

FY 2011 Federal Annual Monitoring and Evaluation (FAME) Report

on the

**NEVADA OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
(NvOSHA)**



*FY 2011 Report Period
October 1, 2010, through September 30, 2011*

*Plan Approval: January 4, 1974
Certification: April 18, 2000*

**Prepared by:
U.S. Department of Labor
Occupational Safety and Health Administration
Region IX**



Table of Contents

| | |
|--|----|
| I. Executive Summary | 1 |
| A. Summary of the Report | 1 |
| B. State Plan Introduction | 1 |
| C. Data and Methodology | 2 |
| D. Findings and Recommendations | 4 |
| II. Major New Issues | 4 |
| III. State Response to FY 2010 FAME Recommendations | 5 |
| IV. Assessment of State Performance | 7 |
| A. Enforcement | 8 |
| 1. Complaints (SAMM 1, 2, and 3) | 8 |
| 2. Fatalities and Catastrophes | 9 |
| 3. Targeting and Programmed Inspections | 9 |
| 4. Citations and Penalties | 11 |
| 5. Abatement | 13 |
| 6. Employee and Union Involvement | 13 |
| B. Review Procedures | 13 |
| 1. Informal Conferences (SIR 7, 8, 9) | 14 |
| 2. Formal Review of Citations | 14 |
| C. Standards and Federal Program Changes (FPCs) Adoption | 14 |
| 1. Standards Adoption | 14 |
| 2. Federal Program/State Initiated Changes | 14 |
| D. Variances | 15 |
| E. Public Employee Program (SAMM 11) | 15 |
| F. Discrimination Program | 15 |
| G. Complaint Against State Plan Administration (CASPA) | 23 |
| H. Voluntary Compliance Program | 23 |
| I. Training Program | 24 |
| J. Program Administration | 24 |
| V. Assessment of State Progress in Achieving Annual Performance Goals | 25 |
| <i>Appendix A – FY 2011 Findings and Recommendations</i> | |
| <i>Appendix B – Status of State Actions in Response to FY 2010 EFAME</i> | |
| <i>Appendix C – Enforcement Comparison</i> | |
| <i>Appendix D – FY 2011 State Activity Mandated Measures (SAMM).</i> | |
| <i>Appendix E – State Information Report (SIR)</i> | |
| <i>Appendix F – FY 2011 State OSHA Annual Report (SOAR)</i> | |
| <i>Appendix G – FY 2011 23(g) Consultation Data</i> | |

I. Executive Summary

A. Summary of the Report

This report assesses the Nevada Occupational Safety and Health (NvOSHA) program's performance during the federal Fiscal Year (FY) 2011 in activities mandated by OSHA and the state's achievement of its annual performance plan goals and five-year strategic goals. Although NvOSHA is operating an effective program overall, OSHA identified the need for the state to take remedial actions in several areas.

Also addressed in this report are the 16 recommendations that were carried over from the 2009 Special Study and six findings from the FY 2010 Federal Annual Monitoring and Evaluation (FAME). Close-out of the recommendations was pending an audit. The audit was conducted August 2-11, 2011, and corrective actions were completed for 21 of the 22 enforcement-related findings and recommendations.

A comprehensive audit of the Whistleblower program found staff that were committed to the program. However, lack of training in whistleblower investigation techniques has led to practices that deviate from the standard Federal OSHA whistleblower investigations. This report includes 12 findings and recommendations for the whistleblower program.

There are nine findings and recommendations associated with OSHA mandated activities and the Nevada goals in its annual performance plan. Management should continue to focus attention on technical staff retention, ensuring inspection data integrity, meeting the goals in the Nevada annual performance plan and improving enforcement program measures such as complaint processing, targeting of inspections, violation documentation and the abatement of serious hazards.

Overall, NvOSHA made acceptable progress in many areas and significant compliance program improvement over the past two years. This was evident from the 2009 Special Study with 56 compliance program related findings and recommendations compared to this FY 2011 report with 10 compliance related findings and recommendations. Management's attention to whistleblower program improvements and continued due diligence in the compliance program will ensure Nevada employees will be adequately protected on the job.

B. State Plan Introduction

The State of Nevada, under an agreement with OSHA, operates an occupational safety and health program in accordance with Section 18 of the Occupational Safety and Health Act of 1970. Initial approval of the Nevada State Plan was published on January 4, 1974, and final approval was published on April 18, 2000.

The Nevada State Plan is administered by the Department of Business and Industry, Division of Industrial Relations (DIR). The Enforcement section includes the

Whistleblower Program and is provided by the Nevada Occupational Safety and Health Administration (NvOSHA). Consultation is provided by the Nevada Safety Consultation and Training Section (SCATS). Donald Jayne is the State Plan Designee and Director of the Division of Industrial Relations. Steve Coffield is the Chief Administrative Officer (CAO) of NvOSHA and Joseph Nugent is the CAO of SCATS. NvOSHA has a total of 74 full time equivalent (FTE) enforcement positions and 35 FTE consultation positions. However, the state continues to have a high turnover rate of almost 20 percent.

NvOSHA and SCATS are headquartered in Henderson with offices in Reno and Elko. Federal OSHA standards are adopted by reference and standards contained within 29 CFR, Parts 1910 (General Industry), 1915 (Maritime), 1926 (Construction) and 1928 (Agriculture) are enforced. In addition, Nevada has adopted state specific requirements for: safety programs, cranes, steel erection, mandatory 10 and 30 hour training for construction projects, asbestos, explosives, ammonium perchlorate and photovoltaic system projects.

The Nevada State Plan enforcement and consultation programs have jurisdiction and provide services to approximately 67,000 public and private sector employers and 1.1 million workers in the state, with the exception of federal employees, the United States Postal Service (USPS), private sector maritime, employment on Tribal lands, and areas of exclusive federal jurisdiction. The state operates its programs under two federal grant agreements:

- 1) 23(g) operational program agreement that covers private and public sector enforcement and training.*
- 2) 21(d) consultation program agreement that covers private sector consultation services.*

In FY 2011, Nevada operated with a budget of \$6,461,803 for its 23(g) enforcement and training program and \$1,811,025 for its 21(d) consultation program.

C. Data and Methodology

This Federal Annual Monitoring and Evaluation (FAME) report evaluates state performance of required (mandated) performance areas and related enforcement activities. It also evaluates state performance at achieving its own performance goals as outlined in its grant application. The report represents the combined efforts of OSHA's San Francisco Regional and Las Vegas Area Offices, and covers the federal fiscal year 2011, which is the period from October 1, 2010 through September 30, 2011.

The opinions, analyses, and conclusions described herein are based on information obtained from a variety of sources, including:

- Findings and Recommendations (Appendix A)*

- *OSHA's analysis and monitoring of the FY 2010 NvOSHA Corrective Action Plan which provides the state's status and response to the FY 2010 EFAME (Appendix B).*
- *Other statistical reports comparing state performance to federal performance (Appendix C).*
- *State Activity Mandated Measures (SAMM) report data (Appendix D).*
- *State Information Report (SIR) data (Appendix E).*
- *Quarterly monitoring meetings between OSHA and the state.*
- *The state FY2011 OSHA Annual Report (SOAR) prepared by the Department of Business and Industry, Division of Industrial Relations, Occupational Safety and Health Administration (Appendix F), which contains details of the state's achievements with respect to its annual goals.*
- *The state FY 23(g) Consultation Data (Appendix G)*
- *An onsite review of case files and interviews with compliance staff which specifically focused on the implementation of the corrective action plan developed in response to the 2009 Special Study.*
- *An onsite review of case files and interviews with investigator staff and first line supervisors specifically focused on a special study of the discrimination program*
- *Whistleblower Investigations Manual DIS-0.09*
- *Whistleblower Investigations Manual CPL 02-03-003*
- *NvOSHA's internal Whistleblower Manual.*

The onsite compliance program audit occurred August 2-11, 2011 in the Henderson and Reno offices. The team included the Area Director and the NvOSHA Special Projects Officer and NvOSHA Training Coordinator. The compliance audit was focused on the implementation of the 2009 Special Study Corrective Actions. A total of 105 case files were reviewed which included all fatality investigations, inspections and inquiry complaint files, citations with grouped violations, use of the diary sheets, case file organization, abatement for complaint related hazards and abatement verification.

Nine interviews were conducted with state compliance staff; two with first line supervisors and seven with compliance staff. Stakeholder interviews were not conducted.

The onsite Whistleblower audit was conducted during the week of February 13, 2012. The team included the Area Director, Administrative Assistant, Compliance Safety and Health Officer (CSHO) and Federal Whistleblower Investigator. A total of ten case files were reviewed which included the only three whistleblower cases recorded in IMIS as closed for FY 2011 and seven files that were not recorded in IMIS as closed. These ten cases represented 16% of all whistleblower cases closed in FY 2011. Of the ten cases, two settled, and eight were dismissed. Interviews were held with the two investigators assigned to investigate discrimination complaints and first line supervisors.

D. Findings and Recommendations

For FY 2011 there were a total of 21 Findings and Recommendations (see Appendix A). The first finding was carried over from the 2009 Special Study and FY 2010 FAME reports. The states' severe recruitment policies and imposed wage reductions continued to significantly impact NvOSHA and SCATS ability to hire and retain qualified technical staff.

There were nine findings in the safety and health compliance program. The issues included complaint processing, inspection and targeting goals, IMIS coding and data, severity and abatement of serious violations and timely issuance of violations.

The majority (a total of 12) of the findings were from the in-depth audit of the Whistleblower Program. The audit found that the state had not implemented many of the changes to the investigation process that had occurred in the Federal program over the past few years.

II. Major New Issues

The staffing turnover rate of almost 20 percent continued to be an ongoing challenge in Nevada. On July 1, 2011 the Nevada State Legislature imposed a 2.5% wage reduction for all state employees. This was in addition to the 12 hours of unpaid furlough days per quarter and the Governor's executive order mandating that new state employees be brought in at the first step of the salary range.

With the exception of the one Recommendation related to the retention of staff, the state completed 55 out of the 56 items in the 2009 Special Report Corrective Action Plan. This major achievement was completed in less than two years.

Two willful citations were issued by the Reno District Office. This accomplishment was due in part to the emphasis on training of compliance officers and subsequent improvement in the quality of investigations and violation documentation. Staff changes in the Division Counsel Office in Henderson may also have helped to reverse the long term practice of refusing to approve the issuance of willful violations.

