

U.S. Department of Labor

Occupational Safety and Health Administration  
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**FEB 25 2014**

Rick Ruble, Commissioner  
Indiana Department of Labor  
402 W. Washington Street, Room W195  
Indianapolis, IN 46204

Dear Commissioner Ruble:

On April 2, 2013, our office notified Mr. Timothy Maley, Deputy Commissioner of Indiana Occupational Safety and Health Administration (IOSHA), of the filing of a Complaint About State Plan Administration (CASPA) alleging administrative changes to the IOSHA State Plan. It alleged that these changes affected the quality of the IOSHA program. The purpose of this letter is to apprise you of the Occupational Safety and Health Administration's (OSHA) findings and recommendations.

Due to the nature and scope of the allegations, OSHA deemed this as a "sensitive" CASPA and began an investigation without requesting an initial analysis and response from the State. OSHA's investigative team, comprised of staff from the Chicago Regional Office and the Cleveland Area Office, reviewed IOSHA's policies and procedures, examined 60 enforcement and 25 discrimination case files, and interviewed administrative staff, Inspectors, Industrial Hygienists, Whistleblower Investigators, Supervisors and Managers. A list of case files reviewed is included in Appendix A. Reference materials reviewed included CPL 02-03-003 (Whistleblower Investigations Manual (WIM) effective date September 20, 2011), 29 CFR 1977 (effective date January 29, 1973) and the Richard Fairfax Directive, Revised Whistleblower Disposition Procedures (April 18, 2012). IOSHA's Field Investigation Reference Manual (FIRM) was also reviewed.

Of the three total allegations in this CASPA, OSHA found all three to be valid. In addition to these three original allegations, additional findings, with recommendations, were identified and are included in this report. A total of 22 Recommendations were made for corrective action.

**Allegation 1: Several concerns were raised about the complaint processes including how safety, health and whistleblower complaints are handled from receipt of complaint to final disposition.**

### **Enforcement Findings**

Interviews and complaint file reviews identified inaccuracies and delays in several steps of the complaint process, including misclassification of incoming complaints, delayed assignment of and response to complaints, and complaint investigations/responses inconsistent with IOSHA FIRM.

*The Complaint Intake Clerk is not properly trained or experienced resulting in the misclassification of complaints. Complaints are not assigned and investigations are not initiated within the required negotiated timeframe.* The Complaint Intake Clerk (Clerk) had been responsible for intake of all complaints for approximately six weeks at the time of the investigation. The Clerk had received limited on-the-job training and had no safety or health background. The Clerk was responsible for intake of phone, electronic and paper complaints. Review of the complaints documented misclassification of hazards. For example, ventilation and fume hazards were classified as safety complaints rather than health complaints.

At the time of the CASPA investigation, there were more than 92 unprocessed complaints. The status of the 92 complaints is noted below.

- Fifteen formal complaints were waiting for signature for more than 14 days.
- Twenty-five nonformal complaints had been received, but not acted on or entered into the NCR. Some of these complaints had been received up to six weeks earlier.
- There were an additional 27 nonformal complaints, which had been entered into the NCR, where the employer had not been contacted or the complaint faxed to the employer. These complaints had been received up to six weeks earlier.
- There were an additional 25 ecorrespondence that had been received up to six weeks earlier where no action had been taken.

State Activity Mandate Measure (SAMM) 2, the average number of days to initiate complaint investigations, through the second quarter of Fiscal Year 2013 (FY 13) was 8.44. It is impossible to know what the actual value of SAMM 2 is because of the delays noted above. It is expected that SAMM 2 would be much higher than 8.44 if all complaints had been properly entered into the NCR. The IOSHA negotiated value for SAMM 2 is five days.

SAMM 1, the average number of days to initiate complaint inspections, through the second quarter of FY 13 was 47.47 days and has dropped to 38.18 days at the end of FY 13. The negotiated referenced value is 10 days. Complaint case file review also documented delays in assignment of complaints (formal and nonformal) to Inspectors for inspection. These delays ranged from two weeks to four months. Since the time of the investigation, IOSHA has hired a Supervisor to oversee the intake and processing of complaints.

