



**State of New York
Public Employees Occupational Safety and Health
(PESH)**

***Federal Annual Monitoring Evaluation (FAME) Report
October 1, 2009 - September 30, 2010***

**U.S. Department of Labor
Occupational Safety and Health Administration
Region II - New York**

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I. Executive Summary

This evaluation of the New York Public Employees Occupational Safety and Health (PESH) State Program covers the period of October 1, 2009 through September 30, 2010. For FY 2010, PESH's initial total 23(g) grant amount was \$8,241,000, which included the federal base grant of 3,163,000, the state's match of 3,163,000, and the 100% overmatch of 1,915,000,

PESH's FY10 Annual Performance Plan consisted of one strategic goal, Improving Workplace Safety and Health for all Public Employees, along with complementary performance goals; (1) reduce injuries and illnesses in NAICS 237310 (Highway, Street and Bridge Construction), (2) reduce the number of lost workday rate by 4% in NAICS 623110, 623210, 622210, (Health Services-Nursing Homes, Residential Facilities operated by NYS Office for People with Developmental Disabilities (OPWDD) and Psychiatric Hospitals Operated by the NYS Office of Mental Health (OMH).

PESH reported the following results as it relates to its Goal of Improving Workplace Safety and Health for all Public Employees.

Performance Goal #1A: Reduce the lost workday rate by 1% in NAICS 237310 (Heavy Construction – except buildings). The goal for FY 10 was to identify the counties with the highest injury and illness rates and offer a training program designed to address the more frequent injuries identified on their injury and illness logs (SH-900). The goal was met as the average rate for all NY counties was 9.9, which represents a 7.5% reduction from the 2008 rate of 10.7. In addition; PESH performed inspections, and conducted outreach and consultation activities in the highway, street and bridge construction industry.

Performance Goal #1B: Reduce the lost workday rate by 4% in the Health Services and Nursing Homes NAICS codes. The overall injury rate has decreased in the nursing home industry by 41.6% since the beginning of this initiative (1998). Based on this success the goal for FY 10 was expanded to include the NYS Office of Mental Health (OMH) and the NYS Office for People with Developmental Disabilities (OPWDD). Logs were collected and reviewed as was done with the beginning of the Long Term Care Initiative. Because of problems with the logs such as getting the facilities to provide enough information on the log to make them useful, PESH used the Annual NYS Workers' Compensation Report to track Lost Work Day Rates. For OPWDD there was a reduction of 7.1% from 2007 to 2009. OHM however had an increase of 13.5%. PESH asserts that many of these injuries are due to workplace violence and has committed to focusing on the issue of workplace violence in FY 2011 and beyond.

a. Introduction

The New York State Plan for Public Employee Safety and Health (PESH), by authority under Section 27(a) of the New York Labor Law, is responsible for promoting the health and safety for more than 2 million State and Local government employees in the State. The New York Plan received initial plan approval on August 19, 1984 and certification on August 16, 2006. The New York Department of Labor has been designated as the agency responsible for administering the plan throughout the State. The Commissioner of Labor has full authority to enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions. In addition to the plan's enforcement responsibilities, PESH provides free

on-site consultation and training services to public sector agencies, upon request.

The PESH Program consists of one central office in Albany, New York and nine district offices located throughout the State: Albany, Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City and New York City.

The New York State Plan applies to all public sector employers in the State, including: State, County, Town, and Village governments, as well as Public Authorities, School Districts, and Paid and Volunteer Fire Departments. Private sector enforcement is retained under Federal Jurisdiction, while private-sector consultative services are provided by the NYSDOL-DOSH Consultation Services Bureau under section 21(d) of the OSH Act. PESH adopted all applicable Federal OSHA safety and health standards either identically or through alternative means.

The PESH program does not allow for the issuance of “first instance” monetary penalties for public employers found being in violation of PESH standards on a first instance basis. Per Diem penalties can be assessed when Failure-to-Abate notices are issued.

New York State Plan Profile

State Plan: Initial Plan Approval – August 19, 1984
Certification: August 16, 2006 (71 FR 47089)

Designee - Colleen C. Gardner, Commissioner
New York State Department of Labor

Excluded Coverage

- Occupational Safety and Health enforcement services in the private sector
- Occupational Safety and Health consultative services in the private sector

Employee Coverage - Public Coverage Only

- 1,304,900 total State, County and Local employees
- 7,211 Public Sector Employers

Operational Grant – Per PESH’s Financial Close Out Report

- Federal Share: \$3,981,500
- State Match: \$3,981,500
- 100% Overmatch: \$1,096,500
- Total for Grant: \$9,059,500

- Total NY share: \$5,078,000

Allocated Staff

Enforcement: 45

Consultation (23(g) Public Sector Only): 17

b: Summary of the report

PESH's 2009 EFAME noted 38 recommendations. It is OSHA Region 2's assessment that PESH, in its 2009 EFAME Corrective Action Plan adequately addressed all items. In the cases of 2 recommendations related to information management - PESH will need to re-assess its information management system and its interoperability with the upcoming OSHA Information System (OIS).

Complaints

The 2009 EFAME noted that there were delays in responding to health complaints, that proof that complainants were notified of inspection results was not evident and that there were cases in which complaint items were not fully addressed.

Complaints received are evaluated by the Supervisors, input into IMIS, and assigned to inspectors. Supervisors review routinely to monitor status of pending complaint inspections. Most PESH district offices are able to provide a quick response to complaints, but downstate districts, especially Manhattan, receive more complaints and struggle to provide the same timely response. Preliminary data indicates that there has been improvement on this issue.

Supervisors review 100% of complaint case files and they are ensuring that the appropriate communications are sent prior to closing the complaint.

Supervisors review 100% of complaint case files to ensure that all complaint items have been appropriately addressed.

In 2011 OSHA Region 2 personnel reviewed a sample of cases from the Manhattan PESH office and determined that there has been significant improvement in this area.

Case File Documentation

The 2009 EFAME noted that cases reviewed (including fatalities) from either the safety or health programs contained insufficient prima facie evidence to support the citations issued. Typically the cases were lacking evidence of employee exposure and evidence of employer knowledge.