NvOSHA hired a VPP program manager who has been tasked with updating the VPP manual, program coordination and ensuring the integrity of the program is maintained.

Another success has been the vigorous efforts by SCATS to reach out to the Hispanic community. This outreach effort resulted in 46 safety and health training classes to 1535 Spanish speaking participants.

III. State Response to FY 2010 FAME Recommendations

The state completed the FY 2010 corrective action plan with one exception; Item No. 10-17 may require legislative action. This recommendation from the 2009 Special Study directed the state to pursue all available options to increase the salaries of NvOSHA safety and health compliance officers

Table 1: 2010 NvOSHA Corrective Action Plan

| Item No. | Findings | Recommendations | NV OSHA Corrective Action Plan | OSHA Comments: Accepted/Not Accepted | Status & Date of Submitted Documentation |
|---------------|---|---|---|--|--|
| 10-1 to 10-16 | .See findings from the 2009 Special Study | See recommendations from the 2009 Special Study | Findings were corrected in the CAP for the 2009 Special Study. | Accepted – Audit of case files confirmed recommendations had been implemented. | ✓Completed 9/30/2011 |
| 10-17 | Employees with 3 years of safety and health experience have left the employment of NvOSHA for higher paying safety positions. | Continue to pursue all available options to increase the salaries of NvOSHA safety and health compliance officers and SCATS consultants and trainers. | Work with legislature to increase CSHO salaries & explore other available options that may impact staff retention. | Accepted – Corrective action has not been completed. NvOSHA and SCATS management has requested but has not received approval of pay increases for safety and health staff through the state personnel system and legislative process. Pay increases will be pursued through the personnel system & the legislative process. | ECD – FY 2014 Legislation. |
| 10-18 | Complainant was not timely notified of the results of the inspection or inquiry. | Ensure complainants are timely notified after an investigation or inquiry. | Review current procedures and retrain staff, if needed. Nevada Operations Manual is aligned with current complaint notification procedures in the FOM. NvOSHA trained designated staff on and implemented these procedures in June 2011. | Accepted | ✓Completed 6/30/2011 |

| Item No. | Findings | Recommendations | NV OSHA Corrective Action Plan | OSHA Comments: Accepted/Not Accepted | Status & Date of Submitted Documentation |
|----------|---|---|--|---|--|
| 10-19 | Abatement verification or certification was not provided for all serious violations. | NvOSHA should investigate all cases with outstanding abatement and implement corrective actions to ensure employees are not exposed to ongoing serious hazards that have not been abated. | Investigate cases with outstanding abatement verification and take action if needed. | Accepted – NvOSHA reviewed all cases with outstanding abatement verification. Staff corrected data entry errors after discovery and CSHOs initiated follow-up inspections when warranted. Completed 11/30/11. | ✓Completed 11/30/2011 |
| 10-20 | The percent serious/willful/repeat (SWR) violation rate for programmed inspections was not met. | NvOSHA should continue to evaluate and improve their targeting mechanisms and ensure serious hazards are recognized and citations issued in accordance with enforcement policy. | <p>Review inspection targeting procedures and violation classifications.</p> <p>NvOSHA routinely reviews its inspection targeting procedures and it will continue to include industries with the highest DART rates in its Site-Specific targeting plan and Local Emphasis Programs. Quarterly reviews of inspection violation ratios for selected industries will be used to assess agency effectiveness.</p> <p>NvOSHA recently created an internal training unit that is intended to address potential CSHO training deficiencies and sharpen CSHO hazard recognition skills.</p> | Accepted – Programmed inspections met/exceed S/W/R referenced percent rate. | ✓Completed 9/30/2011 |

| Item No. | Findings | Recommendations | NV OSHA Corrective Action Plan | OSHA Comments: Accepted/Not Accepted | Status & Date of Submitted Documentation |
|----------|--|--|--|---|--|
| 10-21 | Inspection goals were not met. The state completed 56.5% of projected inspection goals. | Evaluate inspection goals and if appropriate, modify to reflect changes in policy and declining industries in the state. | Re-evaluate inspection goals and account for average vacancy rate. Modify inspection goals if appropriate. Since FY2012 is already underway, inspection goals will be adjusted to reflect projected staffing and experience level of compliance officers in FY2013. Changes in inspection emphasis will also be considered, when necessary. | Accepted – There has been several discussions on inspection goals. The state indicated a program change to modify 2012 inspection goals may be submitted. | ✓Completed 9/30/2011 |
| 10-22 | State strategic objective and performance goal of 3 VPP Star sites was not met. Only one application was awarded a VPP Star site and there were no new applications submitted. | The VPP goals should be re-evaluated and the necessary resources allocated to meet the goal. | Re-evaluate VPP goal for the FY 2011. Modify goal pending re-evaluation. | Accepted – State modified VPP goals in grant application for 2011. Grant application was accepted and awarded. | ✓Completed 9/30/2011 |

Finding 11-1 (Continued 10-17): *Employees with 3 years of safety and health experience continued to leave employment with NvOSHA and SCATS for higher paying safety positions.*

Recommendation 11-1 (Continued 10-17): *Continue to pursue all available options to retain safety and health compliance officers, consultants and trainers.*

IV. Assessment of State Performance

As part of an approved state plan, each state must administer a program that meets its mandated responsibilities. The Occupational Safety and Health Act and regulations in 29 CFR 1902, 1953, 1954 and 1956 identify these core elements and responsibilities for an effective state occupational safety and health program. The NvOSHA program has the necessary authority and procedures in place to carry out those mandates and has adopted required federal program changes that were due during this monitoring period. The following is an assessment of NvOSHA's performance under the specific mandated program areas. Monitoring data was obtained from grant assurances, statistical reports, case file reviews and interviews with compliance staff.

A. Enforcement

1. Complaints (SAMM 1, 2, and 3)

Ensure that safety and health complaint processing is timely and effective, including notification of complainants and appropriateness of the state’s responses.

NvOSHA met their complaint policy in the Nevada Operations Manual (NOM) for timely response with an on-site inspection (14 days) and/or inquiry letter (number of days has not been established). On average the state took 6.2 days to open an inspection and reportedly 2.7 days to initiate an inquiry. During quarterly meetings the state indicated they were revising their complaint policy in the NOM.

A total of 582 complaints were filed with NvOSHA for FY 2011; 409 inspections were conducted and 173 inquiries were processed. The state’s complaint inspection and inquiry process was evaluated during the onsite review.

The inquiry process was used for non-formal complaints and/or for other-than-serious alleged hazards. NvOSHA did not immediately contact the employer per NOM policy. Instead, the complaint was received and given to administrative personnel for processing. Administrative personnel prepared a letter to be mailed to the employer. The tracking date entered into IMIS was the date of the letter, which was usually one to three days after the complaint was received. In addition, the inquiry letter gave the employer 13 days to respond in writing. In September, the state revised their inquiry letters to be consistent with their NOM policy of five days. However, by mailing an uncertified letter and failing to immediately contact the employer (i.e. by telephone, fax or email) it was unknown when the employer received the letter and was notified of the alleged hazard.

There were 9 instances in which the complainant was not timely notified of the results of the inspection or inquiry. The 9 instances were data entry errors which were corrected.

Table 2:

| Complaints (SAMM 1, 2, 3) | | | | | |
|--|----------------|----------------|----------------|----------------|-------------|
| Year | FY 2007 | FY 2008 | FY 2010 | FY 2011 | Goal |
| <i>Days to Initiate Insp (SAMM 1)</i> | 5 | 5 | 5 | 6 | 14 |
| <i>Days to Initiate Inquiry (SAMM 2)</i> | 1 | 1 | 2 | 3 | Not Estab. |
| <i>Cmplts Notified Timely (SAMM 3)</i> | 99.43% | 100% | 96.67% | 97.79% | 100% |

Finding 11-2: *The complaint inquiry tracking date entered into IMIS was the date the letter was mailed which was usually one to three days after the complaint was received.*

Recommendation 11-2: *The date the complaint is received must be entered into IMIS.*

Finding 11-3: *The employer was not immediately contacted and it was not known when the employer was notified of complainant alleged hazards that were investigated through the inquiry process.*

Recommendation 11-3: *The employer must be immediately contacted and informed of alleged hazards that are investigated through the complaint inquiry process.*

Ensure imminent danger situations are responded to promptly and appropriately.
(SAMM 4)

NvOSHA received two imminent danger complaints/referrals in FY 2011. Both were responded to within one day.

2. Fatalities and Catastrophes

Ensure fatalities and catastrophes are investigated properly, including responding timely to incidents and making contact with the families of victims.

The state conducted timely investigation in 11 out of 11 (100%) fatality/catastrophe inspections. A FAT/CAT checklist was used to ensure families of victims were contacted by letter in English and/or Spanish and were kept informed on the status of the investigation.

3. Targeting and Programmed Inspections

Ensure an effective program is in place allowing the conduct of unannounced enforcement inspections (both programmed and unprogrammed).

NvOSHA did not meet their inspection goals for FY 2011. A total of 1,254 Safety and Health inspections were conducted during FY 2011 and the goal was missed by 878 inspections (41%). In FY 2010 NvOSHA also failed to meet their target number and in response reduced the inspection goal for FY 2011.

Table 3: Total Number of Inspections

| <i>Inspections</i> | <i>FY 2010</i> | <i>FY 2011</i> |
|--------------------|----------------|----------------|
| <i>Goal</i> | <i>2565</i> | <i>2132</i> |
| <i>Conducted</i> | <i>1611</i> | <i>1254</i> |
| <i>Difference</i> | <i>954</i> | <i>878</i> |

Mid fiscal year, there were indications inspection goals may not be met; a total of 542 of the projected inspections had been conducted. During this time period, compliance officer performance standards were modified to include 60 inspections per year. The failure to meet inspection goals was due in part to the state's continued focus on addressing the findings from the 2009 Special Study, its own internal review and process improvement, the emphasis on training and the ongoing challenge to recruit and retain experienced compliance officers. With the completion of the corrective action plan for the special study, NvOSHA should be able to focus attention and resources on meeting the inspection goals in the 23(g) grant.

Finding 11-4: *The state failed to meet their inspection goals by 41 percent.*

Recommendation 11-4: *Focus attention and the necessary resources to meet inspection goals.*

Programmed Inspections with S/W/R Violations (SAMM 8)

In FY 2011, the state significantly improved their Serious/Willful/Repeat (S/W/R) rate of violations for programmed inspections to 58.4% for safety and 40.9% for health. However, the mandated activity was not met. The audit of the case files found many other than serious violations with sufficient documentation for serious injuries, illnesses, and, in some cases, death. (See Section A.4. below for additional discussion.)

