

**Appendix B**  
**New York State Plan PESH**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region 2**  
**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	The 2009 EFAME noted that 19 health complaint case files were reviewed of the 19 (63%) were not opened within 5 work days. 24 safety complaint case files reviewed. 7 of the 24 (29%) were not opened within the 5 working days.	PESH should implement internal controls, such as supervisory notification of the receipt of complaint, so that the supervisor can prioritize the assignments, to ensure that complaint inspections are opened within the timeframes established by Agency Policy	Completed. Complaints received are evaluated by the Supervisors, input into IMIS, and assigned to inspectors. Supervisors review the "Unsatisfied Activity" report routinely to monitor status of pending complaint inspections. Most PESH district offices are able to provide a quick response to complaints, but downstate districts receive more complaints and struggle to provide the same timely response.	SAMM Reports indicate that there has been improvement on this issue. Region 2 considers this item completed	Completed
09-2	The 2009 EFAME noted that there appeared to be issues with PESH failing to notify complainants of the results of complaint inspections (16% of cases)	Implement internal controls such as diary sheet entries, IMIS and other correspondence tracking methods (IMIS Standard Letters) and supervisory oversight to ensure that before the complaint investigation is closed that all appropriate notifications and/or correspondences have [been] sent and noted in the file.	Completed. CSHOs have been instructed to enter all activities on the "Case Contact" sheet attached to each case file. The purpose of this sheet is to record all activity related to the file. Supervisors review all inspections completed which includes completion of all appropriate notifications and/or correspondences.	Supervisors review 100% of complaint case files. In cases in which all appropriate contacts have not been made, supervisors are ensuring that the appropriate notifications and letters are sent prior to closing the complaint.	Completed
09-3	The 2009 EFAME noted that there were a number of cases (11%) in which it appears that all complaint items were not addressed.	Implement internal controls and supervisory oversight to ensure that before the CSHO has completed their onsite portion of the inspection that all complaint items have been investigated.	Completed. CSHOs have been instructed to address all items contained in the complaint. Additionally, "Sample Narrative" templates for complaints have been developed and provided to CSHOs to utilize when preparing complaint narratives itemizing each complaint item and observation	Supervisors review 100% of complaint case files to ensure that all complaint items have been appropriately addressed.	Completed.  OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan

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					field office and noted that the level and quality of documentation has improved since the 2009 EFAME review.
09-4	The 2009 EFAME noted that none of the cases reviewed (including fatalities) from either the safety or health programs contained sufficient prima facie evidence to support the citations issued. Typically the cases were lacking evidence of employee exposure and evidence of employer knowledge.	Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements as set forth by State of New York policy.	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. OSHA recommendations resulting from the 2009 E-Fame was reviewed with supervisors and staff. A Supervisory meeting is scheduled for November 4, 2010 and it is expected that local office meetings was held before the end of the 2010 calendar year which will include case file documentation.	PESH asserts that the issue of capturing prima facie information in case files was "fully addressed" via training, staff meetings, and one-to-one meetings with staff members. Supervisors review all case files to ensure that the prima facie information is in the file.	Completed.  OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office and noted that the level and quality of documentation has improved since the 2009 EFAME review.
09-5	The 2009 EFAME noted that one of the cases reviewed was an improperly handled Media Referral. Typically the cases were lacking evidence of employee exposure and	Provide training to all field staff, including supervisory staff, to ensure that referrals are handled in accordance with requirements set forth in	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of	Region 2 and PESH agree that the media referral at issue was unusual and is not representative of a systemic mishandling of	Completed