*Complaint inspections are not consistently conducted in accordance with the procedures specified in IOSHA FIRM.* In 2011 and 2012, two signed formal complaints were received from employees of Sensient Flavors, LLC that were not inspected per the IOSHA FIRM (208920231 and 208429621). One complaint was received on October 4, 2011 and the other was received on November 26, 2012, more than a year later. IOSHA did not conduct an inspection in response to either signed formal complaint, as required in the IOSHA FIRM. Instead, the Deputy Commissioner visited the site on December 14, 2012 to address both complaints.

- The first complaint alleged employee exposure to welding fumes and was over one year old, so it was not addressed in a timely manner. The Deputy Commissioner met with company and union representatives at the site, and reviewed the hazards. He also observed the alleged hazardous areas and the company's corrective actions. He accepted these and had the company write a letter and include abatement information. He gave the documentation and complaints to the Supervisor and told him to close the complaints. No air sampling was conducted to ensure that the first complaint was adequately addressed.
- The second complaint was listed in IOSHA's NCR computer database on the OSHA-7 Complaint form as being received by the office on November 26, 2012 from a current employee and was coded as: Is this a valid complaint? – Yes; Formality – Formal; Safety – Serious; and Inspection Planned? – Yes. However, there was no record of a signed complaint from the employee listed on the OSHA-7. There were no letters sent to the Complainant providing the results of the inspection, contrary to the requirements in IOSHA's FIRM.

In March 2013, a dust explosion occurred at Indianapolis Power and Light (IPL) and was reported by the IBEW Union at the site to an IOSHA Compliance Officer. This Compliance Officer informed his Supervisor and the Industry Director of this event. Although no employees were injured, OSHA believes this is an issue/hazard that should have been inspected. The Compliance Officer, Supervisor, or the Director did not enter this event into the NCR as either a complaint or a referral, and an inspection was not conducted. The Compliance Officer informed management that this was a potential imminent danger, but it was not handled as such by IOSHA. The Director did contact and meet with IPL and the IBEW on this issue, but did not feel it warranted any additional action based on what the company explained. This hazard should have been addressed by an inspection based on the information provided by the Union to the Compliance Officer, which was shared with the IOSHA managers. During this time frame, IOSHA was negotiating a settlement agreement with IPL for an inspection opened on August 08, 2012. A total of eight citations, four Knowing and four Serious, were issued on January 29, 2013. Failure to investigate the report of the explosion gives the appearance that settlement of the case was a priority over employee safety and health.

**Recommendation 1:** Ensure the Complaint Intake Clerk receives necessary training on complaint processing. This would include basic safety and health training to ensure Complainants' concerns are properly addressed and complaints are assigned to safety or health, as appropriate.

**Recommendation 2:** Reduce the current backlog by ensuring the necessary staff is available and trained to process all complaint investigations in a timely manner to meet the negotiated SAMM 2 value of five days. This would include evaluating ecomplaints/correspondence, data entry of all complaints, and completing the phone/fax process.

**Recommendation 3:** Ensure that formal complaints are assigned and opened in a timely manner to meet the negotiated SAMM 1 value of 10 days.

**Recommendation 4:** Ensure that the complaint process is reviewed, revised as necessary, documented, and adequately communicated to all enforcement staff to ensure that all complaints are addressed appropriately per the FIRM in a timely manner.

**Recommendation 5:** Ensure that reports of potential imminent danger hazards are appropriately addressed per the FIRM through an onsite inspection. (\*Note: IOSHA subsequently agreed to conduct an inspection to further investigate this issue, and it was opened on April 18, 2013. OSHA's Salt Lake City Technical Center and Region V provided technical assistance to help address this issue.)

### **Whistleblower Findings**

*Complaint intake and screening procedures did not follow those set forth in federal OSHA's WIM and were not as effective as the OSHA Whistleblower Protection Program.* Records of intakes, screenings, or administratively closed complaints were not available or do not exist. Complaints received or taken were not adequately documented for the prima facie elements of a complaint, Respondent's probable defense and Complainant's desired remedy. Interviews revealed a lack of knowledge and understanding of the intake and screening process and procedures.

During interviews it was determined that Investigative staff were not familiar with the 22 whistleblower statutes delegated to the Secretary of Labor, thus appropriate referrals to OSHA did not occur. No tracking method is in place to determine how many complaints were not referred to OSHA. OSHA provides a Desk Reference, which includes detailed descriptions including coverage, filing periods, allowable remedies, etc. for each of the 22 statutes delegated to the Secretary of Labor. IOSHA has been provided copies of the Desk Reference during whistleblower training classes and conferences. In addition, a "Summary of Whistleblower Statutes" is readily available on the DWPP internet page [www.whistleblowers.gov](http://www.whistleblowers.gov).