Table 4: Percent of Programmed Insp. with Serious/Willful/Repeat Violations

| Programmed Inspection | FY 2007 | FY 2008 | FY 2010 | FY 2011 | Goal Est. by National Data |
|-----------------------|---------|---------|---------|---------|----------------------------|
| Safety | 23.3% | 20.8% | 39.5% | 58.4% | 58.5% |
| Health | 35% | 32.9% | 40.3% | 40.9% | 51.7% |

With the exception of popcorn manufacturers; the state adopted the federal national emphasis programs (NEP). They also had their own local emphasis programs (LEP) based on the Bureau of Labor Statistics (BLS) high injury and illness rate. The LEP's targeted the set up and break down of conventions and events, hotels, motels and casinos, needle sticks and theatrical stage productions.

The compliance data for specific NEP and LEP industries was not reliable due to coding errors. The state has taken some steps to resolve errors by updating and eliminating codes that are no longer used. However, the state must check and correct coding errors at least quarterly to ensure inspection and compliance data is accurate.

The state's in-compliance inspection rate was 40%. This rate points out that in FY 2011, hazards were not found at 505 out of the 1254 worksites inspected. The contributing factor is the high number of non-programmed complaint and referral related inspections (82 percent of all inspections conducted). Programmed inspections have a significantly lower in-compliance rate of 18 percent. If the state fully utilized the complaint/referral inquiry process, a higher percentage of CSHO time could be

redirected toward programmed inspections of known high hazard industries. The state must take all available steps to increase the number of programmed inspections and effectively utilize the complaint inquiry process to avoid conducting non-programmed inspections at low hazard worksites.

Finding 11-5: *The numbers and compliance data for NEP and LEP inspections were not reliable due to coding errors.*

Recommendation 11-5: *The state must check and correct coding errors to ensure inspection and compliance data is accurate.*

Finding 11-6: *A high percentage of inspections conducted are non-programmed (82 percent) and the state is not effectively using the complaint/referral inquiry process to avoid conducting inspections at low hazard worksites.*

Recommendation 11-6: *The state must effectively use the complaint inquiry process to avoid conducting inspections at low hazard worksites and increase the number of programmed inspections.*

4. Citations and Penalties

Serious Violations

The onsite audit indicated there was adequate documentation in most case files to support the violations cited and all apparent violations were addressed. However, many violations were documented that serious injuries, illness and in some cases death, would result from the hazard, but were cited as other-than-serious violations. When the compliance officers were questioned, they said they had been redirected by their supervisor to cite other-than-serious. Supervisors and District Directors must ensure violations are documented in accordance with the policies in the NOM Chapter 4 and appropriate citations and penalties are issued for serious hazards.

Finding 11-7: *Many other-than-serious violations were documented with serious injuries, illness and in some cases death.*

Recommendation 11-7: *Supervisors and District Managers must ensure violations are documented in accordance with the policies in the NOM Chapter 4 and appropriate citations are issued for all serious hazards.*

Willful Violations

The state issued two willful citations; both out of the Reno District Office. There were, however, two case files from the Henderson District Office with violation documentation indicating employer willful intent but were not issued as willful violations. During interviews compliance staff and management stated approval for willful violations had again been denied by the state's Division Counsel Office in Henderson. Recently there

have been some staffing changes in the Counsel Office that may help to reverse the long term practice of refusing to approve the issuing of willful violations.

Grouping of Violations

NvOSHA had a verbal policy that is inconsistent with the NOM and the federal policy for the grouping of violations. The verbal policy allowed grouping if one corrective action abated all violations in the group. The case file audit indicated the verbal policy was followed and this issue will be addressed in the revised NOM.

Ensure serious violations cited are assessed penalties (SAMM 10)

The state had written procedures for imposing first-instance sanctions for violations of standards. The average penalty assessed per serious violation was \$3,192 which is almost double the reference standard of \$1,679. The audit did not capture the penalty per serious violation however; there were indications that the average penalty may be lower than the reported SAMM measure. An in depth review of penalties is planned for FY 2012 to allow a thorough review of this issue.

Ensure an effective program exists for timely issuance of citations. (SAMM 7)

NvOSHA did not meet this mandated activity. Safety citations had a lapse time of 58.2 days and health citations were on average issued in 81.3 days. This issue was addressed during quarterly meetings and the state did take action during the 2nd quarter. Compliance officers were given a goal of 30 days to prepare the case file for citation issuance. After 30 days a meeting would be held with the supervisor to discuss the status of the case.

The state's action had a positive effect and there was reduction in the number of days in the 3rd and 4th quarter reports. However, the average for the year remained high. The significant increase in the number of days to issue citations for FY 2011 reversed a long standing trend of timely issuance of citations.

Table 5: Safety Citation Lapse Time

| Safety Lapse Times (Days) | FY 2011 | FY 2010 |
|---------------------------|---------|---------|
| Goal | 51.9 | 47.3 |
| Actual | 58.20 | 43.46 |
| Difference | -6.3 | 3.84 |

Table 6: Health Citation Lapse Time

| IH Lapse Times (Days) | FY 2011 | FY 2010 |
|-----------------------|---------|---------|
| Goal | 64.8 | 61.9 |
| Actual | 81.34 | 61.2 |
| Difference | -16.54 | 0.7 |

Finding 11-8: *NvOSHA lapse time for citation issuance did not meet the reference standard of 51.9 days for safety citations and 64.8 days for health citations.*

Recommendation 11-8: *Take all appropriate actions to ensure citations are issued timely.*

5. Abatement

Ensure an effective program exists for timely assurance of hazard abatement.
(SAMM 6)

NvOSHA partially met this mandated activity. The state timely verified abatement for public employers, but did not meet their goal of 96% or the Reference Standard of 100% for private sector employers receiving citations with serious, willful or repeat violations. For FY 2011 the state verified abatement for 91.9% of S/W/R violations cited. A total of 56 out of 915 serious hazards were not verified as abated. Recognized serious hazards without abatement verification unnecessarily put employees at risk of injury, illness or death. The state must track and promptly take corrective action for all serious/willful/repeat violations without abatement verification. The state did not meet this goal last year (94.67% hazards were abated).

Finding 11-9: *For FY 2011, 56 out of 915 serious hazards were not verified as abated.*

Recommendation 11- 9: *NvOSHA must track and investigate all cases with outstanding abatement and promptly take corrective actions to ensure employees are not exposed to ongoing serious hazards that have not been abated. This is a repeat recommendation from FY 2010.*

6. Employee and Union Involvement

Ensure employees are allowed to participate in inspection activities.

During NvOSHA's inspections, employees were given the opportunity to participate either through interviews or by having employee representatives accompany inspectors. Employees were also afforded the opportunity to privately express their views about the workplace away from the employer. In addition, inspection results were provided to employee representatives and complainants. Monitoring did not identify cases where employees were not afforded the right to participate in the inspection process. The state met this requirement.

B. Review Procedures

Ensure effective mechanisms are in place to provide employers the right of review of alleged violations, abatement periods, and proposed penalties. Ensure employees or their representatives have an opportunity to participate in the review proceedings and provide for contest of abatement dates.

1. Informal Conferences (SIR 7, 8, 9)

NvOSHA's informal settlement provisions provided employers the right of review and employee or their representatives the opportunity to participate in the proceedings. The indicators were equivalent to the federal program.

On average, NvOSHA's FY 2011 rate of 8.9% vacated violations was higher than the Federal percentage rate of 7%. Their penalty retention was 62% compared to the 62.8% federal retention rate. In the area of violation reclassification, NvOSHA reclassified 2.7%, compared to OSHA's reclassification rate of 4.8%.

2. Formal Review of Citations

Nevada's Administrative Rules and NvOSHA's Operations Manual contained procedures that afford employers the right to administrative and judicial review of alleged violations, initial penalties and abatement periods. Those procedures also provided employees and their representatives the opportunity to participate in Review Board proceedings and to contest citation abatement dates.

C. Standards and Federal Program Changes (FPCs) Adoption

1. Standards Adoption

Ensure new and revised standards are adopted within required time frames.

The state had acceptable procedures for promulgating standards that were at least as effective as those issued by OSHA. During this evaluation period, there were two final rules issued by OSHA. NvOSHA adopted identical rules for The General Working Conditions in Shipyard Employment rule that was adopted with an effective date of October 31, 2011 and the Standards Improvement Project – Phase III rule adopted with an effective date of December 1, 2011. All rules were adopted within the required timeframes.

2. Federal Program/State Initiated Changes

Ensure timely adoption of program changes

The state adopted and timely submitted all of the federal program changes. State initiated, legislative and/or regulatory changes were not initiated.

The state adopted identical National Emphasis Programs (NEPs) with one exception. The state did not adopt CPL-03(11-01) NEP – Microwave Popcorn Processing Plants; because Nevada does not have flavored popcorn manufacturing facilities.

The state adopted the OSHA penalty policy in the memorandum dated September 27, 2010 and the implementation date of October 1, 2010.

D. Variances

NvOSHA did not grant permanent or temporary variances during this evaluation period.

E. Public Employee Program (SAMM 11)

Ensure a representative share of safety and health enforcement inspections is conducted in the public sector.

NvOSHA met this mandated activity. The state conducted 3.4% of inspection activity in the public sector, which exceeds the established mandated activity of 2.9%. Public sector agencies are issued citations with monetary penalties for serious, willful and repeat violations.

F. Discrimination Program

Ensure the state provides necessary and appropriate protection against employee discharge or discrimination for raising occupational safety and health concerns.

Make-up of NvOSHA's Discrimination Program

The NvOSHA whistleblower program had one full time investigator who worked out of the Henderson, Nevada office, who allocated 100% of his time to whistleblower investigations, and one part-time investigator located in the Reno Nevada office who allocated 60% of his time to whistleblower investigations and 40% to safety compliance inspections. The program did not have a dedicated supervisor assigned to the whistleblower program. First line supervision was provided by two Safety Supervisors that were also responsible for safety compliance officers. NvOSHA reported that both the Henderson and Reno office prioritized whistleblower investigations, and whistleblower investigation work took precedence over other NvOSHA work.