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	evidence of employer knowledge.	PESH's Field Operations Manual	the PESH Field Operations Manual with staff during monthly staff meetings. A Supervisory meeting was scheduled for November 4, 2010 and local office meetings were held before the end of the 2010 calendar year which will include a review of the proper handling of referrals.	media referrals. The appropriate staff has been coached on the handling of media referrals. Region 2 considers this item completed.	
09-6	The 2009 EFAME noted that a Workplace Violence complaint case file was lacking documentation.	Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described	Completed. Ongoing efforts are continuing to instruct and train staff to document all events and observations and/or actions pertaining to each case file. A Supervisory meeting is scheduled for November 4, 2010 and local office meetings were held before the end of the 2010 calendar year which will include documentation to clearly identify the case file status.	PESH has provided documentation training for all staff. Supervisors review all cases. Region 2 considers this item completed.	Completed
09-7	The 2009 FAME noted that 21 fatality case files were reviewed. In 6 (29%) of the cases it appears that all required next of kin (NOK) letters were not sent to the families of the victims.	Provide training to CSHOs to reiterate the policies relating to fatality investigations including the following: Proper procedures relating to making the appropriate communication to the family of victims (i.e. next of kin letters, inspection findings, etc.) and the requirement of documenting the communication in the file.	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. This item was reviewed with supervisors and field staff. A Supervisory meeting is scheduled for November 4, 2010 and local office meetings were held before the end of the 2010 calendar year which included appropriate communication with the family of fatality victims	PESH has committed to ensuring that appropriate contact is made with next-of-kin and that all letters are sent. OSHA followed up with PESH in February 2011 and PESH asserted that they are following procedures set in their FOM. Region 2 considers this item completed.	Completed
09-8	The 2009 EFAME noted that information in 2 cases reviewed indicates that (1) the investigator may not have conducted the inspection in accordance with OSHA - CPL 02-00-137	Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of the PESH	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. This item was reviewed with supervisors and field staff	A Supervisory meeting is scheduled for November 4, 2010 and local office meetings were held before the end of the 2010 calendar year which will	Completed

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	<p>Fatality/Catastrophe Investigation Procedures dated April 14, 2005 and (2) the inspections may not be adequately supervised.</p>	<p>FOM (i.e. providing detailed narrative documenting the facts that surround the incident, field notes, evidence of employee exposure, evidence of employer knowledge and completion of the appropriate forms (i.e. OSHA 36's and OSHA 170's)).</p>		<p>include providing detailed narratives documenting the facts that surround the incident, field notes, evidence of employee exposure, evidence of employer knowledge and completion of the appropriate forms . PESH has provided documentation training for all staff. Supervisors review all cases. Region 2 considers this item completed</p>	
<p><b>09-9</b></p>	<p>The 2009 EFAME noted that PESH staff was not adhering to OSHA Instruction ADM 1-1.31 requirements in that PESH was not updating IMIS regarding the status of cases related to logging that cases were contested, and updates to IMIS related to the outcomes of informal conferences. PESH has indicated that NCR entries do not always match State procedures and that contest and penalty entries for IMIS do not fit the PESH program. OSHA and PESH will address this issue.</p>	<p>PESH must ensure compliance staff; consultation staff, support staff and management complete, and enter required IMIS forms into the system and ensure IMIS standard reports are reviewed on a regular basis to ensure that forms are complete.</p>	<p><u>See State Action Taken.</u></p>	<p>PESH now tracks informal conferences in IMIS</p> <p>Supervisory Staff utilize IMIS generated reports to monitor CSHO activity and completion of forms.</p> <p>Secretaries monitor Host Reject and Draft Form reports 2 to 3 times per week for proper completion of IMIS forms. IMIS entries for contests and penalties have been a concern and we look forward to working on this with OSHA. Emphasis will be placed on the updating IMIS information after an Informal Conference. In the meantime, penalty and contest data can be provided to OSHA on a</p>	<p>Completed.</p> <p>This issue will be reviewed after OIS deployment and corrective action will be required at that time.</p>