The 2009 EFAME also noted that in enforcement and consultation case files, narratives describing the events on site and the CSHOs' onsite activity were lacking, making it difficult to assess whether all hazards were accurately identified.

PESH asserts that the issue of capturing prima facie information 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.

In 2011 OSHA Region 2 personnel reviewed a sample of cases from the Manhattan PESH office and determined that there has been significant improvement in the areas of prima facie and narrative documentation.

Fatality - Contact With Next of Kin

The 2009 EFAME noted that in a significant number of fatality case files it appeared that all required next of kin (NOK) letters were not sent to the families of the 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.

Employee and Employee Representative Contact

The 2009 EFAME noted that documentation of employee interviews the level of union involvement in inspections and consultation visits was lacking.

Interviewing techniques and documentation training was been conducted in late 2010. PESH supervisors report that files now contain the appropriate notes and description of employee and employee representative involvement with inspections

In 2011 OSHA Region 2 personnel reviewed a sample of cases from the Manhattan PESH office and determined that there has been significant improvement in the areas of documenting employee and employee representative contact.

Citations

The 2009 EFAME noted that there were several cases in which violations were mis-classified, that there were cases in which violations may have been missed, or incorrectly cited.

PESH has reviewed the concepts and requirements for correctly classifying citations and supervisors are reviewing citations to ensure that they concur with the compliance officer's recommendation re: classification prior to issuance.

Supervisors 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.

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. Region 2 considers these corrective actions to be completed.

In 2011 OSHA Region 2 personnel reviewed a sample of cases from the Manhattan PESH office and determined that there has been significant improvement in the areas of citation and general case file documentation.

Hazard Abatement

The 2009 EFAME noted that excessive abatement periods were proposed in a significant number of cases, including for hazards that were considered “imminent danger.” In addition inadequate abatement appears to have been accepted in a number of cases reviewed, Petitions to Modify Abatement Dates (PMAs) were not handled in accordance with agency policy, and there were cases reviewed in which citations for Failure-to-Abate previously cited items were warranted, but not issued.

PESH has completed in house training regarding abatement verification, appropriate abatement periods, PMAs, and when to propose FTAs. PESH continues to conduct self audits to ensure that the field staff are addressing and adequately documenting hazards.

PESH conducts follow-up inspections regardless of whether acceptable abatement certification is received from employers.

In 2011 OSHA Region 2 personnel reviewed a sample of cases from the Manhattan PESH office and determined that there has been significant improvement with respect to hazard abatement.

Whistleblower Investigations

The 2009 EFAME noted that because PESH Whistleblower investigators must get clearance to proceed with investigations from PESH counsel in certain scenarios, this had resulted delays or prevention of the respondent position statements being tested.

PESH has revised the PESH discrimination portion of its Field Operations Manual to more closely mirror OSHA discrimination procedures

PESH has completed in house training and its Supervisors continue to oversee the investigators work. Region 2 considers these items to be completed.

Whistleblower Written Reports

The 2009 EFAME noted that not all discrimination cases result in a written report. The lack of documentation hampers an outside party’s ability to determine whether or not the appropriate result was reached in the cases.

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 with PESH are referred to PESH counsel for appropriate action.

Training

The 2009 EFAME noted that there were multiple instances where CSHOs did not receive mandatory training and training appropriate the level of complexity of certain types of inspections (ex: fatality investigations).

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 OSHA Training Institute training

with priority to newer CSHOs and continuing training for experienced CSHOs on a cyclical basis.

c: Monitoring methodology

Monitoring of the New York State Plan consisted of both formal and *ad hoc* meetings, as well as regular review of data from a variety of sources to track the State's progress in achieving its strategic and annual performance goals and to ensure the State is meeting its mandated responsibilities under the Act.

OSHA met with key stakeholders and received input on stakeholders' concerns and recommendations with regard to PESH's performance.

OSHA has considered stakeholder input in when assessing the PESH's 2010 performance and their actions in response to the 2009 EFAME.

In addition, onsite monitoring was conducted to track PESH's substantial progress in addressing the recommendations made as a result of the special study and which were included in the FY 2009 Federal Annual Monitoring Evaluation report. This monitoring consisted of an on-site review of twenty case (20) files which included eight (8) safety and twelve (12) health case files. Included in this number was 1 fatality file. The results of this on-site review are discussed below.

II. Major New Issues

There are no major new issues related to PESH State Plan Monitoring in FY2010.

III. Assessment of State Action and Performance Improvements in response to Recommendations From the FY2009 EFAME

Finding 09 - 01:

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.

Recommendation 09-01:

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.

Corrective Action and Status 09-01:

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.

Finding 09 - 02:

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).

Recommendation 09-02:

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.

Corrective Action and Status 09-02:

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.

Finding 09 -03:

The 2009 EFAME noted that there were a number of cases (11%) in which it appears that all complaint items were not addressed.

Recommendation 09-03:

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.

Corrective Action and Status 09-03:

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 by CSHO.

Supervisors review 100% of complaint case files to ensure that all complaint items have been appropriately addressed.

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.

Finding 09 - 04:

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.

Recommendation 09-04:

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.

Corrective Action and Status 09-04:

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.

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.

Finding 09 - 05:

The 2009 EFAME noted that one of the cases reviewed was an improperly handled Media Referral.

Recommendation 09-05:

Provide training to all field staff, including supervisory staff, to ensure that referrals are handled in accordance with requirements set forth in PESH's Field Operations Manual.

Corrective Action and Status 09-05:

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. 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.

Region 2 and PESH agree that the media referral at issue was unusual and is not representative of a systemic mishandling of media referrals. The appropriate staff has been coached on the handling of media referrals. Region 2 considers this item completed.

Finding 09 - 06:

The 2009 EFAME noted that a Workplace Violence complaint case file was lacking documentation.

Recommendation 09-06:

Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described

Corrective Action and Status 09-06:

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.

Finding 09 - 07:

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.

Recommendation 09-07:

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.

Corrective Action and Status 09-07:

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.

Finding 09 - 08:

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 Fatality/Catastrophe Investigation Procedures dated April 14, 2005 and (2) the inspections may not be adequately supervised.

Recommendation 09-08:

Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of the PESH 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)).

Corrective Action and Status 09-08:

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 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.

09 - 09:

Finding 09 - 09:

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.

Recommendation 09 - 09:

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.

