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Subject: Wyoming OSHA's Statement in Response to the Final FFY 2017 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Regional Administrator Lucero;

This letter is our response to the FFY 2017 Federal Annual Monitoring and Evaluation (FAME) report. Wyoming OSHA requests this letter be posted with the FAME report as our official response.

Our Wyoming OSHA program appreciated the input from your Region VIII Staff and considers audits an important part of managing both state and federally run programs. I appreciate the numerous positive comments contained within the report, as well as Wyoming OSHA's positive working relationship with you and others at the area and regional level. We also appreciate that Region VIII recognizes the impact on the entire system from the high turnover/continuity of Compliance Officers and staff, which has been ongoing for years. This has certainly continued to be a contributing factor associated with any findings and observations.

Wyoming OSHA prides itself on continuous improvement within the organization and truly values constructive input. While I value and respect the findings and recommendations, I believe Wyoming OSHA's staff continues to perform well and is highly effective at ensuring compliance within the state and providing a safe workplace for all covered Wyoming employees.

Our responses to the findings and observations are filed in the Wyoming FFY 2017 Corrective Action Plan (CAP). Wyoming OSHA always recognizes the need for improvement associated with any findings and observations and is committed to correct them whenever possible.



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It should be noted that of the four findings the discrimination finding information was incorrect. The following is information that Wyoming OSHA feels needs to be corrected/addressed:

1. The review team evaluated six investigative case files, three from FFY 2014, two from FFY 2015, and one from FFY 2016, and none from FFY 2017. In addition, the team reviewed 33 administratively closed casefiles not 32, ranging from FFY 2015 thru FFY 2017 not just 2017. Wyoming OSHA does not consider a review of the 39 administratively closed and settled cases a small sample size, and considers this more than adequate to determine if there were trends. Wyoming OSHA feels the auditors should have been able to find trends since this is typically more than the number of other state plan cases reviewed. A finding should not be given merely because the team felt there was potential for trends since there were no significant negative issues identified. Significant effort was made by Wyoming OSHA to have Region VIII reconsider this from a finding to a recommendation to no avail.
2. The following table provides the correct summary of whistleblower complaints for case in FFY 2017 and previous FFYs. We are recommending the following table be used rather than the one in the FAME report because the below table gives a more accurate view of the efforts being made in the program.

Disposition	Totals
Total cases Still Open from previous years	27
Total cases Received in FFY 2017	21
Cases completed in FFY 2017	37
Cases completed timely	30
Overage cases	4
~ Withdrawn	1
~ Dismissed	3
~ Merit	1
~ Settled	2
~ Settled other	-
~ Litigated	1
Administratively Closed	23
Investigator on Staff	1
Managers on Staff	1

3. The review team indicated they found multiple deficiencies in the intake, processing and disposition of whistleblower cases, but earlier indicated they were not able to identify trends relating to information observed which seems to be a contradiction. It is more important to note that there were no significant deficiencies in the process that would have affected the out-come of any of those cases.
4. The review team found some deficiencies in the disposition of whistleblower cases (administrative closed due to lack of cooperation vs leaving a case docketed and a determination being made without complainant cooperation). In 12 of 32 cases files reviewed that were originally docketed and later undocked to facilitate being able to list as administratively closed in IMIS (The decision



to un-docket was made due to perceived limitations of IMIS relating to administratively closing if it was a docketed casefile). Once Region VIII pointed this out the cases were changed back to docketed cases and a determination was made. Which all led to the perception that respondent/complaint notification letters were sent without docketing the case in IMIS, which was not correct. Again, it should be noted that this was not an observation that would have changed the outcome of any of those cases and is not consider significant by Wyoming OSHA. This was a procedure the investigator took to try to eliminate issues in IMIS. Wyoming OSHA has already made the corrections needed to ensure all case files that were to be investigated were docketed. Wyoming OSHA does agree with the observation and thanks Region VIII review team for the feedback.