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				quarterly basis	
09-10	<p>The 2009 EFAME noted that due to the general lack of documentation in the cases it was difficult to assess whether all hazards were accurately identified. Of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard cited, etc.) in 7 cases (7%), including 2 fatalities.</p>	<p>Provide additional hazard recognition, and IMIS training for CSHOs to ensure that investigations are completed, and all hazards and potential violations are addressed and corrected in a timely manner.</p> <p>PESH has provided documentation training for all staff. Supervisors review all cases, to ensure that all pertinent information is included in the case file. Region 2 considers this item completed.</p>	<p>Completed. CSHOs attend OTI to enhance hazard recognition skills as demonstrated by PESH inspections citing more hazards than the federal average per inspection.</p>	<p>Open inspection reports are reviewed during monthly staff meetings to monitor status of inspections. Emphasis on documenting the date hazards are abated continues. This was reviewed with supervisors on November 4, 2010 and they reviewed with CSHOs in late 2010. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. Management reports including Open Inspection and Unsatisfied Activity are and will be reviewed on a monthly basis.</p>	<p>Completed.</p> <p>OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office and noted that the level and quality of documentation has improved since the 2009 EFAME review.</p>
09-11	<p>The 2009 EFAME noted that there was no documentation of employee interviews in 79% of the cases reviewed. In approximately 50% of the files reviewed, other than a check box on a PESH form in the file, there was little documentation regarding the level of union involvement.</p>	<p>Provide training to all field staff regarding the interviewing procedures and Agency's policy of Union/Employee Representative involvement during and after inspections and the requirement to properly document compliance with this policy in case file.</p>	<p>Completed. Interviewing techniques and documentation training has been conducted beginning in September 2010. Supervisors will monitor the case files for improvement.</p>	<p>PESH has instructed staff to include interview notes and documentation in case files. PESH supervisors report that files now contain the appropriate notes. OSHA has offered to assist PESH in ensuring that PESH staff get the training they need, including inviting PESH</p>	<p>Completed.</p> <p>OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office</p>

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				staff to attend training sessions presented by local OSHA staff. PESH has allowed their field staff to attend such training.	and noted that the level and quality of documentation has improved since the 2009 EFAME review.
09-12	The 2009 EFAME noted that 15 of the cases reviewed appeared to be inappropriately classified. 1 case may have been “willful”, but was cited as serious. 1 case was cited as willful, but there was no documentation to support the classification. 13 cases had Non-Serious violations that appeared to present serious hazards	Provide additional training to all field staff to adequately classify violations with appropriate description, severity, and probability of potential resulting injury.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Violation Worksheets to document classification of all hazards are being implemented. OSHA recommendations resulting from the 2009 EFAME was reviewed with supervisors on November 4, 2010 who reviewed the findings with CSHOs before the end 2010.	PESH has reviewed the concepts and requirements for correctly classifying citations and supervisors are reviewing citation to ensure that they concur with the compliance officer's recommendation re: classification prior to issuance.	Corrected.  OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office and noted that the level and quality of documentation has improved since the 2009 EFAME review.
09-13	The 2009 EFAME noted that of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard	Implement internal controls and supervisory oversight to ensure that CSHOs have evaluated all relevant hazards on the site, and has determined	Completed. Supervisory Staff have conducted field audits of all CSHOs this past year which did include a review of hazard identification for some	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self	Completed.

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	<p>cited, etc.) in 7 cases (7%), including 2 fatalities. There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).</p>	<p>that all appropriate potential citations have been evaluated for issuance.</p>	<p>staff. Supervisors are instructed to conduct a field audit with staff semi-annually. Training of staff is an ongoing commitment. Additional training including fire safety, health and safety cross over courses, cranes and material handling, excavation and trenching, and machine guarding have been scheduled for FY 2011.</p>	<p>audits to ensure that the field staff are addressing and adequately documenting hazards.</p>	
<p><b>09-14</b></p>	<p>The 2009 EFAME noted that of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard cited, etc.) in 7 cases (7%), including 2 fatalities. There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).</p>	<p>If a documentation issue - review with the staff the requirement to note why an obviously volatile condition documented in a case file was not cited (i.e. no exposure, knowledge etc.)</p>	<p>Documentation of hazards or lack of hazards (for complaint items) is reviewed by each CSHOs technical supervisor for every inspection</p>	<p>PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.</p>	<p>Completed.  OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office and noted that the level and quality of documentation has improved since the 2009 EFAME review</p>

