

## APPENDIX D

## AGENCY RESPONSE TO DRAFT REPORT

U.S. Department of Labor

Assistant Secretary for  
Occupational Safety and Health  
Washington, D.C. 20341

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MEMORANDUM FOR: ELLIOT P. LEWIS  
Assistant Inspector General  
for Audit

FROM: EDWIN G. FOULKE, JR. *Edwin G. Foulke, Jr.*

SUBJECT: Response to OIG's Draft Audit Report  
No. 05-07-001-10-105  
"Workers Were at Risk During the  
Resolution of Serious Hazards"

This memorandum is in response to your May 3, 2007, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 05-07-001-10-105, "Workers Were at Risk During the Resolution of Serious Hazards." We appreciate this opportunity to respond to the findings and recommendations of the OIG and to clarify some of the findings contained in the draft audit report regarding the OSHA On-site Consultation Program we believe to be somewhat misleading.

The OIG Draft Audit Report contends that Consultants often failed to ensure interim protection before granting extensions to correct serious hazards. We believe this perceived deficiency relates to a lack of proper documentation and monitoring of required written procedures rather than a more serious implication that the On-Site Consultation Program leaves workers exposed to serious risk. Three criteria must be met under 29 CFR 1908.6(f)(3) prior to an employer receiving an extension for hazard correction. The OIG study showed that two of the three criteria were consistently met and documentation for these criteria were in place supporting extensions for hazard correction. In fact, the criteria for "good faith" effort to correct hazards in the established time frame by the employer were documented in 95 percent of extensions granted. These criteria for "good faith" are a very strong indicator of the employer's commitment to correct hazards and protect the safety and health of their employees. Consultants carefully evaluate and assess this and other aspects of the employer's safety and health program prior to granting an extension.

We believe interim protection is carefully considered but not always properly documented by all of the On-site Consultation Projects. Consultants recommend interim protection for all serious hazards during the initial workplace assessment. However, current Agency procedures do not require documentation of interim

protection unless an extension is requested. Therefore, interim protection actually may be in place as recommended by the Consultant during the hazard correction period. Also, at a minimum, there is interim protection through the administrative control of informing and educating employees of serious hazards which is routinely provided by the Consultant as an element of the worksite assessment. Most importantly, I believe it is more revealing that the OIG Draft Audit Report found that over 85 percent of Consultant-employer interaction regularly achieved correction of serious hazards without any need for an extension of time.

The OIG study also reported that Consultants seldom refer employers for enforcement action when serious hazards are not corrected in a timely manner. The Agency agrees that not a single employee should be placed at risk and appropriate action including enforcement referral should be taken when necessary. However, the gravity of the concern expressed in the Draft Audit Report is presented out of context given that 96 percent of all serious hazards evaluated as part of the study were corrected in a timely manner without the need for an enforcement referral.

The foundation for the delivery of the On-site Consultation service is the assurance received from employers that serious hazards identified by the Consultant will be corrected in a timely manner. The Agency takes a very strong position on the issue of employee protection and will take every necessary action to respond to the findings of this report that will strengthen the On-Site Consultation Program. Our responses to the specific recommendations in the OIG Draft Audit are as follows:

**Recommendation 1:** *Enforce the requirement that State consultation program officials grant extensions to correct a serious hazard only when there is documented evidence that correction has not been completed because of factors beyond the employer's reasonable control, and the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.*

OSHA agrees with the intent of this recommendation. In fact, the Agency has taken a number of steps to ensure that Consultants grant extensions in accordance with program requirements and assure that interim protection is in place to safeguard employees until the complete abatement of the hazard is accomplished.

First, OSHA is in the process of developing and implementing its new information management system, known as the OSHA Information System (OIS). OIS will enable better management of the On-site Consultation Program data including the process for tracking the correction of hazards and granting extensions. OIS system requirements will not allow Consultants to grant extensions without the assurance that proper interim protection is in place. This will be a "fail-safe" feature that will strengthen the On-site Consultation Program's ability to protect the safety and health of employees.

Next, changes to the Fiscal Year 2008 Federal Consultation Cooperative Agreement require that On-site Consultation Projects must ensure that employers granted extensions for correction of serious hazards demonstrate good faith, show evidence of steps taken to correct hazards, and provide interim protection during the extended correction period. This change is significant, as it is a condition for granting funds to On-site Consultation Projects. OSHA Regional Offices will monitor this requirement and provide a report in the Regional Annual Consultation Evaluation Report (RACER) for each Consultation Project within their jurisdiction.

Additionally, we intend to issue a memorandum to all OSHA Regional Administrators reinforcing the need for proper documentation and monitoring of On-site Consultation Projects in their States for the correction of serious hazards and interim protection. The OSHA Consultation Project Managers will be issued a similar memorandum, reiterating the importance of following the proper procedures for documentation when granting extensions for the correction of serious hazards.

Finally, at the recent 2007 Annual Consultation Training Conference, training was conducted for all Consultation Program Managers and Regional Consultation Officers to ensure that established policies and procedures for the correction of serious hazards are properly understood and adhered to by On-Site Consultation Projects.