*Cases administratively closed do not follow required procedures such as providing the Complainant information on their right of appeal.* Complaints administratively closed were not documented in the Whistleblower IMIS. Letters to Complainant explaining the reason(s) why a complaint was not appropriate for investigation were not sent to Complainants when complaints were administratively closed or when Complainants were told that IOSHA could not or would not accept their complaints. Complainants were not provided information on their right of appeal when complaints were administratively closed or when Complainants were told that IOSHA could not or would not accept their complaints. During interviews it was determined that tolling and the principles of equitable tolling are not applied when complaints are not within the 30 day filing period. The total number of such occurrences could not be determined due to the inadequate documentation of the intake and screening process/procedures.

*Acknowledgement letters to the Complainant and Respondent were not in the files.* A review of case files documented that acknowledgement letters to Complainants were missing in all but a few of the files reviewed. Interviews of Investigators revealed a lack of knowledge regarding who was

responsible for and when to issue the acknowledgement letters to Complainants. Respondent notification letters were missing in all but a few of the files reviewed. Respondent notification letters were hand delivered with the Investigator returning at the appropriate date to pick up Respondent's position paper. According to information in the case files and obtained through interviews, there was no investigative activity other than the delivery of the notification letters and a brief explanation of the complaint conducted when serving Respondent notice of a complaint.

*Time limitations for investigations prohibit thorough investigations.* Interviews revealed that Investigators are not conducting investigations in the same or similar manner and that make whole remedies are not being sought as resolution of complaints. Letters to Complainants often contain language referencing the Investigator's 60 day investigative restriction and the 120 day statutory deadline for filing in court. Available information revealed that Respondents' legal counsel are well aware of the 60 day investigative restriction and the 120 day statutory deadline for filing in court and often informed Investigators that these restrictions are not their problem and were less than cooperative in providing Respondents' position papers in response to a complaint.

The quality of memos to file, Final Investigative Reports (FIR) and letters to the respective parties were less than professional and failed to meet a standard business format. For example, copies of letters, FIRs, and dismissal/closure letters were often missing supervisory and/or management signatures and several settlement agreements were not fully executed, missing an identified agency management representative and/or a respective party's signature. The content of case files did not adhere to the case file organization provision of the WIM. Left side administrative and right side evidentiary information and tables of content were often missing.

The content of case files left unanswered questions regarding investigative activities that might provide answers supporting a prima facie complaint or testing a Respondent's defense. The content of the case files revealed the absence of investigative activities in obtaining make whole remedies for Complainants. No settlements included reinstatements, only back pay from the date of termination until the date of settlement. Documentation in case files revealed that the Investigators often, in various ways, tell Complainants that they could take the settlement amount presented or IOSHA would dismiss their complaint. These comments were frequently memorialized in documents in the files including but not limited to the content of the FIR and Case Diary. Letters, FIRs, etc. utilized are out dated and need to be brought up to date. The FIR is now a Report of Investigation (ROI) and the Revised Whistleblower Disposition Procedures eliminated the need for a ROI under specific circumstances.

Complaints rejected by the Attorney General, when referred for litigation, did not contain a legal analysis explaining the reason for declining to litigate or file the complaint in court.

*Whistleblower IMIS tools are not used effectively.* The Whistleblower IMIS is not being used as a management tool to monitor the Whistleblower Program activities or for consistency between the data in the IMIS and that contained in the case file. Closure/determination, FIR, etc. dates were entered in the IMIS before the dates recorded in the case file and often before files are submitted for final review and approval.

**Recommendation 6:** Ensure that all investigative staff are following the same Whistleblower Program policies and procedures and are as effective as the OSHA Whistleblower Protection Program.

**Recommendation 7:** Provide training to all investigative staff to cover at a minimum the following topics.

- a. The appropriate procedures set forth in the Whistleblower Investigations Manual, including but not limited to: intake and screening, administrative closure, tolling and the principles of equitable tolling, and the appropriate use of the Whistleblower IMIS
- b. The appropriate Whistleblower IMIS procedures for documenting and managing whistleblower complaints received by IOSHA
- c. The 22 Whistleblower statutes provisions delegated to the Secretary of Labor to ensure appropriate referrals to OSHA

**NOTE:** Region V's Whistleblower Program Analyst provided training the week of August 19, 2013 to the IOSHA Investigators. This training included all of the topics referenced above.