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09-15	The 2009 EFAME noted that of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard cited, etc.) in 7 cases (7%), including 2 fatalities. There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).	If a hazard recognition issue – bolster supervisory review of CSHO’s field observations. Supervisors should discuss field observations with CSHOs prior to issuing citations or closing the case as In-Compliance.	Supervisors are instructed to conduct a field audit with staff semiannually. Training of staff is an ongoing commitment. Documentation of hazards or lack of hazards (for complaint items) is reviewed by each CSHOs technical supervisor for every inspection. Despite concerns with hazard recognition, PESH staff was able to cite more hazards in FY09 than the federal average.	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.	Completed.
09-16	The 2009 EFAME noted that of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard cited, etc.) in 7 cases (7%), including 2 fatalities. There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).	PESH should provide additional hazard recognition training for CSHOs to ensure that all hazards and potential violations are addressed.	CSHOs attend OTI to enhance hazard recognition skills as demonstrated by PESH inspections citing more hazards than the federal average per inspection. Open inspection reports are reviewed during monthly staff meetings to monitor status of inspections. Emphasis on documenting the date hazards are abated continues. Additional training including fire safety, health and safety cross over will be scheduled.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. PESH has 53 OTI classes scheduled for staff in FY2011. Additional in-house training for FY 2011 includes work zone safety, bloodborne pathogens update, and an IH day for all health CSHOs  PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.	Completed.
09-17	The 2009 EFAME noted numerous cases with potentially misclassified violations.	Provide additional training to all field staff to adequately classify violations with appropriate severity (including	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. The use of the 1B	PESH has completed in house training, and, in addition to routine review of case files, PESH	OSHA Region 2 personnel have



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		willful classification) and probability of potential resulting injury. Train CSHOs on the concept of citing the most likely/most serious injury/illness to result from exposure.	Violation Worksheets to document classification of all hazards is being implemented was reviewed with staff in late 2010.	continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards. .	reviewed a selection of cases from PESH Manhattan field office and noted that hazards were appropriately classified in those cases reviewed.  Completed.
09-18	The 2009 EFAME noted that case files reviewed lacked evidence of employer knowledge of the cited hazardous conditions, names and contact information for employee(s) interviewed, evidence of employee exposure, narratives, OSHA 1B forms (forms in which violations are documented), and documentation of affirmative defense issues.	Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements as set forth by State of New York policy.	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. Efforts are being made to improve documentation of employer knowledge, employee exposure, and affirmative defense issues. This was reviewed with supervisors on November 4, 2010 and they reviewed with CSHOs in late 2010. Supervisors will continue to monitor case file documentation for any additional field staff training that may be needed.	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.	Completed.
09-19	The 2009 EFAME noted that several individual cases reviewed indicate a lack of union/employee representative involvement and/or documentation of involvement.	Provide training to all field staff regarding the agency's policy of Union/Employee Representative involvement during and after inspections	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. This issue was covered with	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self	OSHA Region 2 personnel have reviewed a

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		and the requirement to properly document compliance with this policy in case file.	Supervisors and inspection staff. This was reviewed with supervisors on November 4, 2010 and they reviewed with CSHOs in late 2010. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed.	audits to ensure that the field staff are addressing and adequately documenting hazards.	selection of cases from PESH Manhattan field office and noted that the level and quality of documentation has improved since the 2009 EFAME review.  Completed.
09-20	The 2009 EFAME noted that there were numerous cases reviewed with inadequate prima facie documentation.	Provide training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements set forth in PESH's Field Inspection Reference Manual or Field Operations Manual.	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings.	OSHA recommendations resulting from the 2009 E-Fame was reviewed with supervisors and staff including prima facie documentation of violations. This was reviewed with supervisors on November 4, 2010 and they reviewed with CSHOs in late 2010. Additional all staff training on specific topics such as critical elements of Prima Facie documentation was conducted using teleconferencing to reach all field staff statewide.	Completed.