Corrective Action and Status 09 - 09:

Completed.

PESH now tracks informal conferences in IMIS

Supervisory Staff utilize IMIS generated reports to monitor CSHO activity and completion of forms. 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 quarterly basis

This issue will be reviewed after OIS deployment and corrective action will be required at that time.

Finding 09 - 10:

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.

Recommendation 09-10:

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.

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.

Corrective Action and Status 09-10:

Completed. 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. 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.

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.

Finding 09 - 11:

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.

Recommendation 09 - 11:

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.

Corrective Action and Status 09-11:

Completed. Interviewing techniques and documentation training has been conducted beginning in September 2010. Supervisors will monitor the case files for improvement.

PESH has instructed staff to include interview notes and documentation in case files. PESH supervisors report that files now contain the appropriate notes. Region 2 considers this item completed.

OSHA has offered to assist PESH in ensuring that PESH staff get the training they need, including inviting PESH staff to attend training sessions presented by local OSHA staff. PESH has allowed their field staff to attend such training.

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.

Finding 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

Recommendation 09 - 12:

Provide additional training to all field staff to adequately classify violations with appropriate description, severity, and probability of potential resulting injury.

Corrective Action and Status 09-12:

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 were reviewed with supervisors on November 4, 2010, who reviewed the findings with CSHOs before the end of 2010.

PESH has reviewed the concepts and requirements for correctly classifying citations and supervisors are reviewing citations to ensure that they concur with the compliance officer's recommendation re: classification prior to issuance.

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.

Findings 09 - 13, 14, 15, & 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%).

Recommendation 09 - 13:

Implement internal controls and supervisory oversight to ensure that CSHO has evaluated all relevant hazards on the site, and has determined that all appropriate potential citations have been evaluated for issuance.

Corrective Action and Status 09 -13:

Completed. Supervisory Staff have conducted field audits of all CSHOs this past year which did include a review of hazard identification for some 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.

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. Region 2 considers these corrective actions to be completed.

Recommendation 09 - 14:

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.)

Corrective Action and Status 09 -14:

Documentation of hazards or lack of hazards (for complaint items) is reviewed by each CSHOs technical supervisor for every inspection.

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. Region 2 considers these corrective actions to be 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.

Recommendation 09 - 15:

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.

Corrective Action and Status 09 -15:

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. Region 2 considers these corrective actions to be completed.

Recommendation 09 - 16:

PESH should provide additional hazard recognition training for CSHOs to ensure that all hazards and potential violations are addressed.

Corrective Action and Status 09 -16:

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. Region 2 considers these corrective actions to be completed.

Finding 09 - 17:

The 2009 EFAME noted numerous cases with potentially misclassified violations.

Recommendation 09 - 17:

Provide additional training to all field staff to adequately classify violations with appropriate severity (including 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.

Corrective Action and Status 09-17:

Completed. Training of staff is an ongoing commitment through staff meetings on the State and

Local level. The use of the 1B Violation Worksheets to document classification of all hazards is being implemented was reviewed with staff in late 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 are addressing and adequately documenting hazards. Region 2 considers these corrective actions to be completed.

OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office and noted that hazards were appropriately classified in those cases reviewed.

Finding 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.

Recommendation 09 - 18:

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.

Corrective Action and Status 09-18:

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. Region 2 considers these corrective actions to be completed.

Finding 09 - 19:

The 2009 EFAME noted that several individual cases reviewed indicate a lack of union/employee representative involvement and/or documentation of involvement.

Recommendation 09 - 19:

Provide training to all field staff regarding the 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.

Corrective Action and Status 09-19:

Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. This issue was covered with 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.

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. Region 2 considers these corrective actions to be 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.

Findings 09 - 20, 21, & 22:

The 2009 EFAME noted that there were numerous cases reviewed with inadequate prima facie documentation.

Recommendation 09 - 20:

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.

Corrective Action and Status 09 - 20:

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.

Recommendation 09 - 21:

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.

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. Region 2 considers these corrective actions to be completed.

Corrective Action and Status 09 - 21:

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. Region 2 considers these corrective actions to be completed.

Recommendation 09 - 22:

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.

Corrective Action and Status 09 -22:

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. Region 2 considers these corrective actions to be completed.

Finding 09 - 23:

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.

Recommendation 09 - 23:

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.

Corrective Action and Status 09-23:

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

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. Region 2 considers these corrective actions to be completed.

Finding 09 - 24:

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.

Recommendation 09 - 24:

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.

Corrective Action and Status 09-24:

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 Nierenberg 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 statewide. This was performed before the second quarter of FY 2011.

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. Region 2 considers this item completed.

Finding 09 - 25:

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.

Recommendation 09 - 25:

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.

Corrective Action and Status 09-25:

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.

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. Region 2 considers these corrective actions to be completed.

Finding 09 - 26:

The 2009 EFAME noted that several cases contained inadequate Petition to Modify and Abatement Date documentation.

Recommendation 09 - 26:

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 once a PMA is granted it is managed in accordance with PESH requirements.

Corrective Action and Status 09-26:

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 reviewed by the Program Manager's Office for proper documentation and management. 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 of PMAs prior to approval being granted.

Finding 09 - 27:

The 2009 EFAME noted that there were two cases reviewed where FTA appears to have been incorrectly administered.

Recommendation 09 - 27:

Implement internal controls including supervisory oversight to ensure that Failure To Abate notices are issued where appropriate and administered in accordance with PESH policy.

Corrective Action and Status 09-27:

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. Region 2 consider these corrective actions to be completed.

Finding 09 - 28:

The 2009 EFAME noted that neither of the 2 informal conferences reviewed were documented sufficiently.

Recommendation 09 - 28:

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.

Corrective Action and Status 09-28:

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.

Finding 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 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.

Recommendation 09 - 29:

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 have contributed to this problem.

Corrective Action and Status 09 - 29:

Completed. PESH now tracks contested cases via an internal system.

This issue will be reviewed after OIS deployment.

Finding 09-30:

The 2009 EFAME noted that adoption of standards was not timely in 2 of 3 applicable standards.

Recommendation 09-30:

Standards adoption should be carefully reviewed and response to adoption be timely according to the Automated Tracking System request response date.