Complaint Filing

The Nevada State statute NRS 618.445(2), required that a complainant must first notify his or her employer and NvOSHA of the intent to file a complaint before a complaint would be opened. NvOSHA's interpretation of this statute required this step be met before a complaint was filed. The NvOSHA Manual 2(f)(2)(2) required complainants to either use certified mail or hand deliver the whistleblower retaliation complaint to the employer. There was an extended discussion of these issues at the audit closing conference with NvOSHA management. The state agreed that it should allow complainants to provide the employer notice by mail instead of requiring the employee to provide such notice in person. However, NvOSHA felt constrained by the statute and

the requirement that the employer be notified before it could recognize that a complaint had been filed.

This may create a chilling effect on a worker who wishes to file a whistleblower retaliation complaint, given that the worker must send or hand deliver the complaint directly to his or her employer before NvOSHA has made a decision to either administratively close or open up an investigation.

During the FAME review, two incidents came to light which demonstrated the impact of this statute. In one case, a Complainant who alleged that she had been retaliated against for reporting a workplace violence issue was initially dissuaded from filing her discrimination complaint because she had to send it first directly to the employer. The Complainant eventually filed her discrimination complaint with NvOSHA. In another case, NvOSHA dismissed a complaint as untimely after the employee failed to notify the employer of the complaint within thirty days of learning of the adverse employment action, even though the employee filed the complaint with NvOSHA within the thirty day period.

Federal OSHA does not have an equivalent statute or policy requiring a complainant to notify the employer before filing a retaliation complaint. Federal OSHA provides the complaint to the employer after an investigation is opened. However, Federal OSHA does not provide the complaint to the employer if the case is administratively closed prior to commencing an investigation. Under NvOSHA's statute, the employer was notified of the complaint even if NvOSHA administratively closed the case prior to commencing an investigation, opening the worker to an increased risk of retaliation for merely contacting NvOSHA.

This Nevada statute may hamper NvOSHA's ability to conduct inspections regarding the underlying occupational safety and health issue in the whistleblower complaint. Under Federal OSHA's policies and procedures (see DIS-0.09 Chapter 2 (III)(E)(3)), the investigator may temporarily delay providing the employer notice of the whistleblower complaint to allow a safety and health inspection to take place. Nevada's statute requiring the employer to be notified before a retaliation complaint can be filed may prevent the state from conducting an inspection and/or may give the employer pre-notice of an inspection.

Finding 11-10: *Discrimination complainants were required to notify their employer of the intent to file a retaliation complaint. In some cases they were required to make personal delivery to the respondent of their NvOSHA complaint. NRS 618.445(2) may have created a chilling effect on a worker who wished to file a whistleblower retaliation complaint and may hamper NvOSHA's ability to conduct inspections regarding the underlying occupational safety and health complaint at issue.*

Recommendation 11-10: Amend NRS 618.445(2) to not require discrimination complainants to serve the employer a copy of the complaint prior to NvOSHA commencing an investigation.

Complaint Screening

There was evidence in the files that complaints were screened. However, the screenings were cursory and in one case the screener failed to identify an issue that may have been addressed under federal whistleblower laws. In addition, the case files did not indicate a notice to complainants of dual filing during the screening process. In the Henderson office, the opening letter included provisions for dual filing but this letter was mailed to the complainant several days, or even weeks, after the complainant made first contact, limiting a complainant's ability to meet the 30 day dual filing deadline. The Reno District Manager informed the audit team that his office would notify complainants of the opportunity to dual file, but documentation was not included in the case file that this had occurred.

Complainant Interviews

Formal interviews with the complainant were not routinely conducted as required by DIS 0-0.09, Chapter 3, (IV)(D). Out of the ten cases reviewed, two included a formal interview with the complainant; in three cases, formal interviews were not conducted because the case either settled or was dismissed as untimely; in four cases the initial screening interview with the complainant was used as the primary investigative tool. However, these initial screening interviews were almost exclusively targeted at collecting background information about the complainant and/or respondent rather than providing an opportunity to test either the complainant's allegations or the respondent's defenses, as required under DIS 0-0.09, Chapter 3, IV(H), and NvOSHA Manual 3(e). Further, it appears that the complainants were rarely, if ever, provided with the respondent's documents or information concerning respondent's defenses, which could have allowed the complainant to rebut the respondent's allegations.

In addition, the investigator must conduct a formal interview that is reduced to writing and signed by the complainant. In unusual circumstances, if the interview is conducted by telephone, a detailed memo to file must be prepared relating the complainant's testimony. The new manual allows digital record interviews and uses the recording as the complainant "statement."

It is highly desirable to obtain a signed interview statement from the complainant. If the interview is conducted by phone, a detailed memo to file must be prepared and placed in the investigative file.

Finding 11-11: Interviews with the discrimination complainant were sometimes missing and/or incomplete.

Recommendation 11-11: *Full discrimination complainant interviews must be conducted and documented; including obtaining relevant documents and ascertaining the restitution sought by the complainant.*

Finding 11-12: *In some cases, discrepancies were not resolved and discrimination complainants were not provided an opportunity to respond to respondent's defenses.*

Recommendation 11-12: *After completing the respondent's side of a discrimination investigation, investigators must resolve discrepancies, including providing the complainant an opportunity to respond to the respondent's defenses.*

Witness Interviews

Interviews with all relevant witnesses were not documented in the discrimination case file. All relevant witness interviews were only documented in two out of the ten cases reviewed. These were the two cases mentioned previously where a formal interview with the complainant was conducted rather than just an initial screening. Witness interviews were not expected in the three cases that either settled prior to completing the investigation or were untimely.

In the other five cases, it appeared that witness interviews were limited to respondent managers and/or respondent identified non-managers. Few, if any, interviews with complainant identified witnesses were conducted, as required by DIS 0-0.09, Chapter 3, IV(D)(3) and IV(G) and IV (H). The case files were unclear as to why particular witnesses were interviewed and there was no memo or other documentation regarding the substance of such interviews, as required under DIS 0-0.09, Chapter 3, IV(G & K). Where witness interviews were documented, the case file listed the names and dates of the interviews. However, documentation of the circumstances under which the witness interviews were conducted or whether the investigator offered non-management witnesses' limited confidentiality as an incentive to interview was not included in the file. The investigator reported that witness interviews were recorded, but the recordings did not appear in the case file. Sometimes, but not always, handwritten notes regarding interviews were included. However, these notes were rarely sufficient to determine the nature of the questions asked and answered.

Finding 11-13: *Relevant discrimination complainant witnesses were not always identified and interviewed. Witness interviews were not appropriately documented in the case file.*

Recommendation 11-13: *The complainant's side of the investigation must be developed as thoroughly as possible, and the investigator must attempt to identify, interview and document all relevant complainant witnesses in the case file.*

Investigation Closing Conference

For the eight dismissed cases reviewed, there was no evidence in the file that a closing conference was held with the complainant explaining the recommended decision and

discussing appeal rights, as required under DIS 0-0.09, Chapter 3, IV(J), and NvOSHA Manual 3(f). The investigators stated that the complainant was called at the end of the investigation and a verbal closing conference was conducted.

Finding 11-14: *Closing conferences with discrimination complainants at the end of a discrimination investigation were not documented in the case file.*

Recommendation 11-14: *The discrimination investigator must document the closing conference with the complainant at the end of the investigation where the investigator informs the complainant about the breadth and findings of the investigation and advises the complainant of their rights to appeal a non-merit determination.*

Report Writing

All of the cases included an investigative report. However, none of these reports followed OSHA organizational guidelines for investigative reports or cited to exhibits, as required under DIS 0-0.09, Chapter 5, IV(B). Further, some investigative reports drew inferences and conclusions from witness testimony that was not documented in the file. All of these reports followed a template that included sections for “dual motive”, “animus” and “temporal proximity,” which either confused the nature of these terms or merely listed them without reflecting any evidence that they were shown or disproved, and was not in accordance with DIS 0-0.09, Chapter 5, IV(B)(11). Additionally, none of the investigative reports included a discussion of disparate treatment, which in at least two of the 10 cases reviewed was an issue of importance in testing the credibility of the respondent’s defenses.

Finding 11-15: *Discrimination investigative reports did not cite to exhibits.*

Recommendation 11-15: *The discrimination investigator must cite to exhibits in the investigative report.*

Finding 11-16: *In some cases, the final discrimination report contained improper analysis of the evidence.*

Recommendation 11-16: *Final discrimination reports shall contain proper analysis of the evidence collected.*

Organization of File

None of the case files reviewed followed the organization of case files as required by DIS 0-0.09, chapter 5 (III), including exhibit tabs and a table of contents. However, evidentiary material was separated on the right side of the file from written correspondence on the left side. All of the files reviewed were organized logically, to the extent that individual elements of the investigation were separated and followed a logical and consistent sequence.

Case File Timeliness

Timeliness of investigations was a major issue in the cases reviewed. The opening date of the investigation was incorrectly determined and recorded in NvOSHA's internal records, leading to inaccurate timeliness data of NvOSHA's investigations. The date the complainant first contacted NvOSHA to file a complaint was not used as the opening date, as required by DIS 0-0.09, Chapter 2 (IV). Instead, NvOSHA used the date it commenced an investigation as the opening date and by doing so, all cases appeared to be completed within ninety days. However, only five cases reviewed were actually completed within ninety days when using the correct filing date for the opening of the investigation. As a result, in some cases reviewed, the complaint filing date written on the opening letters to the complainant and respondent were incorrect. Moreover, the improper identification of the date for opening an investigation led NvOSHA in one case reviewed to administratively close a case as untimely where the complainant had actually met the statutory deadline for contacting NvOSHA.