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09-21	The 2009 EFAME noted that there were numerous cases reviewed with inadequate prima facie documentation.	Provide additional training to all field staff, including supervisory staff, to ensure that all citation documentation meets the minimum requirements of a prima facie case as set forth by federal OSHA and the FOM.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings . OSHA recommendations resulting from the 2009 E-Fame was reviewed with supervisors and staff. This was reviewed with supervisors on November 4, 2010 and they reviewed with CSHOs in late 2010. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. Additionally all appropriate staff were trained on specific topics such as critical elements of Prima Facie documentation was conducted using teleconferencing to reach all field staff statewide.	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.	Completed.
09-22	The 2009 EFAME noted that there were numerous cases reviewed with inadequate prima facie documentation.	Implement internal controls to ensure that all cases are reviewed on a supervisory level to make certain that all violations issued meet the prima facie requirements. Prima Facie documentation includes evidence of employee exposure to a hazard, evidence of employer knowledge, an assessment of the severity of the injury/illness resulting from exposure to the hazard, and the probability of that exposure.	Completed. Additional internal controls were implemented to look for adequate documentation of Prima Facie elements. With advice from our internal control unit, we can look to review an appropriate number of random case files for proper violation documentation on a quarterly basis. Comprehensive annual audits will be performed for each CSHO.	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.	Completed.

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09-23	<p>The 2009 EFAME noted that excessive abatement periods were proposed in 16 of 65 cases (25%) reviewed that had citations, including a case in which hazards that were considered “imminent danger” were given abatement periods of 10 days. In several cases the abatement periods were 3 months or longer to correct hazards such as missing eyewash stations, unguarded floor holes, implementing lockout tagout procedures, PPE assessment, etc. Inadequate abatement appears to have been accepted in 6 cases (9%) reviewed.</p>	<p>Internal controls should be developed and implemented to ensure that appropriate PESH staff tracks the status of abatement for every citation issued by PESH. OSHA recommends that staff reviews IMIS generated abatement status reports to identify citations with pending or overdue abatement dates. Prior to the abatement due date PESH personnel should follow up with employers requesting the required abatement information and re-emphasizing the abatement due date. If at that time, if the employer needs additional time a timely and proper PMA can be submitted to PESH.</p>	<p>Completed. Supervisors review IMIS generated reports at least monthly to monitor status of inspections. CSHOs are instructed to make contact with an employer three times after the closing conference to monitor abatement progress. If there is any concern in meeting the assigned abatement dates, the CSHO reminds the employer of the process for a PMA. These contacts are being documented on the Case Contact sheet. We will include this topic in our audits as part of our internal control program</p>	<p>PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards. .</p>	<p>Completed.</p>
09-24	<p>The 2009 EFAME noted that there appeared to be 2 cases in which Failure-To-Abate (FTA) violations may have been appropriate, but not issued. There were 2 cases in which a FTA were issued but PESH had not received final abatement as of this review and PESH does not appear to be pursuing abatement.</p>	<p>Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including: • Ensure appropriate abatement periods are assigned for unabated violations. • Ensure that all abatement information accepted satisfies the order to comply prior to closing the case. • For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.</p>	<p>Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. Supervisors review case files for appropriate abatement periods and verification of abatement methods. This was reviewed with supervisors on November 4, 2010 and with CSHOs in late 2010.</p>	<p>Supervisors review case files for appropriate abatement periods and verification of abatement methods. This was reviewed with supervisors on November 4, 2010 and with CSHOs in late 2010. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. Additional all staff training on specific topics such as abatement procedures was conducted using teleconferencing to reach all field staff</p>	<p>Completed.</p>