Corrective Action and Status 09-30:

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.

Finding 09 - 31 & 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 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.

Recommendation 09 -31:

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.

Corrective Action and Status 09 - 31:

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.

Recommendation 09 -32:

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 a timely manner, and if not abated to be referred to enforcement for appropriate action.

Corrective Action and Status 09 - 32:

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 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.

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. Region 2 consider these corrective actions to be completed.

OSHA Region 2 Considers the corrective actions for 09-31 and 09-32 completed.

Finding 09 - 33, 34, & 35:

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.

Recommendation 09 - 33:

PESH should test respondent's position statements without waiting for a response from department counsel.

Corrective Action and Status 09 - 33:

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.

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.

PESH has completed in house training and is Supervisors continue to oversee the investigators work. Region 2 considers these items to be completed.

Recommendation 09 - 34:

Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainant's prima facie allegations.

Corrective Action and Status 09 - 34:

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.

PESH adopted the "Quick Settlement" section, Chapter 6, Remedies & 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 investigation process.

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.

Recommendation 09 - 35:

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.

Corrective Action and Status 09 - 35:

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.

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

Finding 09 - 36:

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.

Recommendation 09 - 36:

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 taken in the investigation. These reports should be dated and recorded in IMIS. Each file should also have a table of contents (exhibit list).

Corrective Action and Status 09-36:

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.

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 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.

Finding 09 - 37:

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.

Recommendation 09 - 37:

PESH should provide pertinent [training], such as Basic Whistleblowing Training 1420, for discrimination investigators, discrimination investigators' direct supervisors, and all program managers.

Corrective Action and Status 09-37:

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.

Region 2 considers this item to be completed.

Finding 09 - 38:

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.

Recommendation 09 - 38:

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”.

Corrective Action and Status 09-38:

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. PESH will train all staff hired after it adopts TED-01-00-018 to the level that meets that directive. That effort was started in 2009 and will continue.

53 OTI classes have been scheduled for staff in FY 2011. PESH is currently tracking the status of training for their staff via Microsoft Access database of their own creation.

IV. FY 2010 State Enforcement

Inspection Activity

The FY 2010 Inspection Activity micro-to-host report (INSP8) shows that PESH OSHA conducted a total of 2,184 inspections during the fiscal year: 1,518 safety inspections and 666 health inspections. This is 21% higher than their Planned vs. Actual (PVA) projection of 1,800 inspections.

Of the 2,184 inspections: 1,518 were safety inspections which is 26% above the planned goal of 1,200 and 666 health inspections which was 11% above the planned goal of 600.

Of the 2,184 inspections conducted, 1,388 or 57% were classified as unprogrammed inspections. The unprogrammed inspections included 21 accident investigations, 348 complaint inspections, 44 referral inspections, 116 monitoring inspections, 858 follow-up inspections, 1 unprogrammed related and 0 other.

Of the 801 inspections classified as programmed, 790 were planned, 8 were programmed related and 3 were classified as “other”.

Inspections by industry: 27% of the inspections or 600 inspections were in the construction industry and 1,584 were classified as other inspections.

During FY 2010 PESH conducted 1,473 local emphasis programmed inspections of which 5,525 violations were issued. A total of 17 Willful, 13 Repeat, and 3,601 Serious, 1,836 Other and 58 Notifications of Failure to Abate were issued.

There were 15 contested cases for FY 2010 compared to 20 contested cases for FY 2009.

All consultations that are conducted by PESH are in the public-sector. The OSHA Mandated Activities Report for Consultation (MARC) for PESH indicates that during FY 2010 PESH conducted a total of 441 public-sector consultation visits. This is 47% above the goal of 300 consultation visits.

Mandated Activities

State Activity Mandated Measures: PESH performed satisfactorily relating to the majority of the fifteen established mandated enforcement measures discussed in this report. The only significant outlier is assuring timely hazard correction (91% vs. 100% - see Corrective Action 09-23).

Mandated Activities Report for Consultation (MARC): PESH performed satisfactorily relating to the five established mandated consultation measures. Overall PESH met or were within 5% of their MARC references. A full discussion of the MARC follows.

B. State Activity Mandated Measures

(Source: SAMM Report –11/12/2010)

SAMM 1: Average number of days to initiate Complaint Inspections:

During this evaluation period, PESH responded to 344 complaints with an average response time of 40.88 days from notification. This is an increase from 28.56 days in FY 2009. PESH asserts that the increase is due to the fact that the downstate districts, particularly Manhattan, receive more complaints and struggle to provide the same timely response. PESH is looking at ways to streamline their response time, including consideration of developing a non-formal complaint “investigation” policy that is similar to Federal OSHA’s “phone and fax” non-formal complaint procedure.

SAMM 2: Average number of days to initiate Complaint Investigations:

This measure does not apply to PESH as all complaints are handled by inspection.

SAMM 3: Percent of Complaints where Complainants were notified on time:

Complainants were notified on time in 91.99% (333 out of 362) of all complaints processed in FY 2010. This is a slight decrease from 96.12% in FY 2009. Reference point is 100%.

SAMM 4: Percent of Complaints and Referrals responded to within 1 day – ImmDanger:

During this evaluation period PESH received 7 complaints/referrals for imminent. The 1 day response time was 85.71(6 of 7 responded to within 1 day). Reference point is 100%.

SAMM 5: Number of Denials where entry not obtained:

PESH had no denials of entry during the evaluation period.

SAMM 6: Percent of S/W/R Violations verified:

During FY 2010, the percentage of serious, willful, repeat violations cited that was verified as abated within the abatement date plus 30 days was 91.07% (2,936 SWR out of 3224) Reference point is 100%. (SEE CAP Recommendation 09-23) The 91.07% still represents an

improvement over FY2007's 88% measure.

SAMM 7: Average number of calendar days from Opening Conference to Citation Issue:

PESH's citation lapse time for FY 2010 was calculated at 39.87 days for safety, a decrease from 48.40 days in FY 2009 and 77.61 days for health, an increase from 51.25 days in FY 2009. Although the lapse time increased for health in FY 2010 it is still well below the FY 2008 figure of 90.6 days. PESH is below the national average of 47.3 days for safety and is above the national average of 61.9 days for health.

