FOM in regard to employee interviews during inspections. The form 1A should be filled out completely before submission to the host.

See recommendation #2. Wyoming OSHA has been developing a formalized interview form and will be included in the casefile. All compliance officers have been instructed and trained on this issue.

Recommendations #21. Follow Chapter 3, Section D of the FOM which dictates the involvement of the union in all phases of the inspection process.

Wyoming OSHA has always requested union involvement and does offer the union involvement in both the opening, walkaround, and closing. The short coming was only that the union involvement was not always documented in the casefile. These issues have been reiterate and instructed to the compliance officers.

Citations and Penalties

Recommendation #22. Completely fill in both pages of the OSHA 1B form for all violations. This form documents the conditions that support each violation. Follow the directions for grouping in Chapter 4, Section X, B of the FOM.

This recommendation is very similar to Recommendation # 2 and seems redundant. This item has been address and corrected in Recommendation #2. Wyoming OSHA still does not understand the recommendation on grouping violations. The examples provided did not justify the recommendation.

Abatement

Recommendation #23. Code abatement observed and verified on-site by CSHOs in the IMIS with an "P". There is no need to enter the number of days for abatement as abatement has been verified. For CSHO Observed Abatement, follow the guidelines outlined in Chapter 7, Section VI, D, of the FOM.

This issue has been addressed already and you should find that to be the case in future audits.

Recommendation #24. Ensure abatement periods reflect the gravity of the violation. If a violation is abated and observed by the CSHO onsite, no abatement date is necessary, but a notation should be made on the citation stating "Corrected during Inspection."

Wyoming OSHA has begun to address abatement issues more specifically with the employer during the inspection and closing conferences. We have started documenting what is planned to be done and when in the case file narrative. Consequently the abatement periods will be shorter.

Recommendation #25. Follow 29 CFR 1903.19 and/or Chapter 7, Section V and VI of the federal FOM for abatement certification. Ensure there is abatement certification for all violations and include that information in case files.

As stated in the report, Wyoming OSHA provides a document called “Wyoming OSHA Citation Instruction Booklet For Employers – A Step by Step Guide” with all citation packages that are sent to an employer. This document provides specific instructions relating to what types of abatement documentation is needed from the employer. If the employer has provided the necessary documentation/certification to show the hazard has been abated (i.e. photos, training documentation, written verification, etc.), we do not require the employer to fill out the Abatement Certification form. This process meets the intent of abatement certification and Wyoming OSHA will endeavor to ensure all hazards have some sort of abatement verification as always.

Recommendation #26. The State needs to be more aggressive at collecting and tracking abatement. Abatement extensions need to be documented and must follow the guidelines of Chapter 7, Section V, C, of the FOM.

Collection abatement – Wyoming OSHA has responded to this issue and has taken steps to ensure abatement follow up occurs in a timely manner. The inspector who conducted the inspection gets the file back when the 15 day contest period ends if abatement is needed. The inspector calls the employer to remind them that abatement is needed and follows up with a certified letter. The employer is given 10 days to provide the requested information.

Abatement extensions – During our phone conversation with the employer, we establish a new abatement date or an understanding that they wish to contest the citation. If they intend to abate we enter the extension date into the NCR and make a note on the case file summary sheet relating to the abatement matter.

If the employer does not comply, a follow-up inspection is scheduled if practical.

Recommendation #27. Initiate a follow-up inspection protocol for those employers who do not submit timely abatement.

If the employer does not respond to our reminder call and letter, a follow-up inspection is scheduled if practical.

Penalty Reduction Programs

Recommendation #28. Document the criteria of the 75/25 program and insert it into the State Internal Evaluation Program.

Wyoming OSHA still intends to offer this program when appropriate and will document the criteria as resources allow.

Recommendation #29. Change the parameters of the 75/25 program so that an employer is not able to participate multiple times. An employer should be completely out of the program before being considered for entry. Add criteria to the program to address repeat and regular participants.

Wyoming OSHA is currently reviewing this program and will take appropriate steps once these reviews are completed.

On-Site Abatement

Recommendation #30. If Quick Fix is used, follow the guidelines described in Chapter 6, Section IV of the FOM.

As stated in the report, Wyoming never applied the Quick-Fix guidelines to the initial proposed penalty in the NCR. The reduction to the penalty was initiated at the informal conference for good faith efforts for abating the hazard quickly. If and when Wyoming OSHA adopts the new increase penalty policy, this Quick Fix guideline will be followed.

Recommendation #31. If the State chooses to use an alternate penalty reduction program for onsite abatement to continue their practice of encouraging prompt abatement, the State should write a complete program which includes: the criteria of the program, the penalty structure, how the program will be tracked, and how the program will be coded in the database. This penalty reduction program will need to be as effective as the guidelines in Chapter 6, Section IV of the federal FOM, "Effect of Penalties if the Employer Immediately Corrects." Discontinue the State's current onsite abatement program until concurrence is reached with the Regional Office.