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				<p>statewide. This was performed before the second quarter of FY 2011.</p> <p>FTA Cases are tracked via the "Open Inspection" reports. Supervisors review the reports and when appropriate PESH Counsel and the NY State Attorney General pursue FTA penalties and abatement</p>	
09-25	<p>The 2009 EFAME noted that the auditors reviewed 3 inspections in which PESH conducted follow-up inspections for the purpose of verifying abatement after they received and accepted abatement information from the employer. PESH conducts follow-up inspections regardless of whether acceptable abatement certification is received from employers.</p>	<p>Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described and the reasons for actions such as follow-up inspections are described.</p>	<p>Completed. Follow-up narratives are being standardized to address method of abatement for each violation cited. Case Contact sheets are maintained in each case file to document all activities related to the inspection. Supervisors review all follow-up inspections as per PESH policy.</p>	<p>A follow up template for narrative reports was provided to staff on 2/11/2010 to standardize report documentation statewide. Proper use of the case contact sheet was reviewed with Supervisors on 11/4/2010. PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field staff is adequately documenting inspection related activities</p>	Completed.
09-26	<p>The 2009 EFAME noted that several cases contained inadequate Petition to Modify and Abatement Date documentation.</p>	<p>Implement internal controls to ensure that all Petitions for Modification of Abatement Dates (PMAs) are reviewed on a supervisory level to ensure that all required information is contained in the request prior to granting the PMA, and that</p>	<p>Completed. PESH reported that PMAs are only granted at the supervisory level with input from Program Managers. Approved PMAs are entered into IMIS and tracked on Open Inspection Reports during monthly staff meetings. All PMAs will be</p>	<p>The PMA form itself was recently revised to improve clarity and to gather more information. PESH will include this topic as part of its internal controls program and plans to audit a sampling</p>	Completed.

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		once a PMA is granted it is managed in accordance with PESH requirements.	reviewed by the Program Manager’s Office for proper documentation and management.	of PMAs prior to approval being granted	
09-27	The 2009 EFAME noted that there were two cases reviewed where FTA appears to have been incorrectly administered.	Implement internal controls including supervisory oversight to ensure that Failure To Abate notices are issued where appropriate and administered in accordance with PESH policy	Completed. PESH reported that all case files are reviewed at the supervisory level including the issuance and monitoring of FTA notices. Supervisors monitor when violations reach their abatement due dates via review of Open Inspection Reports at monthly staff meetings. FTA cases will be included in the random quarterly audits for proper documentation and management.	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field FTAs are properly administered	Completed.
09-28	The 2009 EFAME noted that neither of the 2 informal conferences reviewed were documented sufficiently.	Relating to informal conferences, PESH representatives must thoroughly document the following in the case file: The fact that the appropriate notifications to the parties of the date, time and location of the informal conference was made; indicate the date of the informal conference was held in the diary sheet; at the conclusion of the conference, all main issues and potential courses of action must be summarized and documented.	Completed. The PESH Field Operations Manual addresses notification and the preparation of an Informal Conference Report. Such instruction was reinforced with supervisors.	This was reviewed with supervisors on November 4, 2010.	Completed.
09-29	The 2009 EFAME noted that PESH staff was not adhering to OSHA Instruction ADM 1-1.31 requirements in that PESH was not updating IMIS regarding the status of cases related to logging that cases were contested, and updates to IMIS related to the outcomes of	PESH must begin to update the IMIS in a timely manner relating to logging status of informal conferences and contested cases. Federal OSHA Region II is willing to assist with resolving IMIS compatibility issues which	See State Action Plan	PESH now tracks contested cases via an internal system.	Completed.  This issue will be reviewed after OIS deployment