**Recommendation 8:** Follow the Intake and Screening procedures set forth in the Whistleblower Investigations Manual, 29 CFR 1977 and the Richard Fairfax Directive, Revised Whistleblower Disposition Procedures (April 18, 2012) or immediately establish and implement a policy and procedure as effective as the OSHA Whistleblower Intake and Screening policy and procedures.

**Recommendation 9:** Ensure efficient use of resources by addressing Respondent notification and Complainant interview processes/procedures. This would include evaluating the efficiency of hand delivery of Respondent notification letters; personally picking up Respondent position papers; and in person Complainant interviews when extensive travel is necessary to accomplish these activities.

**Recommendation 10:** Ensure that Complainants are provided information regarding their right to appeal as a routine part of the IOSHA Whistleblower Program.

**Recommendation 11:** Request the Attorney General provides a legal analysis detailing the reason for rejecting the complaint or declining to litigate.

**Recommendation 12:** Eliminate the 60 day investigative restriction and seek revision of the 120 day statutory deadline for filing in court to avoid pressuring (perception or reality) Complainants into acceptance of less than the remedy available under the Act.

**Allegation 2.** Concerns were noted about the settlement process. This included informal and formal settlement for enforcement cases and also whistleblower investigations.

### **Enforcement Findings**

*Settlements appeared to be handled appropriately.* Case files with both formal and informal settlements were reviewed and evaluated. Interviews with management responsible for holding the informal conferences were conducted. While notes were included in the files from informal settlement meetings, justification for changes to the Safety Orders, penalty and deletion, were not included in the file.

**Recommendation 13:** Ensure that justification for all changes made to Safety Orders is included in the file.

### **Whistleblower Findings**

*Settlement of Whistleblower cases noted deficiencies.* A review of IOSHA's Whistleblower settlement process was conducted. IOSHA engages in unilateral agreements without Complainant's concurrence and agreement even when the adverse employment action is termination and the agreement is not a make whole remedy. Settlement agreements found were often not fully executed (i.e., not signed by all the parties or by the appropriate IOSHA management representative). Complaints were closed as settled without a copy of a settlement agreement in the case file. Third party settlement agreements were not reviewed and approved by IOSHA. IOSHA is using outdated settlement agreement templates rather than using settlement agreements equivalent to OSHA's current practices as provided in the WIM. IOSHA settlement agreements contain language to make the check payable to IOSHA or Complainant and files reviewed revealed that at least once, the check was made out to IOSHA and IOSHA provided Respondent a W-9 acknowledging receipt of the check.

Withdrawals were accepted without reviewing and approving the settlement agreement upon notice from an attorney that Complainant and Respondent have reached an agreement and that Complainant was withdrawing the complaint.

Interviews and files reviewed reveal that Complainants are not asked if they have additional complaints filed under separate State or Federal Statutes, which could affect any agreement under or through the IOSHA Whistleblower Program.

The case files reviewed and interviews conducted reveal that Complainants often do not know about the settlement until the check is presented by the Investigator. If Complainant is reluctant or does not accept the check, documentary and testimony evidence reveals that Investigators often inform Complainants that if they do not take the settlement amount presented, IOSHA would dismiss their complaint.

**Recommendation 14:** Ensure that all settlement negotiations seek and make reasonable efforts to obtain make whole remedies, including reinstatement for Complainants when termination is

the alleged adverse employment action, and ensure this activity is adequately documented in the case file.

**Recommendation 15:** Cease acceptance and approval of unilateral settlement agreements that do not make Complainants whole.

**Recommendation 16:** Provide training to all investigative staff on the appropriate settlement process and procedures set forth in the Whistleblower Investigations Manual, 29 CFR 1977 and the Richard Fairfax Directive, Revised Whistleblower Disposition Procedures (April 18, 2012) or immediately establish, develop and implement a Whistleblower settlement training program, policies and procedures as effective as the OSHA Whistleblower Protection Program.

**NOTE:** Region V's Whistleblower Program Analyst provided training the week of August 19, 2013 to the IOSHA Investigators. This training included settlement procedures.

