



MICHAEL R. PENCE, GOVERNOR
Rick J. Ruble, Commissioner

402 West Washington St., Room W195
Indianapolis, IN 46204-2751

Phone: (317) 232-2655
Fax: (317) 233-3790

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Mr. Nick Walters
Regional Administrator
United States Department of Labor
Occupational Safety and Health Administration
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604

Mr. Walters:

This letter serves as a reply to your letter dated February 25, 2014 and the accompanying findings and recommendations resulting from the investigation of CASPA No. 13-30.

Please communicate my appreciation to the federal OSHA staff members who conducted the investigation. I am certain they had other important tasks, but the job needed done . . . and they did it professionally and politely.

Also, thank you for granting a brief extension of time for this reply. The investigation of CASPA No. 13-30 examined Indiana OSHA work processes and files from 2012 and 2013. I did not serve as Commissioner of Labor during most of that time and was not directly involved in the Indiana OSHA operation, so I had to do some research into the operational processes and file management procedures of Indiana OSHA during 2012 and 2013 in order to gather sufficient information to reply.

The officials who conducted the investigation of CASPA No. 13-30 made several valid observations and useful recommendations. Many of the same observations were also made by the new Indiana OSHA management team after they assumed responsibility for the Indiana OSHA program during the months preceding the initiation of the CASPA No. 13-30 investigation.

The investigators made twenty-two (22) recommendations. Those recommendations are conveniently summarized in "Appendix C," attached to your letter. For the sake of brevity, I

will not address each and every individual recommendation here. Suffice to say that Indiana OSHA acknowledges the recommendations and either has already taken appropriate action, or is in the process of taking action to implement those recommendations. I will address a few of the observations or recommendations that merit further attention or explanation.

Regarding Recommendation 1, the Complaint Intake Clerk (“Duty Officer”) has been assigned a CSHO Identification number, been enrolled to attend OSHA 10-Hour General Industry and Construction training, and is receiving continuing training on complaint processing.

During the period of time under review, Indiana OSHA’s SAMM 1 measure (*the average number of days to initiate complaint inspections*) was found to be approximately 38.18 days at the end of Fiscal Year (FY) 2013 and is addressed in Recommendation 3. Indiana OSHA has completely restructured the complaint intake process and assigned a supervisor to closely monitor complaint intake and directly assign complaints to CHSOs, both in the office and in the field, who now initiate investigations more promptly. Indiana OSHA has been testing this new arrangement and found that complaint inspections are being initiated in a more appropriate average of 7.5 days.

Twelve (12) of the recommendations relate to the operation of Indiana OSHA’s Whistleblower Protection Program (Recommendations 6 – 12; 14 – 16; 19 and 20). Indiana OSHA either has already taken action, or is in the process of taking action to implement those recommendations. Indiana OSHA completely restructured its Whistleblower Protection Program to provide for complaint intake, complaint processing and investigation, file management, settlement negotiations, and appeal rights in accordance with the Whistleblower Investigations Manual and the Revised Whistleblower Disposition Procedures.

A Program Analyst (*Whistleblower Expert*) from the Region V office to provided thorough and effective training and/or re-training for the Indiana OSHA Whistleblower Protection Program staff. Thank you. We appreciate that.

Indiana state statutory law contains a one hundred twenty (120) day limitation period (“*Statute of Limitations*”) on filing civil actions to enforce complainant’s rights in a Whistleblower case. The investigators recommended revision of that 120 day statutory limitation (Recommendation 12). Indiana OSHA cannot unilaterally change Indiana state law. I will work with the Indiana General Assembly and the Office of the Attorney General to attempt to revise or repeal that 120 day limitation. Indiana OSHA has already extended the sixty (60) day investigative time restriction to a more reasonable 80 – 90 days. That investigative time restriction may be eliminated altogether once the General Assembly repeals the 120 day statutory limitation.

Indiana OSHA revised employee performance expectations for 2014 to emphasize thorough inspection procedures and hazard recognition consistent with Recommendations 17, 18, and 21. Indiana OSHA will also work with the OSHA Area Director and the Region V OSHA office to update the FIRM to be as effective as the OSHA Field Operations Manual.