There is no alternate penalty reduction program to discontinue because the reduction was applied at the informal conference. See Recommendation #30.

Review Procedures

Recommendation #32. The State should follow Chapter 7, Section I of the ROPP in reference to notice of contest. This process gives employers the right to appeal the final order.

Chapter 7, Section I of the ROPP deals with when a complaint of discrimination should be considered for investigation. Wyoming OSHA assumes the recommendation relates to Chapter 6, Section 2 through 4, in which Wyoming OSHA will encourage the employer to submit written notice to contest within the 15 working days.

Recommendation #33. Adopt a format to be used for note taking during settlements that includes: why the case is being settled, why citations are being reclassified, why penalties are being reduced and why items are being grouped. It is suggested, the notes should also

indicate if the settlement is informal or formal and whether the meeting was face-to-face or by phone.

Wyoming OSHA has already begun to improve on this issue. Documentation during the informal conference will be improved on by the Compliance Supervisor taking the time to better document the conferences.

Recommendation #34. Review the State policy for post-contest informal settlements. Contact the State SOL and Hearing Officer to determine if timelines exist and who has ownership of the case after contest.

Wyoming OSHA operates under the belief of the employer's good faith. Once there is a lack of good faith from the employer, Wyoming OSHA will start the process for a contest hearing.

Recommendation #35. In order to maintain a deterrent effect, discontinue the use of multiple penalty reduction programs for settlement of a case, or create written criteria to address the problem of large penalty reductions using the average federal penalty reduction percentage as guidance.

Wyoming OSHA began to minimize multiple penalty reduction to no more than 50% of the original proposed penalty about a year ago.

Public Employer Programs

Recommendation #36. Increase programmed inspection activity in the public sector by devising an appropriate emphasis program.

For FY2011, Wyoming OSHA has developed a local emphasis program for employers in the public sector with a positive EMR.

Tracking Systems & Information Management

Recommendation #37. The State needs to revise their abatement tracking process and place an emphasis on prompt abatement and abatement verification. The abatement tracking report should be run and checked weekly.

Abatement verification – The inspector who conducted the inspection gets the case file back when the 15 day contest period ends if abatement is needed and no contest was requested. The inspector calls the employer to remind them that abatement is needed and follows up with a certified letter. The employer is given 10 days to provide the requested information.

Abatement tracking report – The report is being run weekly and given to the inspector as a reminder for what cases still need abatement information.

Recommendation #38. The State will coordinate with the Region to set up an onsite visit with a data entry person supplied by the Region to educate the staff and resolve entry issues in preparation for the new data system.

Wyoming OSHA is always interested in providing its staff any helpful training and guidance to the data entry system. Please let us know when your trainer is available to travel and present their training.

Bureau of Labor Statistics Rates

Recommendation #39. Based on the number of inspections in these areas, continue focusing resources in the emphasis areas of residential construction and nursing and personal care facilities. Increase the focus in the areas of trucking and warehousing and lumber and wood products, paying extra attention to worker compensation information and OSHA 300 logs to focus attention into the areas where the accidents are occurring.

Wyoming OSHA has and always will strive to improve on using the workers compensation data to help target employers where accidents are occurring.

Stakeholder Interviews

Recommendation #40. Find ways to market the Wyoming State Plan Program to employees. This outreach should include how to file a complaint with OSHA in the event of unsafe working conditions.

Wyoming OSHA feels this recommendation is not valid. Over the last five years, Wyoming OSHA has had a safety awareness campaign including a annual safety and health conference, increased training in all areas of Wyoming's industries (oil & gas, construction, general industry), very active in the Governor's Fatality Taskforce, and has developed an alliance with the Oil & Gas Industry called WOGISA (Wyoming Oil and Gas Industry Safety Alliance).

Standards Adoption

Recommendation #41. The Region recommends the State of Wyoming allow WSCD to "adopt standards by reference" in order to meet the adoption timelines stipulated in the State Plan agreement.

Wyoming OSHA will revisit this issue with Attorney Generals office.

Discrimination Program

Recommendation #42. Conduct increased employee interviews in each case in order to support the determination.

Wyoming OSHA does interview as many persons/employees that we deem necessary to determine the merit of the case and would like more specific examples and reasons for increased employee interviews from the casefiles that were reviewed.

Recommendation #43. Address “disparate treatment” in all cases.

Please provide specific example of where we did not address disparate treatment.

Recommendation #44. Input all post agency settlement actions into the Whistleblower database. The State was instructed on how to enter the post agency settlement actions by the Whistleblower investigator during the review.