**Allegation 3. Concerns were noted about accountability of staff in meeting goals and quality of inspections/investigations. This would include performance measures, staff abilities and accountability for performance measures.**

**Enforcement Findings:**

*Established performance measures inhibit investigation of safety and health hazards.* In 2007, the State of Indiana implemented a Merit Pay System for all State employees. This pay system involved setting SMART (Specific, Measurable, Achievable, Relevant, and Time Sensitive) goals for each employee that were specifically linked to the agency's Strategic Plan. These are covered on each employee's Work Profile and Performance Appraisal Report, which is completed at the end of each calendar year. Beginning in 2007, IOSHA Compliance Officers had specific goals related to inspection activities, including the number of inspections conducted and the time to complete an inspection. These specific goals are listed in Section B. Performance Expectations / Goals of their Work Profile (see Appendix B).

From 2007 through 2012, the inspection goals for each IOSHA Compliance Officer were based on their job title (General Industry versus Construction) and type of inspection conducted (i.e., Fatality; IH Sampling versus Safety without sampling; Complaints versus General Schedule; etc.). For example, an Industry Safety Compliance Officer had a goal that required a minimum of 45 inspections to "meet" the performance element and 65 inspections to "exceed." Similarly, an IH had a goal of 25 inspections with sampling to "meet" and 40 to "exceed," and Construction Compliance Officers had a goal of 65 complaint-type inspections and/or 135 General Schedule inspections to "meet" and 75 and 150 respectively to "exceed." All Compliance Officers also had to complete and submit inspection files for review in an average of 18 to 27 days to meet this performance element.

In April 2013, under the direction of the new Commissioner of Labor and Deputy Commissioner of Labor, these performance elements were revised due to low production through the first two quarters and, in part, to one of several concerns raised by the media that IOSHA was not going to meet its



inspection goal of 2,000 inspections in FY 2013. Depending on the level of experience and job classification, the goal was raised for experienced General Industry Compliance Officers up to a minimum of 61 inspections to “meet” and 75 inspections to “exceed.” This included Industrial Hygienists as well as Safety; there was no separate designation. Experienced Construction Compliance Officers had a revised goal of 110 inspections to “meet” and 125 to “exceed.” (See Appendix B)

A significant revision to the 2013 goals was the reduced time allowed to complete inspections and turn them in for review. The goal was reduced to an average of 4.1 days for an experienced General Industry Compliance Officer and an average of 2.3 days for an experienced Construction Compliance Officer. This change, in addition to the increased inspection goal, has led to Compliance Officers and Supervisors complaining about the inability to adequately address and document serious hazards. It also significantly impacts the ability of Industrial Hygienists to schedule and conduct chemical and noise sampling of employees during inspections, as they could not meet this goal if they had to return to a company for full-shift monitoring and wait to send and receive sample results from the laboratory. Any complex or large establishment inspections that normally take several days if not weeks to complete would be discouraged in order to meet these goals. Also, employees would not have enough time to expand inspections to document additional hazards or evaluate complex issues due to the time constraints imposed by these performance measures.

The agency also added a goal in 2013 of issuing Serious, Knowing, and Repeat violations on an average of two to three violations per inspection, with an average of four or greater violations per inspection exceeding this goal. These performance metrics conflict with Section 8 (h) of the OSH Act (revised 1998) which states,

(h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.

**NOTE:** Since the time of the investigation, IOSHA has removed all references to goals related to the number of violations per inspection from employees’ Work Profiles.

**Recommendation 17:** The agency should review its 2013-2017 Strategic Plan and revise goals as appropriate to ensure they are achievable and consistent with the mission of the agency.

**Recommendation 18:** Ensure that Compliance Officers are not penalized for taking additional time to conduct complex inspections and appropriately identify and document all observed hazards during inspections, including industrial hygiene sampling.

## Whistleblower Findings

*Established performance measures inhibit comprehensive whistleblower investigations.*

Whistleblower Investigators' position descriptions had a goal that required a minimum of 24 complaint investigations completed to receive a "meets" and 30 to receive "exceeds" in their annual performance evaluations. The Intake/Investigator is required to complete 20 investigations for a "meets" and 30 for an "exceeds." These goals are directly related to the percentage of pay increase the employee will receive. Whistleblower Investigators' position descriptions include an evaluation element based on completing complaint investigations within the 60 day investigative restriction. The Intake and Screening Whistleblower Investigator's position description also includes processing all nonformal safety and health complaints for IOSHA. These goals and performance standards give the appearance of negatively affecting the quality of whistleblower complaint investigations and activities.