5. The percentage of Wyoming investigations completed within 90 days (SAMM 14) was 33% in FFY 2016 and 28% in FFY 2017. SAMM 15 measures the percentage of complaints that were meritorious; the FRL range is from 20% to 30%. Wyoming met the FRL at 20% in FFY 2017. Secondly, it is important to note Wyoming OSHA has no control over whether a case has merit and if there is a number required for merit cases it would appear there is a quota requirement, which Wyoming OSHA will not support. Lastly, SAMM 16 calculates the average number of calendar days to complete an investigation; the FRL of 90 days is fixed for Federal OSHA and all State Plans. In FFY 2017, the Wyoming OSHA took an average of 207 days not 726 days to complete an investigation and this was below the national average for discrimination investigation cases for FFY 2017.
6. Despite the challenges ahead, the Wyoming OSHA will continue to do all it can to keep improving on its 11(c) program with respect to SAMMs 14, 15, and 16. Unfortunately the individual hired in April of 2018 has now taken a new position out-side the OSHA Division. Which again creates a short fall in continuity for the program.

Continued areas of concern from previous FAME reports and this FAME report for Wyoming OSHA:

1. Wyoming continues to provide excess funding to the compliance program and has not been provided funds equivalent to FFY 2013. Wyoming OSHA should be provided the same increases that Federal OSHA has received along with full time employees. My continual concern that has also been a past concern is “How is Wyoming OSHA to provide the same levels of service as Federal OSHA when not resourced/funded and staffed at the same level?”
2. Federal OSHA is designed to pay their employees at competitive wages and offer incentives that are similar to the private sector safety and health professionals, while the funding for state plans continues to not be taken into consideration. Again, the requirements are the same; however, the funding is substantially different. Again, my question is “How is Wyoming OSHA or other State Plans to provide the same outcomes and levels of service as Federal OSHA when not resourced/funded and staffed at the same level?”

Reoccurring Accomplishments:



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1. Wyoming OSHA is and continues to be one of the few State Plans that have Oil & Gas Rules, which provide additional safety measures for Wyoming workers in this industry. The Division continues to work closely with the Wyoming Oil & Gas Industry Safety Alliance (WOGISA) to reduce accidents, injuries and fatalities in this industry along with several other alliances and coalitions within the state.
2. Wyoming OSHA is again one of the few OSHA Programs that continues to have an annual Safety event “Wyoming Safety & Workforce Summit”. This conference has provided and continues to provide Wyoming industries in-depth education on the topics of their concern each year. During 2017 and 2018, there were over 300 participants each year in attendance along with the Governor Matt Mead hosting the award luncheons. This service is open to all private and public sector employers and employees.
3. It should be noted that Governor Matt Mead has and continues to support Wyoming OSHA and the safety in the State Of Wyoming during 2017 and 2018 by declaring a week in June each year as “Workplace Safety Week” and signing a proclamation to continue to build on the foundation of a culture of safety in Wyoming.

Summary that is somewhat repetitive of the previous FFY 2016 FAME:

1. Ultimately, Wyoming OSHA would continue to like to have personnel who are highly trained and have significant experience to address the repeated concerns identified. This has been and continues to be a significant contributing factor to issues identified during these audits. However, due to inadequate funding through the grant process, we have not had that opportunity. There continues to be the key issue regarding the ability to pay staff at levels comparable to Federal OSHA to reduce these insufficient deficiencies.
2. The Department of Workforce Services and Wyoming OSHA efforts continue to provide a significant amount of over-matching funds. The ratio of which continues to be more unbalanced each passing year. As previous stated in past FAME responses, there is a tipping point at which we will have to consider other creative methods and practices to enhance safety and protect workers. I am continuing to ask that Federal OSHA consider funding Wyoming OSHA adequately and equitably.

It is important to understand that Wyoming OSHA will continue to be concentrated on our main goals of; helping employers reduce accidents, injuries, and fatalities. Moreover, we will continue to help employers provide workers with a safe and healthy work environment through enforcement and consultation/compliance assistance. Ultimately, if Wyoming OSHA has a choice between administrative issues over employee health and safety the latter will always take precedent in Wyoming.



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Our management team looks forward to discussions during the upcoming Region VIII, Managers Meeting in August and during the FFY 2019 monitoring cycle regarding the identified observations.

Thank you again for your team's time and efforts during this monitoring cycle and please consider my request for adequate fiscal support.

Respectfully,



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