



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
OCCUPATIONAL SAFETY AND HEALTH DIVISION
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July 10, 2020

Mr. Kurt Petermeyer, Regional Administrator
United States Department of Labor
Occupational Safety and Health Administration
61 Forsyth Street Southwest, Room 6T50
Atlanta, Georgia 30303

Re: Tennessee OSHA Response to the FY 2019 Federal Annual Monitoring and Evaluation (FAME) Report

Dear Mr. Petermeyer:

Our office has received the results of the FY 2019 Comprehensive Federal Annual Monitoring and Evaluation (FAME) report your staff conducted of our program. The report contained one finding; therefore a Corrective Action Plan (CAP) is required.

Tennessee OSHA would like to take this opportunity to thank you and your staff for the courtesy and professionalism extended to our staff while on-site. We look forward to continuing to work with Region 4 staff to improve the effectiveness of our program and our mutual goal of eliminating safety and health hazards from the workplace.

Notwithstanding, we value the opportunity to post a formal response and to provide comment on the following finding that we believe is not warranted:

The state and local government consultation case files did not contain all the required information as outlined in the Consultation Policies and Procedures Manual (CPPM).

The files that were reviewed as part of the FY 2019 FAME report were Public Sector (PS) consultation files. TOSHA has a unique Public Sector program that covers state agencies, city/county governments, public utilities, and school systems. Each entity has a safety and health plan that is filed with TOSHA upon entering the PS program. The program requires compliance with all TOSHA regulations; as such, each plan requires a safety and health officer for enforcement. In addition, there is a provision that TOSHA monitor each PS plan every two years (i.e. TOSHA inspects every entity's plan every two years). Additionally, the program's directors (mayors, county executives, etc.) and safety officers develop a professional working relationship with the TOSHA compliance officers and routinely contact them for information and guidance. Due to the frequent onsite monitoring inspections, TOSHA's PS request for consultative type visits is very minimal; there were only two during FY19. Because of this relationship, we believe it is in the best interest of the employer to have the PS compliance officers make those

consultative visits.

Furthermore, in 2011, your office conducted a FAME audit that addressed consultation visits conducted in the Public Sector section. During that FAME audit, the only issue discussed was lack of documentation for abatement on hazards found during the consultative visits, which is now included. There was no discussion on the contents of the casefile as far as not having the required information as outlined in the CPPM. There have been no changes in the way TOSHA has addressed PS consultation visits from 2011 to the present.

Moreover, the 2015 CPPM states the following:

Chapter 1 – Introduction II. Scope. This instruction applies to Consultation Programs funded under Section 21(d) of the Occupational Safety and Health Act of 1970 (OSH Act). Although private sector Consultation Programs funded under Section 23(g) grants are not subject to the specific policies and procedures documented here, they must operate programs that are at least as effective as the Consultation Programs funded under Section 21(d) of the OSH Act.

It is TOSHA's position that the CPPM does not apply to the PS Consultation visits. TOSHA does not have a 23(g) Consultation Program; however, if doing consultation visits in the PS section constitutes as having a 23(g) Consultation Program, then the PS compliance officers consultation visits are "as effective as" and likely, more effective than those that would be conducted by the 21(d) consultants given the relationship that the PS compliance officers develop with the safety officers in each of the PS programs, even with the missing paperwork that was stated in the finding. The files reviewed included documentation of any hazards found, scope of activity, working conditions, comparison of injury rates and evaluation of the safety and health program, but did not use the specific 21(d) Consultation forms.

To this end, TOSHA was not given any information or guidance on the contents of the PS consultation visit reports during the FY 2011 FAME audit that would indicate that the paperwork was not in compliance with the current CPPM manual. Furthermore, there have been several FAME audits between 2011 and the present with no mention of this issue whatsoever. TOSHA stands by its belief that this item should not have been considered a finding in the FY 2019 FAME.

Thank you for the opportunity to provide a formal response to this FY 2019 FAME report. The TOSHA state plan program continues to improve its processes and efforts in protecting the working population of Tennessee from exposure to injuries and illnesses from on-the-job hazards.

If I can be of service to you please do not hesitate to contact me.

Sincerely,

Wendylee K. Fisher
Assistant Commissioner
TOSHA