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	informal conferences. PESH has indicated that NCR entries do not always match State procedures and that contest and penalty entries for IMIS do not fit the PESH program. OSHA and PESH will address this issue.	have contributed to this problem.			
09-30	The 2009 EFAME noted that adoption of standards was not timely in 2 of 3 applicable standards.	Standards adoption should be carefully reviewed and response to adoption be timely according to the Automated Tracking System request response date.	Completed. PESH adopts new OSHA standards through the State Administrative Procedures Act. PESH strives to adopt all new OSHA standards within OSHA parameters.  PESH must identify the source of the delay and develop corrective action, ranging from a legislative change to allow faster adoption of identical standards to a system to expedite processing.	PESH and Region 2 are working together to ensure that standards are adopted in a timely manner. Budget constraints and availability of referenced standards contributes to the timeliness issues. PESH reports that overall they intend to adopt OSHA standards intact.	Completed.
09-31	The 2009 EFAME noted that due to the lack of documentation such as field notes and photos the reviewer could not determine if all hazards were addressed during the consultation visits. The health consultants make no mention as to the type of chemicals present, or if exposure has been documented by employer and/or if monitoring had been performed. Cases in which apparent hazards were missed are described in detail on pages 76-77.	Internal controls should be implemented to ensure that all required consultation forms are completed, that field notes are maintained in case files, the employee involvement is documented, and that referrals to PESH enforcement are made as appropriate.	All PESH consultation forms are reviewed by supervisors. Additional emphasis has been placed on documentation issues, verification of abatement, and referral to enforcement. This was reviewed with supervisors on November 4, 2010 and they reviewed with CSHOs in late 2010.	Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. PESH will look to adopt the elements of 1908 and will require employee participation in every consultation.	Completed.
09-32	The 2009 EFAME noted that due to the lack of documentation such as field notes and photos the reviewer could not determine if all hazards were addressed during the consultation visits. The health consultants make no mention as to	PESH should provide additional hazard recognition training for Consultation to ensure that all hazard and potential violations are addressed, that serious hazards are verified as being abated in	PESH routinely cites more hazards than the federal average, but the scope of the consultation may be limited by the employer in accordance to PESH policies. These issues have been reviewed with supervisors and consultation	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to ensure that the field FTAs are properly	Completed.

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	<p>the type of chemicals present, or if exposure has been documented by employer and/or if monitoring had been performed. Cases in which apparent hazards were missed are described in detail on pages 76-77.</p>	<p>a timely manner, and if not abated to be referred to enforcement for appropriate action.</p>	<p>staff for proper case file documentation and follow up action. This was reviewed with supervisors again on November 4, 2010 and they reviewed with CSHOs in late 2010. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed.</p>	<p>administered.</p>	
<p>09-33</p>	<p>The 2009 EFAME noted that 8 of the 24 cases reviewed were sent to counsel’s office for their review. The State’s investigators stated that they send counsel all cases where complainants have made a prima facie allegation of discrimination. In many cases the investigation then halts while the investigators wait for a response from counsel. This means that respondent’s position statements are not tested. In order for the investigators to further the investigations they must test the respondents’ assertions. Investigators stated that they believed that the PESH FOM required them to wait for counsel to respond prior to continuing the investigation.</p>	<p>PESH should test respondent’s position statements without waiting for a response from department counsel.</p>	<p>Completed. PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures including completion of a Complaint Intake Form to assess whether the complaint meets required criteria. Training on the new procedures is scheduled for Q1FY11.</p>	<p>The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of PESH Supervisors and discrimination investigators.</p> <p>PESH has completed in house training and is Supervisors continue to oversee the investigators work.</p>	<p>Completed.</p>
<p>09-34</p>	<p>The 2009 EFAME noted that 8 of the 24 cases reviewed were sent to counsel’s office for their review. The State’s investigators stated that they send counsel all cases where complainants have made a prima facie allegation of discrimination. In many cases the investigation then halts while the investigators wait for a response from counsel. This</p>	<p>Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainant’s prima facie allegations.</p>	<p>Completed. PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures. Training on the new procedures is scheduled for Q1FY11.</p>	<p>PESH adopted the "Quick Settlement" section, Chapter 6, Remedies &amp; Settlement Agreements, Section III Settlement Policy of the FOM. The nature of the schedules of some municipal employees (part time vs. full time) slows the</p>	<p>Completed.</p>