**Recommendation 19:** Reevaluate the Whistleblower Investigators' position descriptions. IOSHA should amend the completed complaint investigation goals, the 60 day investigation restriction.

**Recommendation 20:** Reevaluate the Intake and Screening Whistleblower Investigator's position description. IOSHA should remove the collateral duty of processing all non-formal safety and health complaints for IOSHA.

**Additional Enforcement Findings:** While conducting the investigation into the three original CASPA allegations, the following findings and recommendations were identified.

**Finding:** In response to the increased inspection goal and reduced time to complete the inspections, IOSHA has instructed the Compliance Officers to write self-referrals and create a new inspection number when they observe two or more hazards at a workplace outside the scope of the complaint. This creates two separate inspections at one facility, when the hazards would normally be addressed within the scope of the initial inspection.

**Recommendation 21:** Address all hazards in plain view during the course of an inspection within the scope of that inspection. CSHOs should normally make a referral if the hazard they identify is outside the scope of their expertise (i.e., IH referral for health hazards observed by a Safety Specialist).

**Findings:** During interviews with management, it was identified that IOSHA was preparing to send letters to only those companies on the primary and secondary SST inspection list rather than to all potential SST companies. This would have been identified as advance notice. At the time of the CASPA investigation, these letters had not been sent.

Federal OSHA provided a contact name/email address to IOSHA to obtain the entire SST universe of employers. IOSHA obtained the appropriate list and was in the process of sending letters to all employers at the time of the CASPA investigation.

**Recommendation:** None, as the issue was addressed during the CASPA investigation.

**Findings:** At the time of the CASPA investigation, IOSHA was using the Field Inspection Reference Manual (FIRM) rather than the updated Field Operations Manual. On January 4, 2010, IOSHA responded to a Federal Program Change (FPC) requiring State Plan states to adopt a FOM that was “at least as effective as” federal OSHA’s FOM. IOSHA’s response was that they would adopt OSHA’s FOM with minor terminology changes, such as “Knowing” instead of “Willful.” The adoption date was noted as January 4, 2010. At the time of the CASPA investigation, it was determined that the FIRM used by IOSHA had not been updated as previously indicated.

**Recommendation 22:** Ensure that the FIRM is updated to be “at least as effective” as federal OSHA’s FOM and submit the accompanying plan supplement as required by the FOM directive.

The nature and complexity of this CASPA presented numerous challenges. We appreciate the cooperation of your staff during our investigation. Please provide me with your responses to the recommendations contained within this letter within 30 days of receipt. In the meantime, if you have questions or concerns, do not hesitate to contact me.

Sincerely,



Nick A. Walters  
Regional Administrator

cc: Douglas Kalinowski, Director, DCSP  
Eric Lahaie, Director, OSP  
Vanessa Martin, Area Director, Indianapolis

## Appendix A – List of Case Files Reviewed

Company	Inspection Number
Grace Davison	316543644
Voestalpine Rotec INC.	315870741
Duncan Robertson INC.	316543479
Sensient	315051318
Com-Tech Construction, INC.	315870840
Formco INC	315868281
Remodeling Solutions of Indiana	316543974
Lenstech Optical Lab, INC.	315870568
Automatic Pool Covers, INC.	315867069
Autoline Industries	316485176
Roadsafe Traffic Systems INC.	316536770
Brickmasters	316542927
C & D Technologies	315870790
FEDEX Express	316544469
Whittenberg Construction Co.	315868471
Dalmatian Fire INC.	316542588
Biolife Plasma Services	315870766
Brandt Construction Inc.	316543396
BP Whiting Business Unit	316544865
Grant Professional Painting Service	316543834
Johnson Nichols Health Clinic	316474923
Mares Construction	315869552
City of Indianapolis Parks	316474840
Eastern Bartholomew Water Corp	315870311
Lundy Rebar, INC.	316542000
M&W Countertops INC	316536812
Ampacet Corporation	315863282
Jones Auto Repair	316550763
Crown Concrete Cutting	316548601
R & W Contracting Inc.	316548767
General Motors Marion Metal	316547702
Owens-Brockway Glass Container	315870881
Hancock County Highway Department	316549203
Arcelormittal Holding Inc.	316544485
Contractors Steel Co.	316547959