Wyoming OSHA will ensure that the Compliance Supervisor and Administrative Support staff enters the post agency settlement actions into the Whistleblower data base.

Recommendation #45. Use an adequate tracking system to insure cases are assigned in a timely manner.

Please provide a more specific example of this recommendation.

Voluntary Compliance Programs

Recommendation #46. Adopt an assurances template consistent with the assurances in the VPP Policies and Procedures Manual.

Wyoming OSHA feels that our assurance template is meeting all of the program requirements for application to CVPP. A more detail examples of what is missing would be helpful in identifying this recommendation and provide to us Federal OSHA’s electronic application format so that it can be reviewed to meet the VPP Directive.

Recommendation #47. Follow the document maintenance requirements of the VPP Directive in that all applications and assurances materials must be maintained by the State. To accomplish this, it is suggested that the State should consider reducing their VPP materials into electronic format to save space and provide easy storage

Wyoming OSHA will follow and maintain all application and assurance material required in the VPP Directive for maintenance of participants files. The materials will be stored in archives.

Recommendation #48. Align the Wyoming CVPP with the federal VPP application requirements. In many cases, not all applications contain the necessary information to justify acceptance.

Wyoming OSHA will follow Procedures for Receipt and Review of Applications in the VPP Directive.

Recommendation #49. Review applications prior to the site visit in order to provide enough time to conduct a thorough review of the application details.

Wyoming OSHA does provide ample time to conduct a thorough review of the application details before doing an on-site review.

Recommendation #50. Record the application acceptance date in order to more effectively track that onsite audits are scheduled within six months of the acceptance date. It is suggested this information is added to the History Status report.

Wyoming OSHA will add an "Application Acceptance Date" column to our History Status report to justify the problem with an employer's application between the applications received date and the acceptance date due to problems with the initial application. This will correct the out-liar for not being onsite within 6 months.

Recommendation #51. Re-evaluations need to be scheduled inside the designated time frames as stipulated by the VPP Policies and Procedures manual.

See Recommendation #50.

Recommendation #52. Use the Supplement C report to provide a standardized documentation of the PSM program evaluation.

Wyoming OSHA will use Supplement B for employers that have a PSM program for their annual self-evaluation.

Recommendation #53. Create a database to indicate who conducted and assisted on each VPP. This will assist at tracking the criteria for back-up and team leader.

Wyoming OSHA will create a database to indicate who has conducted and assisted on each VPP audits.

Recommendation #54. Adopt the use of the standardized VPP report template and forms. The use of the Form -33 is inappropriate for VPP audits.

Wyoming OSHA will use the standardized VPP report template format.

Recommendation #55. Ensure all action items are complete before a site is approved as a CVPP participant. Limit timelines for outstanding items to 90 days.

Wyoming OSHA will ensure all action items are completed before a site is approved as a CVPP participant.

Recommendation #56. Maintain CVPP reports and action items separately. Ensure annual self evaluation reports from CVPP sites are complete before being accepted by the State.

Wyoming OSHA will maintain a public file on all approved participants in accordance with the VPP Directive.

Program Administration

Recommendation #57. Expand the use of a “check for competency” as used in the health section to the rest of the initial training program.

Wyoming OSHA does not agree with this recommendation in that the findings are contradictory to this recommendation. In the report on page 8, it is stated that “No problems were noted with the competency of the inspectors’ field work. Inspectors exhibited good hazard recognition and appeared to be technically competent. A wide range of hazards were effectively recognized and cited in the case files. For the most part, the correct standards were cited and the initial penalties were calculated correctly 100% of the time.” Also on page 34, it states “The on-site review did not reveal any problems with the technical expertise of the compliance staff.”

Recommendation #58. Expand data entry instruction to the Wyoming initial training and conduct periodic training to address data entry problems.

Wyoming OSHA will enhance training through classroom instruction for data entry into the NCR and into the new OIS system when it is deployed in February 2011.

Recommendation #59. Include clarification of procedures identified as problematic during the audit into the State’s bi-annual training meetings.

Wyoming OSHA has always and will continue to share any helpful and positive constructive recommendations with its staff to ensure they are following the proper procedures according to their job duties.

State Internal Evaluation Program

Recommendation #60. References should be made between the ROPP and the FOM to clarify what procedures are being followed for the Wyoming state plan staff.

Wyoming OSHA is currently reviewing this program and will take appropriate steps once these reviews are completed.

Recommendation #61. As part of the SIEP, processes and procedures need to be in writing.

Wyoming OSHA is in the process of developing a SIEP and will submit the written procedure to the Region when completed.

Recommendation #62. Document and evaluate a minimum of one internal process each year.

Wyoming OSHA will ensure one internal process is evaluated each year in the SIEP.