SAMM 8: Percent of Programmed Inspections with S/W/R Violations:

The percent of programmed inspections with S/W/R violations for Safety is 82.15% which is significantly higher than the national average of 58.4%. The Health average is 65.05% also higher than the health national average of 50.9%. Both of these percentages are an increase from FY 2009.

SAMM 9: Average Violations per Inspection with Violations:

For inspections with violations, the performance indicators for FY 2010 showed an average of 4.10 S/W/R violations/inspection and 2.07 for "other-than-serious" violations/inspection. PESH continues to be above the national averages of 2.1 for S/W/R and 1.2 for "other-than-serious" violations/inspection.

SAMM 10: Average Initial Penalty per Serious Violation (Private Sector Only):

The average initial penalty per serious violation in the private sector is not applicable to PESH.

SAMM 11: Percent of Total Inspections in Public Sector:

All inspections conducted by PESH are in the public sector (2,184) at 100%.

SAMM 12: Average lapse time from receipt of Contest to first level decision:

Contested cases were not logged in to the IMIS database and this measure could not be calculated. There were 16 contested cases in FY 2010.

Once OIS is rolled out PESH anticipates being able to log the information needed to evaluate this measure.

SAMM 13, 14, 15: Percent of 11c Investigations Completed within 90 days (13) – Percent of 11c Complaints that are Meritorious (14) – Percent of Meritorious 11c Complaints that are Settled (15):

PESH conducted 35 discrimination complaints, 23 of these investigations (65.71%) were completed within 90 days. The reference measure is 100%. Two cases or 5.71% were determined to be meritorious. National Average for such cases is 21.2%. Both of these cases (100%) were settled meritorious. The national average is 86%.

PUBLIC SECTOR CONSULTATION

According to the MARC Report, (Source MARC Report – 10/10/2010) PESH conducted a total 441 public-sector consultation visits in FY 2010, 11.30% above their projected goal of 300 visits.

The following MARC statistics are provided:

MARC 1: Percent of initial visits in high-hazard establishments – PESH conducted 97.17% of its initial visits in high hazard establishments, an increase from FY 2009's indicator of 94.76%. The reference point is no less than 90%.

MARC 2: Percent of initial visits in smaller business – 93.29% of initial visits were conducted in establishments with less than or equal to 250 employees; 75.97% in establishments with less than or equal to 500 employees. The reference point is no less than 90%.

The percentage increased 2% from FY 2009 for establishments with less than or equal to 500 employees. Establishments with less than or equal to 250 employees remained the same.

MARC 3: Percent of visits where consultants conferred with employees - PESH conferred with employees in 97.88% or 277 out of 283 initial visits (FY 2009 the percentage was 97%). FY 2010 percentage for follow-up visits was 92.86 or 13 out of 14 visits and 97.50% or 39 out of 40 training and assistance visits. Reference point is 100%.

MARC 4a: Percent of Serious Hazards Verified Corrected in a Timely Manner.

95.38% of serious hazards were verified abated in a timely manner compared to 95.6% in FY 2009. Reference standard is 100%

MARC 4b: Percent of Serious Hazards not verified corrected in a timely manner

4.62% of serious hazards were not verified corrected in a timely manner.

MARC 4c: Percent of Serious Hazards referred to enforcement.

No serious hazards were referred to enforcement during FY 2010.

MARC 4d: Percent of Serious Hazards verified corrected (in original time or on site)

The percent of serious hazards verified corrected in original time or on site is 70.15%. The reference standard is 65%.

MARC 5: Number of uncorrected serious hazards past 90 days –

There were no serious hazards uncorrected as of the end of FY 2010.

Federal Program Changes and Adoptions

During FY 2010 there were a total of 10 Federal Program Changes that required a notice of intent to adopt. PESH responded in a timely manner with their intent.

Federal Program Change	Date of Directive	Intent to Adopt	Adopt Identical	State Adoption Date
CPL-03-00-011 National Emphasis Program on Facilities that Manufacture Food Flavorings Containing Diacetyl	10/30/2009	NO	NO	N/A
CPL-02-00-148 November 2009 Revisions to Field Operations Manual (FOM)	11/09/2009	YES	NO	11/09/2009
CPL-02-02-075 Enforcement Procedures for High to Very High Occupational Exposure Risk to 2009 H1N1 Influenza	11/20/2009	YES	YES	11/30/2009
CPL-02(10-02) Revisions to NEP on Recordkeeping	2/19/2010	NO	NO	N/A
CPL-02-02-076 National Emphasis Program – Hexavalent Chromium	2/23/2010	NO	NO	N/A
CPL-02-00-048 Clarification of OSHA's Enforcement Policies Relating to Floors/Nets and Shear Connectors	4/30/2010	YES	YES	8/03/2010

CPL 02-00-149 Severe Violator Enforcement Program (SVEP)	6/18/2010	YES	YES	10/14/2010
CPL-02(10-05) National Emphasis Program – PSM Covered Chemical Facilities	7/08/2010	NO	NO	N/A
CPL-02(10-06) Site-Specific Targeting 2010 (SST-10)	8/18/2010	NO	NO	N/A
CPL-02(10-07) Revisions to NEP on Recordkeeping	9/28/2010	YES	NO	12/16/2010

A total of four (4) Federal Standards were issued during FY 2010. The notice of intent to adopt was timely in all four standards.

Standard Action	FR Notice Date	NY Intent to Adopt	State Effective Date
Final Rule – cranes and Derricks in Construction	8/09/2010	YES	Adopted identical effective 12/22/2010 currently awaiting publication in the state registry.
Technical Amendment – Safety Standards for Steel Erection	5/17/2010	YES	5/20/2010
Direct Final Rule – Hexavalent Chromium	5/14/2010	YES	Will be published in state register by end of 2 nd quarter FY-11.
Direct Final Rule – Acetylene	11/09/2009	YES	10/06/2010

Variances

There were no variances requests received or processed during FY 2010.

V. OTHER

Complaints About State Program Administration (CASPAS)

In April 2010 a CASPA was submitted to OSHA alleging the following:

Allegation #1 – PESH’s procedures are inadequate and improper once a merit finding is recommended by the discrimination investigator to the NY State DOL’s Counsel Office

Status: Allegation is partially sustained. All PESH Whistleblower Investigators have received training in the revised PESH FOM which requires investigators to include their recommendations in the FIR forwarded to Counsel’s office. PESH continues to work with one assigned attorney and case status is reviewed by the DOSH Director and Counsel’s office monthly.