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	<p>means that respondent's position statements are not tested. In order for the investigators to further the investigations they must test the respondents' assertions. Investigators stated that they believed that the PESH FOM required them to wait for counsel to respond prior to continuing the investigation.</p>			<p>investigation process.</p> <p>The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of our Supervisors and discrimination investigators</p>	
09-35	<p>The 2009 EFAME noted that 8 of the 24 cases reviewed were sent to counsel's office for their review. The State's investigators stated that they send counsel all cases where complainants have made a prima facie allegation of discrimination. In many cases the investigation then halts while the investigators wait for a response from counsel. This means that respondent's position statements are not tested. In order for the investigators to further the investigations they must test the respondents' assertions. Investigators stated that they believed that the PESH FOM required them to wait for counsel to respond prior to continuing the investigation.</p>	<p>Once investigators have determined that there is a prima facie discrimination allegation they should continue with investigation by sending out a notification to the respondents. This has been counsel's policy since at least 2001.</p>	<p>Completed. PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures. Training on the new procedures is scheduled for Q1FY11.</p>	<p>The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of our Supervisors and discrimination investigators</p>	Completed.
09-36	<p>The 2009 EFAME noted that PESH Discrimination Investigators stated that in the cases they do not believe will be referred for merit to the counsel's office they do not prepare a report. The lack of documentation hampers an outside party's ability to determine whether or not the appropriate result was reached in the cases.</p>	<p>PESH should ensure that all cases that are docketed have a final report outlining the work done regardless of the outcome. Each investigation should be documented by the creation of, at least, a simple narrative outlining the steps that were taken and the reasoning behind the actions</p>	<p>Completed. PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures. Training on the new procedures is scheduled for Q1FY11.</p>	<p>PESH now requires a report or narrative in all cases - including non-merit cases. Screening forms now require "prima facie" information to verify whether the complaint has merit. Cases in which the complainant disagrees</p>	Completed.

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		<p>taken in the investigation. These reports should be dated and recorded in IMIS. Each file should also have a table of contents (exhibit list).</p>		<p>with PESH are referred to PESH counsel. Counsel may request that PESH gather additional information and. PESH can at that point reopen the cases. If counsel concurs that the case has no merit then the complainant is advised of their appeal rights.</p>	
<p><b>09-37</b></p>	<p>The 2009 EFAME noted that in a number of cases, case files documenting an investigation are not complete enough to know what the investigator did and the reasons for the investigations conclusions. Investigators appear not to adhere uniformly to PESH investigative policy.</p>	<p>PESH should provide pertinent [training], such as Basic Whistleblowing Training 1420, for discrimination investigators, discrimination investigators’ direct supervisors, and all program managers.</p>	<p>Completed. All current and future discrimination investigators have or will receive Whistleblower training. Considering the differences between OSHA and PESH rules and regulations, PESH would welcome an abbreviated offsite OTI Whistleblower class to be held in upstate NY.</p>	<p>All current and future discrimination investigators have or will receive Whistleblower training.</p>	<p>Completed.</p>
<p><b>09-38</b></p>	<p>The 2009 EFAME noted that there were multiple instances where CSHOs did not receive mandatory training. In addition, no CSHOs had advanced accident investigation training, including those who conduct fatality inspections. Further, it is likely this lack of training has negatively impacted overall inspection quality relating to hazard identification and the ability to adequately document legally defensible cases.</p>	<p>Develop and implement a comprehensive training plan to improve existing training records and to provide mandatory training to CSHOs and their supervisors to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 “Initial Training Program for OSHA Compliance Personnel”.</p>	<p>Completed. PESH has strived to train CSHOs to OSHA standards at the time such standards were in place. PESH and OSHA training records were not compatible. PESH has centralized training records in the Program Manager’s office and continues to send CSHOs to OTI training with priority to newer CSHOs and continuing training for experienced CSHOs on a cyclical basis. We will train all staff hired after we adopted TED-01-00-018 to the level that meets that directive. That effort was started in 2009 and will continue.</p>	<p>53 OTI classes have been scheduled for staff in FY 2011. PESH is exploring ways to track the status of training for their staff by creating a Microsoft Access database. Target date for completion is the end of the 2nd Q of FY2011.</p>	<p>Completed.</p>