**Recommendation 2:** *Provide guidance to the States on acceptable types of interim protection.*

OSHA agrees that States must be aware of the acceptable types of interim protection but believes that the Agency already provides such guidance to the States on this matter. Guidance is currently outlined in OSHA Training and Education Directive (TED) 3.6 Consultation Policies and Procedure Manual (CPPM), Chapter 7 for States to choose acceptable interim protection. This chapter, revised in December 2006, broadly outlines options for interim protection based on the “hierarchy of controls” for preventing exposure to hazards in the workplace. In addition, information and guidance resources are readily available on OSHA’s website to assist Consultants in making recommendations on interim protection. The Agency also provides technical assistance through Regional Engineers and Hygienists, as well as the Salt Lake Technical Center, the Cincinnati Laboratory and the Wisconsin Occupational Health Laboratory. OSHA will continue its efforts to ensure that Consultation projects are aware of these sources of information and guidance. In addition, the Agency will issue annual reminders to On-site Consultation Projects on the availability of guidance materials for the selection of interim protection.

**Recommendation 3:** *Establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date.*

OSHA does not agree with this recommendation since we do not believe it is feasible to predict the length of time required to abate every type of workplace hazard. The time-period required to abate a hazard can vary depending on many factors and is established based on prevailing conditions and best judgment at the time the hazard is identified and classified. If those conditions change, the Consultant makes the judgment to grant extensions if all criteria for extensions are satisfied. Establishing a performance measure that benchmarks the percentage of serious hazards corrected by the initial correction due date would not change the conditions that require a Consultant to revise the correction time-period. In fact, we are concerned that establishing a new benchmark tied to the initial correction due date could have the opposite effect of that intended by this recommendation as it might encourage some On-site Consultation Projects to grant longer initial correction due dates in an effort to meet the established benchmark.

The Agency does agree, however, that measuring performance and benchmarking the correction of serious hazards is an important element in tracking the effectiveness of the On-site Consultation Program. OSHA has a performance measure in place that benchmarks the percent of serious hazards verified corrected in a timely manner. The standard for this benchmark is 100 percent. These measures are tracked quarterly in the Mandated Activities Report for Consultation (MARC). The MARC (Section 4A) has four parts related to hazard verification and tracks the number of serious hazards verified corrected by:

- On-sites performed,
- Within original time frame
- Within extension time frame
- Within 14 days of latest correction due date.

The measure of "Within Original Time Frame," tracks correction of serious hazards based on the initial correction due date for serious hazards. However, OSHA does not believe that establishing a performance standard for this measure will be valuable in defining overall program performance. The Agency believes that rigorous monitoring of the timely correction of hazards is the most prudent action. Further, the OIS currently being designed is configured to allow OSHA to create specific benchmarks for particular States that may have problems monitoring the correction of serious hazards.



**Recommendation 4:** *Enforce the requirement that State Consultation Program officials refer employers for enforcement action when serious hazards were not corrected timely.*

OSHA agrees that the protection of employees from serious workplace hazards is a critically important matter. Any disregard for this notion must be handled appropriately including referral for enforcement action. The OSHA On-site Consultation Program has rigorous requirements for the correction of hazards and ensures participating employers understand the repercussions for non-compliance. The Agency has taken some actions and will implement some additional measures to ensure that On-site Consultation Project officials continue to refer employers for enforcement action when serious hazards are not corrected in a timely manner.

First, OSHA's revision to the TED 3.6, CPPM Chapter 7, Relationship to Enforcement issued December 14, 2006, clearly outlines the requirements for referral to enforcement for all On-site Consultation Projects. Additionally, at the 2007 Annual Consultation Training Conference, training was conducted for all Consultation Program Managers and Regional Consultation Officers to ensure established program policies and procedures for the correction of serious hazards are properly understood and adhered to by the Consultation Projects.

In addition, significant changes to the Fiscal Year 2008 Federal Consultation Cooperative Agreement contains language that State On-site Consultation Projects will "ensure that the appropriate OSHA enforcement authority is notified if an employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions granted." This requirement will be monitored by the OSHA Regional Offices and reported in the Regional Annual Consultation Evaluation Report (RACER) for each Consultation Project within their jurisdiction.

Finally, we intend to issue a memorandum to all OSHA Regional Administrators reinforcing the need for proper monitoring of On-site Consultation Projects in their States for the correction of serious hazards and enforcement referrals for failure to correct hazards in a timely manner. The OSHA Consultation Project Managers will be issued a similar memorandum, reiterating the importance of following the proper procedures for the correction of serious hazards.

In the long history of OSHA's On-site Consultation Program, well over 400,000 consultation visits have been conducted and over 1 million hazards have been identified and abated through the program. That is an impressive record for this program, OSHA, its State partners, and participating employers. Though we are troubled by what we think is an inaccurate characterization in the OIG Draft Audit that workers are left at risk while hazards are being abated, we nevertheless appreciate the OIG's review of the OSHA On-site Consultation Program. The discovery that some

requirements for written documentation have not been faithfully followed by the three Consultation Projects reviewed in the Draft Audit and the resulting OIG recommendations will be used by OSHA to improve the On-Site Consultation Program.