In reviewing NvOSHA's internal data, the vast majority of the 63 cases NvOSHA claimed it closed in FY 2011 were closed between the 80th and 90th day. This suggests that NvOSHA was prematurely ending its investigations to attain a 100% rate of completing cases within 90 days, a statistic no Federal OSHA region achieved in FY 2011. However, this 90 day deadline is considered directory in nature, as opposed to being mandatory (see 29 C.F.R. Part 1977.16). Several federal cases have held that the Secretary of Labor's failure to notify the complaining party of a determination within 90 days, as required by Section 11(c)(3), does not bar a later filing of a suit.¹

Finding 17: *The complaint date of filing entered into IMIS was the date the discrimination investigation commenced and not the date the complaint was received.*

Recommendation 17: *The date the discrimination complaint is received must be entered into IMIS as the complaint date of filing, rather than the date NvOSHA commences an investigation.*

Appropriateness of State Findings and Decisions

The analysis of the evidence in the eight cases that were dismissed was largely deficient. As previously discussed, one of these eight cases was wrongly dismissed as untimely even though the complainant had contacted NvOSHA within 30 days of the adverse action. In the other seven cases, complaints were dismissed based on either a misreading of the evidence, on a failure to test the respondent's defenses, or through a misunderstanding of the law regarding whistleblower protection. (See DIS 0-0.09 Chapter 3(IV) and NvOSHA Manual Section 3). For example, one case was dismissed

¹ See, for example, *Marshall v. N.L. Industries*, 618 F.2d 1220 (7th Cir. 1980); *Dunlap v. Bechtel Power Corp.*, 6 OSHC 1605 (M.D. La 1977); *Marshall v. Intermountain Electric Co.*, 614 F.2d 260 (10th Cir. 1980); *Donovan v. Square D Company*, 709 F.2d 335 (5th Cir 1983); *Donovan v. Freeway Const. Co.* 551 F. Supp 869, 878 (DCRI 1982); *Solis v. Consolidated Gun Ranges et al.* (2011 WL 148838 (W.D. Washington 2011).

based on the respondent's defense that the complainant had failed to report a leak, despite some managers acknowledging that the complainant had reported the leak to them. In another case, the respondent's defense that the complainant had voluntarily quit was accepted without determining whether the complainant had been constructively discharged after suffering workplace harassment and violence that the respondent had failed to address. In a third case, merit was not found, even though the complainant had been terminated shortly after participating in an NvOSHA inspection (temporal proximity) and there were no other performance related issues.

Finding 11-18: *Several discrimination investigations failed to adequately test the respondent's defenses or failed to provide an adequate analysis of the evidence, including considering temporal proximity, disparate treatment, and animus.*

Recommendation 11-18: *The discrimination investigator must broadly view and test defenses offered by respondent in addition to other evidence to determine if there is evidence that the complainant suffered disparate treatment or animus, suffered adverse action in temporal proximity to the respondent learning of the protected activity, and/or whether there is evidence that the respondent's defense was developed in response to, rather than independently of, complainant's protected activity.*

Case File Management

There were two cases where NvOSHA did not send out a designation of representation form to complainants and respondents in their opening letters of investigation. DIS 0-0.09, Chapter 2 (III)(E)(1) requires that parties be sent "Designation of Representation" forms at the beginning of an investigation.

Program Management and Web IMIS

The number of cases opened and closed in FY 2011, and how many cases are still pending (open), was uncertain due to unreliable data. NvOSHA used an internal data collection process showing this information; however, management was not able to confirm the accuracy of this data.

In addition, incorrect dates were sometimes entered into IMIS. NvOSHA used the term "administratively closed" to refer broadly to all cases that are closed, rather than recording them as "administratively closed" cases in IMIS that are closed upon receipt without an investigation. NvOSHA should only administratively close a case when (1) the complaint is untimely, jurisdiction cannot be established, or the complaint does not allege a prima facie violation, and (2) the complainant concurs with NvOSHA not conducting an investigation.

The state argued that investigators and supervisors attempted to use IMIS, but were frustrated by what they felt was a lack of training and support from the National Office. It should be noted that several NvOSHA staff were trained on how to use IMIS during Region IX's informal training in 2009. In addition, IMIS training is offered at OSHA's

1420 Basic Whistleblower Investigation Course, which most NvOSHA staff has not attended.

Finding 11-19: *Whistleblower IMIS data was not accurate and reliable.*

Recommendation 11-19: *NvOSHA must use IMIS to track opened, closed, administratively closed, and pending whistleblower investigations.*

Appeals

NvOSHA reported that it has an appeals process that required complainants to file a written request for review within 15 days of receiving a notice of a non-merit determination. The NvOSHA Chief Administrative Officer processed the appeal, but there was no set procedure for how those appeals were conducted and no time set for their resolution. NvOSHA reported that they received “some” appeals during FY11, but could not confirm the number of appeals or how they were resolved. The newly issued Whistleblower Manual requires that States establish a written appeals procedure. Since the manual was issued during the last week of the evaluation period, this issue will be monitored to ensure compliance and will be addressed in next year’s evaluation.

Administratively Closed Cases

NvOSHA was “administratively closing” all cases in IMIS, including cases that were settled prior to the investigation concluding (NvOSHA refers to these cases as “pre-settled”) and cases that were closed for lack of merit. However, “administratively closed” is a category reserved for specific cases that were not investigated after they were received because (1) either the case was untimely as filed, NvOSHA lacked jurisdiction, or the complainant failed to allege an essential element of a prima facie case of retaliation (protected activity, employer knowledge, adverse action, and nexus), and (2) the complainant concurred with NvOSHA not conducting an investigation. As long as the complaint was timely, NvOSHA had jurisdiction, and the complainant alleged (not proved) a prima facie claim of retaliation, NvOSHA should have opened an investigation rather than administratively closing the claim in IMIS.

Finding 11-20: *NvOSHA was administratively closing discrimination complaints incorrectly.*

Recommendation 11-20: *NvOSHA must only administratively close discrimination complaints upon receipt prior to opening an investigation if (1) the case is untimely as filed, NvOSHA lacks jurisdiction, or the complainant fails to allege an essential element of a prima facie case of retaliation (protected activity, employer knowledge, adverse action, and nexus), and (2) the complainant concurs with NvOSHA not conducting an investigation.*

Merit, Settlement and Litigation

NvOSHA reported that of the 63 cases it closed in FY 2011, only one case had a merit finding and 15 cases were settled before an investigation was completed. No

information was provided with regard to litigation, except to report that the one merit case was forwarded to the State Attorney General's office for further legal action.

Resources - Training

Both investigators reported receiving training in whistleblower investigations, but only one of the two investigators active in FY 2011 reported training received at the OSHA Training Institute (OTI) that was completed in 2002. The other investigator reported attending a three-day informal training workshop conducted by Region IX in 2010. The two most recent hires (not working in FY 2011) were sent to OTI 1420 Basic Whistleblower Investigation training in January 2012. The Reno office supervisor attended Region IX's three day informal whistleblower investigation training in 2010.

Finding 11-21: *FY11 whistleblower investigators and supervisors did not attend the mandated 1420 Basic Whistleblower Investigation Course.*

Recommendation 11-21: *Investigators and supervisors shall attend the 1420 Basic Whistleblower Investigation course.*

G. Complaint About State Plan Administration (CASPA's)

Ensure timely and thorough responses to CASPA allegations, investigative findings and recommendations for program improvement are provided by the state.

Two CASPA's were processed during this evaluation period. Both were found to have valid allegations. The state responded timely and the written responses were appropriate.

One of the CASPA's involved an inadequate fatality investigation at a casino and failure to provide adequate follow up with the victims' family.

The second CASPA involved an inadequate asbestos inspection and NvOSHA's failure to provide asbestos sampling records. As recommended, NvOSHA conducted a follow-up inspection and requested the asbestos sampling records. After months of delay, the company provided a two page summary but refused to provide copies of the asbestos laboratory results and other sampling records. NvOSHA did not issue a citation, instead after six months issued a subpoena for the records. The company was attempting to have the subpoena quashed.

H. Voluntary Compliance Program

During FY 2011 NvOSHA hired a program manager in the Henderson office for VPP. The program manager was in the process of updating the NvOSHA's VPP manual and incorporating the recent changes in federal OSHA's VPP policies.

Currently, the Nevada program did not include provisions for Merit status VPP sites. Companies participating in the VPP program were only approved at the Star level. For FY 2011 two VPP site participants were awarded the VPP Star. NvOSHA also received one new VPP application for consideration.

I. Training Program

Ensure the existence and implementation of an appropriate program to encourage voluntary compliance by employers through consultation, training and intervention.

In FY 2011 Nevada Safety Consultation and Training Section (SCATS) completed 94 consultation visits at public entity employers. An analysis of the year end SAMM data determined 60 consultations at schools had coding errors. Coding errors have since been corrected and the goal of 54 public sector consultations has been exceeded by 31%. However, several public sector employers said they did not have the money for hazard abatement and therefore did not request consultation services.

SCATS conducted 310 training classes; the classes provided specialized education to over 7,616 employees and 2,959 employers. Of the training curriculum 80% of the sessions were offered to employees and/or employers, targeted in the areas of concrete, plastics, and food manufacturing industries. The class evaluations were rated on average 4.8 on a 5-point scale on how useful the course was.

SCATS made a vigorous effort to reach out to the Hispanic community and provided 46 training classes in Spanish. The courses benefited 1,535 Spanish speaking supervisors and workers. SCATS also had a video lending library that contained an assortment of safety and health videos in various languages. A total of 959 videos were loaned and viewed by approximately 17,416 supervisors and workers.

SCATS had 10 active partnerships/alliances. In addition, support was provided for three large outreach events and assistance to five organizations including; the Employment Education Outreach (EMPLEO) program, State of Nevada Risk Management, University of California - San Diego (UCSD), Boyd Gaming, and National Underground Contractors Association (NUCA).

J. Program Administration

Staffing

The staffing turnover rate of almost 20 percent continued to be an ongoing challenge in Nevada. The 12 hours of unpaid furlough days per quarter and the Governor's executive order mandating that new state employees be brought in at step one remained in effect. In addition, on July 1, 2011 the Nevada State Legislature imposed a 2.5% wage reduction for all state employees. The state was receiving an adequate number of applications for open positions, but many promising candidates refused to interview when told of the low salary cap. The state must continue to pursue all

available options to hire and retain technical staff. See Finding and Recommendation 11-1.

Training

A secondary effect of the high staff turnover rate was the continuing need for sufficient funding for training to maintain the stability of technical staff. So far the state legislature has appropriated sufficient funding for training.

Information Technology

As discussed elsewhere in this report, the state was experiencing ongoing issues with the Information Management systems. In the whistleblower program, the Help Desk has not been able to resolve the problem of access to only one screen. There are also ongoing data issues in the safety and health compliance program. See Finding and Recommendations 11-2, 11-5, 11-8 and 11-22.

State Internal Evaluation Program

NvOSHA has a full time Special Projects Officer that was involved with program monitoring and updating written policy and procedures. Other program managers i.e. VPP and training, were also involved in updating procedures and program evaluation projects. Both the Training manager and the Project Officer were part of the team for the case file review audit.

V. Assessment of State Progress in Achieving Annual Performance Goals

NvOSHA established and implemented a new five-year strategic plan for the federal FY 2011 through FY 2015. Each year NvOSHA develops annual performance plans which supported the achievement of its strategic goals, and submitted the plans to OSHA for review and approval. NvOSHA developed and submitted its FY 2011 annual performance plan as part of its application for federal funds.