Allegation #2 – New York State DOL’s Counsel’s Office did not make timely referrals to the Attorney General’s office for prosecution of the Shanks’ complaints and is possibly delaying prosecution due to the filing of a civil law suit.

Status: Allegation is sustained. PESH has begun the practice of tracking cases that have been referred to Counsel’s Office and providing this information to the DOSH Director who then can review it with Counsel’s Office at their monthly meetings.

Allegation #3 – PESH has allowed ongoing discrimination and acts of retaliation to occur even after determining the discrimination complaints have merit.

Status: Allegation is not sustained. PESH’s role in Whistleblower cases is to investigate, gather evidence, and present that evidence to Counsel, they do not have authority to affect the actions of an employer. PESH contends they advise the Respondent of the provisions of law that prevents employers from retaliating against employees who engage in protected activity. Only the AG has the authority to take legal action to address the employer’s retaliatory actions against employees.

Allegation #4 – PESH and New York State DOL’s Counsel’s Office has failed to review discrimination cases to determine if proper and adequate investigations were conducted by discrimination investigator originally assigned to investigate the Joel Shanks Discrimination complaint.

Status: Allegation is partially sustained. Investigative files will be carefully maintained with detailed records and notes from the investigator. All Whistleblower investigators have received training in the revised PESH FOM including documentation of all actions related to investigation.

Allegation #5 – PESH violated witness confidentiality in revealing identity to Respondent

resulting in harassment of the witnesses:

Status: Allegation was not sustained. There is no evidence to suggest that either PESH or Counsel revealed the identity of any of the witnesses to the Respondent.

Allegation #6 – At the onset of a discrimination investigation PESH determines if the Complainant is disgruntled and if so the complaint is dismissed.

Status: Allegation was not sustained. The Complainant alleges the PESH has language regarding dismissing cases of disgruntled or words to this effect on PESH's website. The website was reviewed and there was nothing found to support this allegation.

Allegation #7 – Counsel's office is demonstrating an unwillingness to take meaningful action with the other aspects of PESH's authority, i.e. compliance.

Status: Allegation was not sustained. OSHA determined that Counsel's Office and the Attorney General's Office supports the PESH compliance program and PESH discrimination proceedings.

A response was sent to the Complainant and the final report was sent to the State, dated 1/19/2011 and 1/13/2011, respectively.

Training and Education Program

During FY 2010, PESH conducted compliance assistance activities within the Strategic Plan's targeted industries: Highways, Street and Bridge Construction (Heavy Construction except buildings), and Health Services and Nursing Homes.

For the Highway, Street and Bridge construction sector, PESH conducted 74 Outreach Visits and 120 Technical Assistance Activities (a slight increase of 5 from FY 2009).

For the Health Services and Nursing Homes sector, PESH conducted 3 outreach and 13 Technical Assistance Activities and conducted 1 Safe Patient Handling Conference and partnered with NYCOSH on another conference that was held in FY 2010.

VI. Assessment of State Progress in Achieving Annual Performance Goals

In addition to the PESH's accomplishments with regard to their Strategic Plan, PESH continues to demonstrate a credible enforcement presence in the public sector in New York. This can be measured by the continuing decrease in Injury and Illness Incident Rates for Public Sector Employment. The 2009 rates decreased from 10.7 to 9.9 per 100 full-time workers which is a 7.5% decrease from 2007.

A. PESH Strategic Goal 1: Improving Workplace Safety and Health for all Public Employees.

Performance Goal #1A: Reduce the lost workday rate by 1% in NAILS 237310 (Heavy Construction – except buildings).

As in the past, PESH compiles injury and illness data from each county, identifies the top ten employers with the highest incidence rate and offers training specific to the most frequent injuries identified on their logs (SH 900). By focusing training on specific injuries identified the group has demonstrated success in reducing employer's total injury and illness rates.

Year	Total Injury and Illness Rate	% Change
2007	10.7	New Baseline Year
2008	10.7	No Change
2009	9.9	Decrease of 7.5%

FY 2010 SH-900 injury data will be collected and entered into the database.

Employers that chose not to take advantage of the training offered were sent information promoting the PESH Consultation Service which may have helped in the increased number of consultations performed during FY 2010.

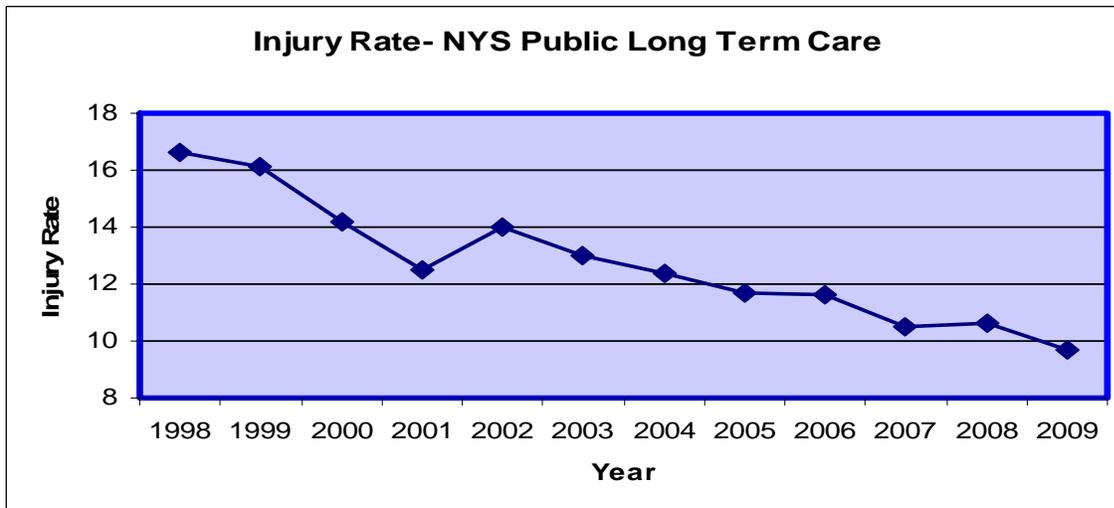
PESH continued to build partnerships with managers and safety officers in local government agencies. This fiscal year PESH concentrated additional efforts in fostering union partnerships. One such union is CSEA (Civil Service Employees Association) which represents 80% of the NY county highway department employees. Union representatives met with members of PESH and were encouraged to provide input and to participate in future training sessions. By fostering this partnership the hope is to improve labor-management cooperation and help lay the foundation for an effective safety and health program.