One observation made by the investigators (page three (3) of the report) alleges that Indiana OSHA received a report of a dust explosion at the Indianapolis Power and Light (IPL) Company

in March 2013 – and did not investigate that report or conduct an inspection. Based upon the facts I have found, that appears to be an incorrect characterization of what occurred.

The facts indicate that the Director of the Indiana OSHA General Industry Safety division was notified of an anonymous (*i.e. no names or job titles*) report of a dust explosion at an Indianapolis Power and Light power generating facility by an Indiana OSHA Compliance Officer. The Indiana OSHA Compliance Officer, Supervisor, and Director were evaluating whether to treat the anonymous report as an “imminent danger” situation and shut down the generating facility. The Indiana OSHA Director refused to grant authorization to shut down the power generating facility without an appropriate investigation or inspection.

The Director of the Indiana OSHA General Industry Safety division personally visited the Indianapolis Power and Light power generating facility to investigate the dust explosion report. The Director met with the Corporate General Counsel, Plant Manager, Safety Manager, Control Room Operator(s), IBEW Union Representatives, and employees who work in that facility. The Director and some or all of the other individuals present conducted an inspection of the facility, and during the inspection, the Control Room Operator(s) ran the machinery through a simulated cycle from “start-up” through “shut-down” so that the Indiana OSHA Director could observe the process.

The Director questioned employees, IBEW Union Representatives, and management officials present at the facility. All denied reporting a dust explosion to Indiana OSHA or to an Indiana OSHA Compliance Officer.

After conducting an inspection, observing operation of the machinery, interviewing the individuals present - and being unable to ascertain more specific information from whoever may have made the anonymous complaint - the Director determined that the situation did not present an immediate hazard to the employees who worked at the facility and concluded the investigation.

The OSHA Region V office arranged to provide Indiana OSHA technical assistance from the OSHA Salt Lake City Technical Center to further investigate the dust explosion report at IPL. Thank you for that support.

The one failure found in the investigation of the dust explosion report at IPL is that Indiana OSHA did not enter the information from this investigation into the federal OSHA computer system properly.

There are two aspects of the CASPA investigation that concern me; the manner in which the investigation was initiated, and the manner in which the final investigation report was delivered and released.

When the federal OSHA investigators came to the Indiana OSHA office to conduct the investigation of CASPA No. 13-30, the federal OSHA investigators refused to disclose the nature of what they were here to investigate. They refused to disclose even the general nature of whatever type of complaint they may have been here to investigate, or the scope of the

investigation they intended to conduct. I believe the investigation was described as a "super-secret CASPA," or a "super-sensitive CASPA." In my estimation, this secrecy was unnecessary and is not consistent with the good collaborative working relationship Indiana OSHA has with the OSHA Area Director and the OSHA Region V office.

OSHA holds an annual meeting with state-run OSHA program staff called the "family meeting." I have heard several OSHA personnel use the term "family" to describe the relationship between federal OSHA and state-run OSHA programs. I can tell you several of the folks at Indiana OSHA don't feel much like "family" after the experience they had with the CASPA No. 13-30 investigation.

The second aspect of the investigation I found disappointing was the manner in which the final investigation report was delivered and released. When the federal OSHA investigators concluded their investigation at Indiana OSHA, they held a closing conference with the Indiana Commissioner of Labor and members of the Indiana OSHA management team. During that meeting, the federal OSHA investigators agreed to deliver their final investigative report to the Indiana Commissioner of Labor and the IOSHA Deputy Commissioner of Labor first, to allow them a couple of days to read the report before it was released to the public or the media. That did not happen.

Indiana OSHA received requests from the media for a copy of the final CASPA investigation report when it arrived. I planned to deliver a copy of the CASPA investigation report to the news media after I received it. I did not have to deliver the report to the media. The news media in Indianapolis already had a copy of the CASPA final investigation report before I received my copy of the CASPA investigation report in the mail.

The federal OSHA investigators who conducted the investigation did a good, thorough, professional job, and they made several beneficial recommendations. Indiana OSHA either has already taken action, or is in the process of taking action to implement those recommendations. Sometimes it is necessary to identify and confront your weaknesses so that you can improve and move forward. That is exactly what I expect Indiana OSHA will continue to do.

Sincerely,



Rick J. Ruble, Commissioner
Indiana Department of Labor