The following is OSHA's assessment of NvOSHA's performance toward meeting its FY 2011 annual goals and the state's progress in achieving its 2011-2015 Strategic Plan. The state 2011 Annual Performance Plan goals are attached in Appendix F, the State OSHA Annual Report (SOAR).

Goal 1: Workplace Safety and Health

Reduce workplace injuries and illnesses within the state.

1.1 Reduce worker injury and illness DART (Days Away, Restricted, or Transferred) by one percent.

Performance Measure

a. Percent of serious willful and repeat citations issued - 49% of serious, willful and repeat citations were issued.

- b. *Percent of inspections with no violations found - 32% of inspections with no violations were found.*
- c. *Percent of DART rate decrease – The DART rate was decreased by 17%.*

Result: *The 2008 baseline DART rate of 2.4 was reduced by 17%. However, the percent of inspections conducted without violations is 32 percent. The high percentage of inspections without violations is addressed in Section IV.A.3 of this report as a finding and recommendation.*

OSHA Assessment: *This goal was exceeded.*

1.2 *Verify that 96% of violations are abated in a timely manner (per SAMM #6 – verify abated within the abatement due date plus 30 calendar days).*

Performance Measure

- a. *Percent of serious hazards with verified abatement. – 92 percent of serious hazards had timely verified abatement.*

Result: *The state only verified that 92% of serious hazards identified were corrected. As a result, employees could continually be exposed to 56 out of 915 identified serious hazards in Nevada.*

OSHA Assessment: *The failure to meet this goal is addressed in Section IV.A.5. of this report as a finding and recommendation.*

Goal 2: Employer Involvement

Change workplace culture through education, outreach and employer incentives.

2.1 *Increase the number of participants in the Nevada VPP Star program by one site.*

Performance Measure

- a. *Number of VPP applications received/reviewed - One VPP applications was received and reviewed.*
- b. *Number of VPP audits conducted - Three VPP audits were conducted.*
- c. *Number of VPP Star sites awarded - Two VPP star sites were awarded*

Result: *NvOSHA awarded two VPP site participants the VPP Star, keeping them on track to meet their FY 2015 goal of awarding five VPP sites. In addition, NvOSHA received and reviewed one new VPP application for consideration.*

OSHA Assessment: *This goal was met.*

Goal 3: Staff Professional Development

Enhance compliance officer knowledge, skills and abilities through formal and informal training.

3.1 Conduct field training and evaluate the performance of at least 20% of field assigned CSHO.

Performance Measure

- a. *Number of field training contacts with compliance officers – Seven field training contacts with compliance officers were conducted.*
- b. *Percent of compliance officers evaluated relative to the number of field assigned compliance officers – Twenty percent of compliance officers were evaluated*

Result: *Last year, NvOSHA hired a full-time trainer. Part of the trainer's responsibilities included monitoring, field and classroom training and evaluation of compliance officers. The trainer completed field training and evaluation for 20 percent of the compliance staff.*

OSHA Assessment: *This goal was met.*

Appendix A - FY 2011 Findings and Recommendations

| <i>FY11 Fame Finding Number</i> | <i>Finding</i> | <i>Recommendation</i> | <i>Corresponding FY10 Fame Number</i> |
|---------------------------------|--|---|---------------------------------------|
| 11-01 | <i>Employees with 3 years of safety and health experience continued to leave employment with NvOSHA and SCATS for higher paying safety positions.</i> | <i>Continue to pursue all available options to retain safety and health compliance officers, consultants and trainers.</i> | 10-17 |
| 11-02 | <i>The complaint inquiry tracking date entered into IMIS was the date the letter was mailed which was usually one to three days after the complaint was received.</i> | <i>The date the complaint is received must be entered into IMIS.</i> | |
| 11-03 | <i>The employer was not immediately contacted and it was not known when the employer was notified of complainant alleged hazards that were investigated through the inquiry process.</i> | <i>The employer must be immediately contacted and informed of alleged hazards that are investigated through the complaint inquiry process.</i> | |
| 11-04 | <i>The state failed to meet their inspection goals by 41 percent.</i> | <i>Focus attention and the necessary resources to meet inspection goals.</i> | |
| 11-05 | <i>The numbers and compliance data for NEP and LEP inspections were not reliable due to coding errors.</i> | <i>The state must check and correct coding errors to ensure inspection and compliance data is accurate.</i> | |
| 11-06 | <i>A high percentage of inspections conducted are non-programmed (82 percent) and the state is not effectively using the complaint/referral inquiry process to avoid conducting inspections at low hazard worksites.</i> | <i>The state must effectively use the complaint inquiry process to avoid conducting inspections at low hazard worksites and increase the number of programmed inspections.</i> | |
| 11-07 | <i>Many other-than-serious violations were documented with serious injuries, illness and in some cases death.</i> | <i>Supervisors and District Managers must ensure violations are documented in accordance with the policies in the NOM Chapter 4 and appropriate citations are issued for all serious hazards.</i> | |

| FY11 Fame Finding Number | Finding | Recommendation | Corresponding FY10 Fame Number |
|--------------------------|---|---|--------------------------------|
| 11-08 | NvOSHA lapse time for citation issuance did not meet the reference standard of 51.9 days for safety citations and 64.8 days for health citations. | Take all appropriate actions to ensure citations are issued timely. | |
| 11-09 | For FY 2011, 56 out of 915 serious hazards were not verified as abated. | NvOSHA must track and investigate all cases with outstanding abatement and promptly take corrective actions to ensure employees are not exposed to ongoing serious hazards that have not been abated. This is a repeat recommendation from FY 2010. | |
| 11-10 | Discrimination complainants were required to notify their employer of the intent to file a retaliation complaint. In some cases they were required to make personal delivery to the respondent of their NvOSHA complaint. NRS 618.445(2) may have created a chilling effect on a worker who wished to file a whistleblower retaliation complaint and may hamper NvOSHA's ability to conduct inspections regarding the underlying occupational safety and health complaint at issue. | Amend NRS 618.445(2) to not require discrimination complainants to serve the employer a copy of the complaint prior to NvOSHA commencing an investigation. | |
| 11-11 | Interviews with the discrimination complainant were sometimes missing and/or incomplete. | Full discrimination complainant interviews must be conducted and documented; including obtaining relevant documents and ascertaining the restitution sought by the complainant. | |
| 11-12 | In some cases, discrepancies were not resolved and discrimination complainants were not provided an opportunity to respond to respondent's defenses. | After completing the respondent's side of a discrimination investigation, investigators must resolve discrepancies, including providing the complainant an opportunity to respond to the respondent's defenses. | |

| FY11 Fame Finding Number | Finding | Recommendation | Corresponding FY10 Fame Number |
|--------------------------|---|--|--------------------------------|
| 11-13 | <i>Relevant discrimination complainant witnesses were not always identified and interviewed. Witness interviews were not appropriately documented in the case file.</i> | <i>The complainant's side of the investigation must be developed as thoroughly as possible, and the investigator must attempt to identify, interview and document all relevant complainant witnesses in the case file.</i> | |
| 11-14 | <i>Closing conferences with discrimination complainants at the end of a discrimination investigation were not documented in the case file.</i> | <i>The discrimination investigator must document the closing conference with the complainant at the end of the investigation where the investigator informs the complainant about the breadth and findings of the investigation and advises the complainant of their rights to appeal a non-merit determination.</i> | |
| 11-15 | <i>Discrimination investigative reports did not cite to exhibits.</i> | <i>The discrimination investigator must cite to exhibits in the investigative report.</i> | |
| 11-16 | <i>In some cases, the final discrimination report contained improper analysis of the evidence.</i> | <i>Final discrimination reports shall contain proper analysis of the evidence collected.</i> | |
| 11-17 | <i>The complaint date of filing entered into IMIS was the date the discrimination investigation commenced and not the date the complaint was received.</i> | <i>The date the discrimination complaint is received must be entered into IMIS as the complaint date of filing, rather than the date NvOSHA commences an investigation.</i> | |

| FY11 Fame Finding Number | Finding | Recommendation | Corresponding FY10 Fame Number |
|--------------------------|---|---|--------------------------------|
| 11-18 | Several discrimination investigations failed to adequately test the respondent's defenses or failed to provide an adequate analysis of the evidence, including considering temporal proximity, disparate treatment, and animus. | The discrimination investigator must broadly view and test defenses offered by respondent in addition to other evidence to determine if there is evidence that the complainant suffered disparate treatment or animus, suffered adverse action in temporal proximity to the respondent learning of the protected activity, and/or whether there is evidence that the respondent's defense was developed in response to, rather than independently of, complainant's protected activity. | |
| 11-19 | Whistleblower IMIS data was not accurate and reliable. | NvOSHA must use IMIS to track opened, closed, administratively closed, and pending whistleblower investigations. | |
| 11-20 | NvOSHA was administratively closing discrimination complaints incorrectly. | NvOSHA must only administratively close discrimination complaints upon receipt prior to opening an investigation if (1) the case is untimely as filed, NvOSHA lacks jurisdiction, or the complainant fails to allege an essential element of a prima facie case of retaliation (protected activity, employer knowledge, adverse action, and nexus), and (2) the complainant concurs with NvOSHA not conducting an investigation. | |
| 11-21 | FY11 whistleblower investigators and supervisors did not attend the mandated 1420 Basic Whistleblower Investigation Course. | Investigators and supervisors shall attend the 1420 Basic Whistleblower Investigation course. | |