Outcome Measures

The SH-900.1 Summary of Work Related Occupational Injuries and Illnesses from all New York counties including the New York City boroughs was reviewed analyzed and used to calculate injury rates and lost work day rates. From this data totals were entered into the database where the average rate was 9.9 which represent a 7.5% reduction from the 2008 rate of 10.7.

Performance Goal #1B: Reduce the lost workday rate by 4% in NAICS 623110 (Nursing Care Facilities), NAICS 623210 (Residential Mental Retardation Facilities), NAICS 622210 (Residential Mental Health & Substance Abuse Facilities).

PESH continued to have success in reducing the Total Recordable Injury Rate in county nursing homes and state veteran homes. The overall injury rate has decreased by 41.6% since the beginning of this initiative in 1998.



41.6% Decrease

Based on the success of the Long Term Care initiative the committee expanded its focus in FY 2010 to include the NYS Office of Mental Health (OMH) and the NYS Office for People with Developmental disabilities (OPWDD). The committee is now referred to as the Health Care Strategic Plan Committee.

The committee has changed focus and instead of reducing Total Recordable Injury Rates they are now focusing on reducing the number of lost work days in Long Term Care by 4%. As was done in the beginning phase of the Long Term Care initiative PESH collected and reviewed logs from OMH and OPWDD facilities. Time was spent reviewing, correcting the logs and obtaining enough information from these facilities to make them useful. Due to problems seen with the logs the NYS Compensation report was used to track Lost Work Day Rates. From 2007 to 2009 a 7.1% reduction was seen for OPWDD facilities while OMH facilities saw a 13.5% increase many of these injuries were due to workplace violence. PESH will make this a primary issue in the upcoming years.

Focus continued on maintaining partnerships with facilities and organizations under the Health Care Strategic Plan. Through the partnership with Kaleida Health the committee was able to develop a new partnership with Upstate Medical University. They co-sponsored the Safe Patient Handling Conference that was held October 28-29, 2009 in upstate NY. PESH also partnered with NYCOSH and held two other SPH conferences in February and in May.

Outcome Measures

The SH-900.1 Summary of Work Related Occupational Injuries and Illnesses from Long Term Care facilities (Nursing Homes) was obtained and reviewed. Although many public nursing homes do not offer light or alternate duty the DART rate calculated indicates a rate of 8.3 in 2009, a reduction of 7.7% from 2007 to 2009. The information also showed a 6.1% reduction in the Days Away From Work Rate.

Appendix A

New and Continuing Recommendations

N/A - PESH has adequately addressed all recommendations from the 2009 EFAME and no new issues have been identified.

Appendix B

Status of FY 2009 New York EFAME Findings and Recommendations

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	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

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			preparing complaint narratives itemizing each complaint item and observation		of cases from PESH Manhattan 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 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

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
					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 evidence of employer knowledge.	Provide training to all field staff, including supervisory staff, to ensure that referrals are handled in accordance with requirements set forth in PESH's 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. 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.	Region 2 and PESH agree that the media referral at issue was unusual and is not representative of a systemic mishandling of media referrals. The appropriate staff has been coached on the handling of media referrals. Region 2 considers this item completed.	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

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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 Fatality/Catastrophe Investigation Procedures dated April 14, 2005 and (2) the inspections may not be adequately supervised.	Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of the PESH 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)).	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 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	Completed

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-9	<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 quarterly basis</p>	<p>Completed</p> <p>This issue will be reviewed after OIS deployment and corrective action will be required at that time.</p>
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</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</p>

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		<p>the case file. Region 2 considers this item completed.</p>			<p>quality of document ation has improved since the 2009 EFAME review.</p>
<p>09-11</p>	<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 staff to attend training sessions presented by local OSHA staff. PESH has allowed their field staff to attend such training.</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 document ation has improved since the 2009 EFAME review.</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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 document ation 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 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%).	Implement internal controls and supervisory oversight to ensure that CSHO has evaluated all relevant hazards on the site, and has determined that all appropriate potential citations have been evaluated for issuance.	Completed. Supervisory Staff have conducted field audits of all CSHOs this past year which did include a review of hazard identification for some 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	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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			cross over courses, cranes and material handling, excavation and trenching, and machine guarding have been scheduled for FY 2011.		
09-14	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 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.) . .	Documentation of hazards or lack of hazards (for complaint items) is reviewed by each CSHOs technical supervisor for every inspection	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 OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan field office and noted that the level and quality of document ation has improved since the 2009 EFAME review.
09-15	The 2009 EFAME noted that of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed	If a hazard recognition issue – bolster supervisory review of CSHO’s field observations. Supervisors should discuss field	Supervisors are instructed to conduct a field audit with staff semiannually. Training of staff is an ongoing commitment. Documentation of hazards or	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	Completed

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	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%).	observations with CSHOs prior to issuing citations or closing the case as In-Compliance.	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.	addressing and adequately documenting hazards.	
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 willful classification) and probability of potential resulting injury. Train CSHOs on the concept of citing the most likely/most	Completed. Training of staff is an ongoing commitment through staff meetings on the State and Local level. The use of the 1B Violation Worksheets to document classification of all hazards is being implemented was reviewed with staff in late 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 are addressing and adequately documenting hazards. .	OSHA Region 2 personnel have reviewed a selection of cases from PESH Manhattan

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		serious injury/illness to result from exposure.			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	Provide training to all field staff regarding the agency's policy of Union/Employee Representative	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 audits to ensure that the field staff are	OSHA Region 2 personnel have reviewed a

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	and/or documentation of involvement.	involvement during and after inspections 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.	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
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	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District	PESH has completed in house training, and, in addition to routine review of case files, PESH continues to conduct self audits to	Completed