Unilever Manufacturing Inc.	316542414
Goshen Coach, Inc.	316549138
Summit Inc.	316548502
National Ill	316548510
Minich Dairy	316548536
Advantage	315870857
A K Industry	316549161
Prime Times	316551431
Holladay Construction	316544683
Stanley Steel	316544709

Establishment	Complaint Number
Thor Motor	208438168
BTU solutions	208919902
Knauk Insulation	208920017
Haynes Interna	208920082
Little Off the	208920264
Goshen Coach	208920397
Indianapolis L	208922500
Harlan Bakerie	208922922
Owens-Brockwa	208923367
CJ Poly	208920900
Alcoria, Inc.	208920777
Pet Supplies	208921478
Knights Inn	208922740

Whistleblower Case files		
Case Number	Determination	Days Open
012060	Settled	93
012057	Litigation/Merit	90
012008	Settled	78
012005	Withdrawn	78
012021	Settled	77
012040	Withdrawn	75
012047	Settled	73
012053	Settled	71
012034	Settled	63
012041	Dismissed/Non-merit	60
012042	Settled	60
013001	Withdrawn	56
0130005	Litigation/Merit	120
0130019	Litigation/Merit	111
0130024	Settled	105
0130025	Dismissed/Non-merit	87
0130032	Settled	63
0130017	Litigation/Merit	61
0130015	Settled	41
0130026	Settled	31
0130012	Settled	28
0130033	Withdrawn	21
0120029	Apparently Administratively Closed	452
0130021	Apparently Administratively Closed	168
0130045	Open	24

Appendix B - CSHO

Goals on Performance Standards

	GI CSHO (> 2 yrs.)	GI IH (> 2 yrs.)	GI CSHO (1-2 yrs.)	GI IH (1-2 yrs.)	GI CSHO (<1 yrs.)	GI IH (<1 yrs.)	Construction CSHO (>3 yrs.)	Construction CSHO (2-3 yrs.)	Construction CSHO (<2 yrs.)
2007-2012 Number of Inspections	Exceed	40	65	40	65	40	75 Complaints/ 150 Programmed	75 Complaints/ 150 Programmed	75 Complaints/ 150 Programmed
	Meet	25	45	25	45	25	65 Complaints/ 135 Programmed	65 Complaints/ 135 Programmed	65 Complaints/ 135 Programmed
2013 Number of Inspections	Exceed	75	43	43	10	10	125	75	40
	Meet	40	40	40	5	5	110	60	35
2007-2012 Time to complete case file (average # days)	18-27	18-27	18-27	18-27	18-27 s	18-27	18-27	18-27	18-27
2013 Time to complete case file (average # days)	4.1	4.1	6.3	6.3	50.4	50.4	2.3	4.2	7.2
2007-2012 Violations per Inspection (average)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2013 Violations per Inspection (average)	Exceed	4	4	4	4	4	4	4	4
	Meet	2-3	2-3	2-3	2-3	2-3	2-3	2-3	2-3

Appendix B – Management

Goals on Performance Standards

	Industry Supervisor	Construction Supervisor	Industry Director	Construction Director
	Exceed			
2007-2012 Number of Inspections	860	1140	860	1140
	Exceed			
2013 Number of Inspections	1000 total (Mick 350; Jim 343; Erick 312)	1000	1000	1000
2007-2012 Time to complete case file (average # days)	20	20	n/a	n/a
2013 Time to complete case file (average # days)	20	20	n/a	n/a
2007-2012 Violations per Inspection (average)	n/a	n/a	n/a	n/a
2013 Violations per Inspection (average)	n/a	n/a	n/a	n/a
	Exceed			
	Meet			



## Appendix C

### List of Recommendations and Observations

**Recommendation 1:** Ensure the Complaint Intake Clerk receives necessary training on complaint processing. This would include basic safety and health training to ensure Complainants' concerns are properly addressed and complaints are assigned to safety or health, as appropriate.

**Recommendation 2:** Reduce the current backlog by ensuring the necessary staff is available and trained to process all complaint investigations in a timely manner to meet the negotiated SAMM 2 value of five days. This would include evaluating ecomplaints/correspondence, data entry of all complaints, and completing the phone/fax process.

**Recommendation 3:** Ensure that formal complaints are assigned and opened in a timely manner to meet the negotiated SAMM 1 value of 10 days.