Appendix B – Status of State Actions in Response to FY 2010 EFAME

2010 NvOSHA Corrective Action Plan

| No. | Findings | Recommendations | NV OSHA Corrective Action Plan | OSHA Comments: Accepted/Not Accepted | Status & Date of Submitted Documentation |
|---------------|---|---|--|--|--|
| 10-1 to 10-16 | .See findings from the 2009 Special Study | See recommendations from the 2009 Special Study | Findings were corrected in the CAP for the 2009 Special Study. | Accepted – Audit of case files confirmed recommendations had been implemented. | ✓Completed 9/30/2011 |
| 10-17 | Employees with 3 years of safety and health experience have left the employment of NvOSHA for higher paying safety positions. | Continue to pursue all available options to increase the salaries of NvOSHA safety and health compliance officers and SCATS consultants and trainers. | Work with legislature to increase CSHO salaries & explore other available options that may impact staff retention. | Accepted – Corrective action has not been completed. NvOSHA and SCATS management has requested but has not received approval of pay increases for safety and health staff through the state personnel system and legislative process. Pay increases will be pursued through the personnel system & the legislative process. | ECD – FY 2014 Legislation. |
| 10-18 | Complainant was not timely notified of the results of the inspection or inquiry. | Ensure complainants are timely notified after an investigation or inquiry. | Review current procedures and retrain staff, if needed. Nevada Operations Manual is aligned with current complaint notification procedures in the FOM. NvOSHA trained designated staff on and implemented these procedures in June 2011. | Accepted | ✓Completed 6/30/2011 |
| 10-19 | Abatement verification or certification was not provided for all serious violations. | NvOSHA should investigate all cases with outstanding abatement and implement corrective actions to ensure employees are not exposed to ongoing serious hazards that have not been abated. | Investigate cases with outstanding abatement verification and take action if needed. NvOSHA reviewed all cases with outstanding abatement verification. Staff corrected data entry errors after discovery and CSHOs initiated follow-up inspections when warranted. Completed 11/30/11. | Accepted. | ✓Completed 11/30/2011 |

| No. | Findings | Recommendations | NV OSHA Corrective Action Plan | OSHA Comments: Accepted/Not Accepted | Status & Date of Submitted Documentation |
|-------|---|---|--|---|--|
| 10-20 | The percent serious/willful/repeat (SWR) violation rate for programmed inspections was not met. | NvOSHA should continue to evaluate and improve their targeting mechanisms and ensure serious hazards are recognized and citations issued in accordance with enforcement policy. | <p>Review inspection targeting procedures and violation classifications.</p> <p>NvOSHA routinely reviews its inspection targeting procedures and it will continue to include industries with the highest DART rates in its Site-Specific targeting plan and Local Emphasis Programs. Quarterly reviews of inspection violation ratios for selected industries will be used to assess agency effectiveness.</p> <p>NvOSHA recently created an internal training unit that is intended to address potential CSHO training deficiencies and sharpen CSHO hazard recognition skills.</p> | Accepted – Programmed inspections meet/exceed S/W/R referenced percent rate. | ✓Completed 9/30/2011 |
| 10-21 | Inspection goals were not met. The state completed 56.5% of projected inspection goals. | Evaluate inspection goals and if appropriate, modify to reflect changes in policy and declining industries in the state. | <p>Re-evaluate inspection goals and account for average vacancy rate. Modify inspection goals if appropriate.</p> <p>Since FY2012 is already underway, inspection goals will be adjusted to reflect projected staffing and experience level of compliance officers in FY2013. Changes in inspection emphasis will also be considered, when necessary.</p> | Accepted – There has been several discussions on inspection goals. The state indicated a program change to modify 2012 inspection goals may be submitted. | ✓Completed 9/30/2011 |

| No. | Findings | Recommendations | NV OSHA Corrective Action Plan | OSHA Comments: Accepted/Not Accepted | Status & Date of Submitted Documentation |
|-------|--|--|--|--|--|
| 10-22 | State strategic objective and performance goal of 3 VPP Star sites was not met. Only one application was awarded a VPP Star site and there were no new applications submitted. | The VPP goals should be re-evaluated and the necessary resources allocated to meet the goal. | Re-evaluate VPP goal for the FY 2011. Modify goal pending re-evaluation. | Accepted – State modified VPP goals in grant application for 2011. Grant application was accepted and awarded. | ✓Completed 9/30/2011 |

Appendix C – Enforcement Comparison

Nevada State Plan FY 2011 Enforcement Activity

| | NV | State Plan Total | Federal OSHA |
|--|--------------------|----------------------|-----------------------|
| Total Inspections | 1,254 | 52,056 | 36,109 |
| Safety | 822 | 40,681 | 29,671 |
| % Safety | 66% | 78% | 82% |
| Health | 432 | 11,375 | 6,438 |
| % Health | 34% | 22% | 18% |
| Construction | 451 | 20,674 | 20,111 |
| % Construction | 36% | 40% | 56% |
| Public Sector | 43 | 7,682 | N/A |
| % Public Sector | 3% | 15% | N/A |
| Programmed | 225 | 29,985 | 20,908 |
| % Programmed | 18% | 58% | 58% |
| Complaint | 371 | 8,876 | 7,523 |
| % Complaint | 30% | 17% | 21% |
| Accident | 33 | 2,932 | 762 |
| Insp w/ Viols Cited | 749 | 31,181 | 25,796 |
| % Insp w/ Viols Cited (NIC) | 60% | 60% | 71% |
| % NIC w/ Serious Violations | 63.2% | 63.7% | 85.9% |
| Total Violations | 2,462 | 113,579 | 82,098 |
| Serious | 1,067 | 50,036 | 59,856 |
| % Serious | 43% | 44% | 73% |
| Willful | 1 | 295 | 585 |
| Repeat | 63 | 2,014 | 3,061 |
| Serious/Willful/Repeat | 1,131 | 52,345 | 63,502 |
| % S/W/R | 46% | 46% | 77% |
| Failure to Abate | 16 | 333 | 268 |
| Other than Serious | 1,315 | 60,896 | 18,326 |
| % Other | 53% | 54% | 22% |
| Avg # Violations/ Initial Inspection | 3.3 | 3.4 | 2.9 |
| Total Penalties | \$3,688,916 | \$ 75,271,600 | \$ 181,829,999 |
| Avg Current Penalty / Serious Violation | \$ 2,489.10 | \$ 963.40 | \$ 2,132.60 |
| % Penalty Reduced | 35.8% | 46.6% | 43.6% |
| % Insp w/ Contested Viols | 21.7% | 14.8% | 10.7% |
| Avg Case Hrs/Insp- Safety | 27.6 | 17.1 | 19.8 |
| Avg Case Hrs/Insp- Health | 22.2 | 26.8 | 33.1 |
| Lapse Days Insp to Citation Issued- Safety | 42.5 | 35.6 | 43.2 |
| Lapse Days Insp to Citation Issued- Health | 0.6 | 43.6 | 54.8 |
| Open, Non-Contested Cases w/ Incomplete Abatement >60 days | 58 | 1,387 | 2,436 |

Note: Federal OSHA does not include OIS data.
The total number of inspections for Federal OSHA is 40,684.

Appendix D – FY 2011 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
 PAGE 1 OF 2

State: NEVADA

RID: 0953200

| MEASURE | From: 10/01/2010 | | CURRENT | REFERENCE/STANDARD |
|--|------------------|--------|------------|--|
| | To: 09/30/2011 | | FY-TO-DATE | |
| 1. Average number of days to initiate Complaint Inspections | 2555 | 6.24 | 172 | Negotiated fixed number for each State |
| | 409 | | 5.54 | |
| | | | 31 | |
| 2. Average number of days to initiate Complaint Investigations | 465 | 2.68 | 38 | Negotiated fixed number for each State |
| | 173 | | 3.80 | |
| | | | 10 | |
| 3. Percent of Complaints where Complainants were notified on time | 399 | 97.79 | 43 | 100% |
| | 408 | | 100.00 | |
| | | | 43 | |
| 4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger | 2 | 100.00 | 1 | 100% |
| | 2 | | 100.00 | |
| | | | 1 | |
| 5. Number of Denials where entry not obtained | 0 | | 0 | 0 |
| 6. Percent of S/W/R Violations verified | | | | |
| Private | 637 | 91.92 | 24 | 100% |
| | 693 | | 61.54 | |
| | | | 39 | |
| Public | 15 | 100.00 | 0 | 100% |
| | 15 | | 0 | |
| 7. Average number of calendar days from Opening Conference to Citation Issue | | | | |
| Safety | 34572 | 58.20 | 3138 | 2631708 |
| | 594 | | 40.75 | 51.9 |
| | | | 77 | 50662 |
| | 16838 | | 1915 | 767959 |
| | | | | National Data (1 year) |

| | | | | |
|--|----------------------------|--------------------------|-------------------------------|-------------------------------|
| Health | 81.34 207 | 83.26 23 | 64.8 11844 | National Data (1 year) |
| 8. Percent of Programmed Inspections with S/W/R Violations | | | | |
| Safety | 104 58.43 178 | 9 42.86 21 | 90405 58.5 154606 | National Data (3 years) |
| Health | 18 40.91 44 | 2 66.67 3 | 10916 51.7 21098 | National Data (3 years) |
| 9. Average Violations per Inspection with Vioations | | | | |
| S/W/R | 1470 1.83 800 | 155 1.53 101 | 419386 2.1 198933 | National Data (3 years) |
| Other | 1328 1.66 800 | 92 .91 101 | 236745 1.2 198933 | National Data (3 years) |
| 10. Average Initial Penalty per Serious Violation (Private Sector Only) | 4382470 3191.89 1373 | 450476 3172.36 142 | 611105829 1679.6 363838 | National Data (3 years) |
| 11. Percent of Total Inspections in Public Sector | 43 3.43 1254 | 5 5.68 88 | 168 2.9 5839 | Data for this State (3 years) |
| 12. Average lapse time from receipt of Contest to first level decision | 9956 132.74 75 | 5 5.00 1 | 3533348 199.7 17693 | National Data (3 years) |
| 13. Percent of 11c Investigations Completed within 90 days | 3 100.00 3 | 0 0 0 | 100% | |
| 14. Percent of 11c Complaints that are Meritorious | 0 .00 3 | 0 0 0 | 1517 23.0 6591 | National Data (3 years) |
| 15. Percent of Meritorious 11c Complaints that are Settled | 0 0 0 | 0 0 0 | 1327 87.5 1517 | National Data (3 years) |

Appendix E – State Information Report (SIR)