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		documentation meets the minimum requirements of a prima facie case as set forth by federal OSHA and the FOM.	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.	ensure that the field staff are addressing and adequately documenting hazards.	
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	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	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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		of the injury/illness resulting from exposure to the hazard, and the probability of that exposure.	each CSHO.		
09-23	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.	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.	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	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
09-24	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	Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established 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	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	Completed

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	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.	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.	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.	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 statewide. This was performed before the second quarter of FY 2011. 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	
09-25	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.	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.	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.	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	Completed
09-26	The 2009 EFAME noted that several cases contained inadequate Petition to Modify and Abatement Date documentation.	Implement internal controls to ensure that all Petitions for Modification of Abatement Dates (PMAs) are reviewed on a	Completed. PESH reported that PMAs are only granted at the supervisory level with input from Program Managers. Approved PMAs	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	Completed

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		supervisory level to ensure that all required information is contained in the request prior to granting the PMA, and that once a PMA is granted it is managed in accordance with PESH requirements.	are entered into IMIS and tracked on Open Inspection Reports during monthly staff meetings. All PMAs will be reviewed by the Program Manager's Office for proper documentation and management.	to audit a sampling 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	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

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		the conference, all main issues and potential courses of action must be summarized and documented.			
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 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.	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 have contributed to this problem.	See State Action Plan	PESH now tracks contested cases via an internal system.	Completed This issue will be reviewed after OIS deployment
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	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

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			standards to a system to expedite processing.		
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 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	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 a timely manner, and if not abated to be referred to enforcement for appropriate action.	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 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	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

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	on pages 76-77.		documentation for any addition field staff training that may be needed.		
09-33	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.	PESH should test respondent's position statements without waiting for a response from department counsel.	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.	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. PESH has completed in house training and is Supervisors continue to oversee the investigators work.	Completed
09-34	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	Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainant's prima facie allegations.	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.	PESH adopted the "Quick Settlement" section, Chapter 6, Remedies & 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 investigation process.	Completed

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	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.			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	
09-35	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.	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.	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.	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	Completed

Appendix B

Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-36	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.	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 taken in the investigation. These reports should be dated and recorded in IMIS. Each file should also have a table of contents (exhibit list).	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.	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 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.	Completed
09-37	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.	PESH should provide pertinent [training], such as Basic Whistleblowing Training 1420, for discrimination investigators, discrimination investigators' direct supervisors, and all program managers.	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.	All current and future discrimination investigators have or will receive Whistleblower training.	Completed

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Status of FY 2009 New York EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-38	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.	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".	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.	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.	Completed

Appendix C

New York Public Employee Only State Plan FY 2010 Enforcement Activity

	NY*	State Plan Total	Federal OSHA
Total Inspections	2,184	57,124	40,993
Safety	1,518	45,023	34,337
% Safety	70%	79%	84%
Health	666	12,101	6,656
% Health	30%	21%	16%
Construction	600	22,993	24,430
% Construction	27%	40%	60%
Public Sector	2,184	8,031	N/A
% Public Sector	100%	14%	N/A
Programmed	802	35,085	24,759
% Programmed	37%	61%	60%
Complaint	345	8,986	8,027
% Complaint	16%	16%	20%
Accident	23	2,967	830
Insp w/ Viols Cited	842	34,109	29,136
% Insp w/ Viols Cited (NIC)	39%	60%	71%
% NIC w/ Serious Violations	85%	62.3%	88.2%
Total Violations	5,525	120,417	96,742
Serious	3,601	52,593	74,885
% Serious	65%	44%	77%
Willful	17	278	1,519
Repeat	13	2,054	2,758
Serious/Willful/Repeat	3,631	54,925	79,162
% S/W/R	66%	46%	82%
Failure to Abate	58	460	334
Other than Serious	1,836	65,031	17,244
% Other	33%	54%	18%
Avg # Violations/ Initial Inspection	6.2	3.4	3.2
Total Penalties	\$72,013	\$ 72,233,480	\$ 183,594,060
Avg Current Penalty / Serious Violation	\$ -	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	N/A	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	0.0%	47.7%	40.9%
% Insp w/ Contested Viols	0.0%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	12.3	16.2	18.6
Avg Case Hrs/Insp- Health	16.5	26.1	33
Lapse Days Insp to Citation Issued- Safety	25.1	33.6	37.9
Lapse Days Insp to Citation Issued- Health	46.2	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	41	1,715	2,510

Appendix D

NY State Activity Mandated Measures (SAMM) Report

State Activity Measures (SAMMs)			
Measure	Reference	FY10	FY11 1 st Quarter
1. Avg days to Initiate Cmp Inspections	Serious complaints- 30 days other than serious – 120 days	40.88	28.22
2. Average days to Initiate Cmp Investigations	1 day	0	0
3. % Complaints where complainants were notified on time	100%	91.99%	97.56%
4. % Complaints/referral responded within 1 day - Imminent Danger	100%	85.71%	100%
5. # Denials where entry not obtained	0	2	0
6. % SWR verified abated within abatement date plus 30 days			
Private	100%	0	0
Public	100%	91.07%	94.56%
7. Avg. days from opening conference to Citation Issuance			
Safety	47.3	39.87	57.25
Health	61.9	77.61	81.34
8. % Programmed Inspections with SWR Violations			
Safety	58.4%	82.15%	69.70%
Health	50.9%	65.05%	72.73%
9. Avg. Violations per inspections with violations			
S/W/R	2.1	4.10	3.93
Other	1.2	2.07	1.34

Appendix D

NY State Activity Mandated Measures (SAMM) Report

State Activity Measures (SAMMs)			
Measure	Reference	FY10	FY11 1 st Quarter
10. Avg. Initial Penalty per Serious (Private Sector Only)	\$1,361.4	0	0
11. % of Total Inspections in Public Sector	100%	100%	100%
12. Avg. Contest Lapse Time	217.8	0	0
13. % 11c Cases completed within 90 days	100%	65.71%	50%
14. % 11c meritorious cases	21.2%	5.71%	0
15. % 11c meritorious cases settled	86%	100%	0

Appendix E

State Indicator Report (SIR) - Not Applicable for NY PESH

Appendix F

NY PESH Federal Fiscal Year 2010 State OSHA Annual Report (SOAR)

(available separately)