**Recommendation 4:** Ensure that the complaint process is reviewed, revised as necessary, documented, and adequately communicated to all enforcement staff to ensure that all complaints are addressed appropriately per the FIRM in a timely manner.

**Recommendation 5:** Ensure that reports of potential imminent danger hazards are appropriately addressed per the FIRM through an onsite inspection. (\*Note: IOSHA subsequently agreed to conduct an inspection to further investigate this issue, and it was opened on April 18, 2013. OSHA's Salt Lake City Technical Center and Region V provided technical assistance to help address this issue.)

**Recommendation 6:** Ensure that all investigative staff is following the same Whistleblower Program policies and procedures and are as effective as the OSHA Whistleblower Protection Program.

**Recommendation 7:** Provide training to all investigative staff on the following topics.

- a. The appropriate procedures set forth in the Whistleblower Investigations Manual, including but not limited to: intake and screening, administrative closure, tolling and the principles of equitable tolling, and the appropriate use of the Whistleblower IMIS
- b. The appropriate Whistleblower IMIS procedures for documenting and managing whistleblower complaints received by IOSHA
- c. The 22 Whistleblower statutes provisions delegated to the Secretary of Labor to ensure appropriate referrals to OSHA

**Recommendation 8:** Follow the Intake and Screening procedures set forth in the Whistleblower Investigations Manual, 29 CFR 1977 and the Richard Fairfax Directive, Revised Whistleblower

Disposition Procedures (April 18, 2012) or immediately establish and implement a policy and procedure as effective as the OSHA Whistleblower Intake and Screening policy and procedures.

**Recommendation 9:** Ensure efficient use of resources by addressing Respondent notification and Complainant interview processes/procedures. This would include evaluating the efficiency of hand delivery of Respondent notification letters; personally picking up Respondent position papers; and in person Complainant interviews when extensive travel is necessary to accomplish these activities.

**Recommendation 10:** Ensure that Complainants are provided information regarding their right to appeal as a routine part of the IOSHA Whistleblower Program.

**Recommendation 11:** Request the Attorney General provide a legal analysis detailing the reason for rejecting the complaint or declining to litigate.

**Recommendation 12:** Eliminate the 60 day investigative restriction and seek revision of the 120 day statutory deadline for filing in court to avoid pressuring (perception or reality) Complainants into acceptance of less than the remedy available under the Act.

**Recommendation 13:** Ensure that justification for all changes made to Safety Orders is included in the file.

**Recommendation 14:** Ensure that all settlement negotiations seek and make reasonable efforts to obtain make whole remedies, including reinstatement for Complainants when termination is the alleged adverse employment action, and ensure this activity is adequately documented in the case file.

**Recommendation 15:** Cease acceptance and approval of unilateral settlement agreements that do not make Complainants whole.

**Recommendation 16:** Provide training to all investigative staff on the appropriate settlement process and procedures set forth in the Whistleblower Investigations Manual, 29 CFR 1977 and the Richard Fairfax Directive, Revised Whistleblower Disposition Procedures (April 18, 2012) or immediately establish, develop and implement a Whistleblower settlement training program, policies and procedures as effective as the OSHA Whistleblower Protection Program.

NOTE: Region V's Whistleblower Program Analyst provided training the week of August 19, 2013 to the IOSHA Investigators. This training included settlement procedures.

**Recommendation 17:** The agency should review its 2013-2017 Strategic Plan and revise goals as appropriate to ensure they are achievable and consistent with the mission of the agency.

**Recommendation 18:** Ensure that Compliance Officers are not penalized for taking additional time to conduct complex inspections and appropriately identify and document all observed hazards during inspections, including industrial hygiene sampling.

**Recommendation 19:** Reevaluate the Whistleblower Investigators' position descriptions. IOSHA should amend the completed complaint investigation goals, the 60 day investigation restriction.

**Recommendation 20:** Reevaluate the Intake and Screening Whistleblower Investigator's position description. IOSHA should remove the collateral duty of processing all non-formal safety and health complaints for IOSHA.

**Recommendation 21:** Address all hazards in plain view during the course of an inspection within the scope of that inspection. CSHOs should normally make a referral if the hazard they identify is outside the scope of their expertise (i.e., IH referral for health hazards observed by a Safety Specialist).

**Recommendation 22:** Ensure that the FIRM is updated to be "at least as effective" as federal OSHA's FOM and submit the accompanying plan supplement as required by the FOM directive.