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NEVADA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | -----12 MONTHS----- | | -----24 MONTHS----- | |
|---|---------------------|-------|---------------------|-------|---------------------|-------|---------------------|-------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| C. ENFORCEMENT (PRIVATE SECTOR) | | | | | | | | |
| 1. PROGRAMMED INSPECTIONS (%) | | | | | | | | |
| A. SAFETY | 3694 | 30 | 8169 | 74 | 18137 | 178 | 40070 | 431 |
| | 61.3 | 12.6 | 61.4 | 17.9 | 62.5 | 22.3 | 63.7 | 25.2 |
| | 6026 | 239 | 13312 | 413 | 29042 | 797 | 62876 | 1712 |
| B. HEALTH | 480 | 11 | 1020 | 32 | 2126 | 48 | 4357 | 108 |
| | 39.7 | 9.6 | 36.4 | 14.2 | 34.6 | 11.9 | 34.7 | 11.4 |
| | 1208 | 115 | 2806 | 225 | 6150 | 403 | 12569 | 948 |
| 2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 3378 | 40 | 7266 | 78 | 14959 | 169 | 32614 | 463 |
| | 73.7 | 85.1 | 72.4 | 82.1 | 70.1 | 87.1 | 69.1 | 77.7 |
| | 4583 | 47 | 10036 | 95 | 21330 | 194 | 47196 | 596 |
| B. HEALTH | 456 | 10 | 890 | 19 | 1723 | 27 | 3487 | 64 |
| | 57.0 | 71.4 | 57.2 | 57.6 | 56.2 | 58.7 | 55.3 | 55.7 |
| | 800 | 14 | 1555 | 33 | 3068 | 46 | 6309 | 115 |
| 3. SERIOUS VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 11703 | 230 | 23768 | 412 | 48704 | 836 | 109064 | 1690 |
| | 79.6 | 49.4 | 77.4 | 46.3 | 76.7 | 44.8 | 78.4 | 42.7 |
| | 14698 | 466 | 30703 | 889 | 63528 | 1867 | 139117 | 3959 |
| B. HEALTH | 2634 | 78 | 5290 | 127 | 10266 | 235 | 21598 | 524 |
| | 66.6 | 44.8 | 64.7 | 40.2 | 64.4 | 42.0 | 66.7 | 44.4 |
| | 3957 | 174 | 8180 | 316 | 15930 | 559 | 32380 | 1181 |
| 4. ABATEMENT PERIOD FOR VIOLS | | | | | | | | |
| A. SAFETY PERCENT >30 DAYS | 2394 | 16 | 4978 | 41 | 10776 | 78 | 23693 | 151 |
| | 16.6 | 6.3 | 16.8 | 9.0 | 17.9 | 8.6 | 17.9 | 8.1 |

| | | | | | | | | |
|----------------------------|-------|-----|-------|-----|-------|-----|--------|------|
| | 14465 | 255 | 29573 | 454 | 60243 | 906 | 132414 | 1863 |
| | 259 | 0 | 711 | 5 | 1451 | 13 | 3159 | 19 |
| B. HEALTH PERCENT >60 DAYS | 6.5 | .0 | 8.6 | 3.1 | 9.4 | 4.4 | 10.0 | 2.9 |
| | 4006 | 103 | 8234 | 160 | 15507 | 298 | 31619 | 666 |

| | | | | | | | | |
|---------------------|---------------------|-------|---------------------|-------|---------------------|-------|---------------------|-------|
| | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | -----12 MONTHS----- | | -----24 MONTHS----- | |
| PERFORMANCE MEASURE | FED | STATE | FED | STATE | FED | STATE | FED | STATE |

C. ENFORCEMENT (PRIVATE SECTOR)

5. AVERAGE PENALTY
A. SAFETY

| | | | | | | | | |
|--------------------|--------|--------|---------|--------|---------|--------|---------|--------|
| | 505479 | 93716 | 1258835 | 156805 | 2803637 | 319849 | 5086228 | 449949 |
| OTHER-THAN-SERIOUS | 1181.0 | 1007.7 | 1195.5 | 962.0 | 1126.9 | 830.8 | 1055.2 | 688.0 |
| | 428 | 93 | 1053 | 163 | 2488 | 385 | 4820 | 654 |

B. HEALTH

| | | | | | | | | |
|--------------------|--------|-------|--------|--------|--------|--------|---------|--------|
| | 219203 | 39200 | 441915 | 61780 | 853346 | 91990 | 1667151 | 139790 |
| OTHER-THAN-SERIOUS | 1184.9 | 980.0 | 1077.8 | 1123.3 | 980.9 | 1022.1 | 958.7 | 896.1 |
| | 185 | 40 | 410 | 55 | 870 | 90 | 1739 | 156 |

6. INSPECTIONS PER 100 HOURS

| | | | | | | | | |
|-----------|------|-----|-------|-----|-------|-----|-------|------|
| | 6874 | 252 | 15417 | 440 | 33850 | 846 | 73070 | 1850 |
| A. SAFETY | 6.0 | 3.0 | 5.6 | 2.6 | 5.5 | 2.5 | 5.4 | 2.8 |
| | 1138 | 83 | 2730 | 167 | 6145 | 342 | 13476 | 667 |

B. HEALTH

| | | | | | | | | |
|--|------|-----|------|-----|------|-----|-------|------|
| | 1458 | 130 | 3330 | 252 | 7311 | 444 | 14958 | 1044 |
| | 2.4 | 3.7 | 2.2 | 3.7 | 2.2 | 3.2 | 2.0 | 3.5 |
| | 615 | 35 | 1501 | 69 | 3390 | 140 | 7404 | 299 |

7. VIOLATIONS VACATED %

| | | | | | | | | |
|--|-------|-----|-------|------|-------|------|--------|------|
| | 1270 | 24 | 3026 | 95 | 6577 | 195 | 12352 | 302 |
| | 5.6 | 4.1 | 6.6 | 8.3 | 7.0 | 8.9 | 6.2 | 6.2 |
| | 22608 | 589 | 46128 | 1142 | 93448 | 2196 | 200310 | 4854 |

8. VIOLATIONS RECLASSIFIED %

| | | | | | | | | |
|--|-------|-----|-------|------|-------|------|--------|------|
| | 737 | 7 | 1997 | 22 | 4456 | 60 | 9147 | 137 |
| | 3.3 | 1.2 | 4.3 | 1.9 | 4.8 | 2.7 | 4.6 | 2.8 |
| | 22608 | 589 | 46128 | 1142 | 93448 | 2196 | 200310 | 4854 |

9. PENALTY RETENTION %

| | | | | | | | | |
|--|----------|--------|----------|---------|-----------|---------|-----------|---------|
| | 19478404 | 400843 | 40012395 | 788152 | 77322520 | 1468871 | 134938244 | 2353575 |
| | 61.0 | 56.4 | 61.6 | 56.2 | 62.8 | 62.0 | 62.8 | 64.6 |
| | 31918969 | 711222 | 65001782 | 1403326 | 123124542 | 2368648 | 214845679 | 3644248 |

| | | | | | | | | |
|---------------------|---------------------|--------|---------------------|--------|----------------------|--------|----------------------|--------|
| | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | ----- 12 MONTHS----- | | ----- 24 MONTHS----- | |
| PERFORMANCE MEASURE | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC |

D. ENFORCEMENT (PUBLIC SECTOR)
 1. PROGRAMMED INSPECTIONS %

| | | | | | | | | |
|-----------|------|----|------|------|------|-----|------|-----|
| | 30 | 0 | 74 | 1 | 178 | 1 | 431 | 3 |
| A. SAFETY | 12.6 | .0 | 17.9 | 10.0 | 22.3 | 6.7 | 25.2 | 6.8 |
| | 239 | 4 | 413 | 10 | 797 | 15 | 1712 | 44 |
| | 11 | 0 | 32 | 0 | 48 | 0 | 108 | 1 |
| B. HEALTH | 9.6 | .0 | 14.2 | .0 | 11.9 | .0 | 11.4 | 1.6 |
| | 115 | 11 | 225 | 18 | 403 | 27 | 948 | 64 |

2. SERIOUS VIOLATIONS (%)

| | | | | | | | | |
|-----------|------|------|------|------|------|------|------|------|
| | 230 | 1 | 412 | 6 | 836 | 8 | 1690 | 19 |
| A. SAFETY | 49.4 | 20.0 | 46.3 | 46.2 | 44.8 | 47.1 | 42.7 | 40.4 |
| | 466 | 5 | 889 | 13 | 1867 | 17 | 3959 | 47 |
| | 78 | 3 | 127 | 3 | 235 | 9 | 524 | 16 |
| B. HEALTH | 44.8 | 33.3 | 40.2 | 30.0 | 42.0 | 39.1 | 44.4 | 30.2 |

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | ----- 12 MONTHS----- | | ----- 24 MONTHS----- | |
|---------------------|---------------------|-------|---------------------|-------|----------------------|-------|----------------------|-------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |

E. REVIEW PROCEDURES

| | | | | | | | | |
|------------------------------|---------|--------|----------|--------|----------|--------|----------|---------|
| 1. VIOLATIONS VACATED % | 579 | 52 | 1131 | 92 | 2220 | 207 | 4270 | 351 |
| | 22.8 | 29.2 | 23.4 | 31.2 | 23.5 | 31.6 | 23.0 | 30.4 |
| | 2542 | 178 | 4834 | 295 | 9442 | 656 | 18586 | 1156 |
| 2. VIOLATIONS RECLASSIFIED % | 328 | 37 | 620 | 61 | 1259 | 103 | 2360 | 176 |
| | 12.9 | 20.8 | 12.8 | 20.7 | 13.3 | 15.7 | 12.7 | 15.2 |
| | 2542 | 178 | 4834 | 295 | 9442 | 656 | 18586 | 1156 |
| 3. PENALTY RETENTION % | 3616720 | 122470 | 9500018 | 180096 | 16062961 | 391982 | 28079915 | 649256 |
| | 56.1 | 44.9 | 62.4 | 46.5 | 62.3 | 54.4 | 60.6 | 59.6 |
| | 6443756 | 272926 | 15212620 | 387143 | 25766759 | 720904 | 46371522 | 1089524 |

Appendix F – FY 2011 State OSHA Annual Report (SOAR)

FY 2011 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix G – FY 2011 23 (g) Consultation Data

Nevada State Plan FY 2011 23(g) Consultation Activity

| | NV Public Sector | Total State Plan Public Sector |
|--|------------------|--------------------------------|
| Requests | 27 | 1,328 |
| <i>Safety</i> | 25 | 576 |
| <i>Health</i> | 2 | 560 |
| <i>Both</i> | - | 192 |
| Backlog | 1 | 123 |
| <i>Safety</i> | 1 | 51 |
| <i>Health</i> | - | 58 |
| <i>Both</i> | - | 14 |
| Visits | 27 | 1,632 |
| <i>Initial</i> | 26 | 1,336 |
| <i>Training and Assistance</i> | - | 175 |
| <i>Follow-up</i> | 1 | 121 |
| <i>Percent of Program Assistance</i> | 27% | 67% |
| <i>Percent of Initial Visits with Employee Participation</i> | 100% | 96% |
| Employees Trained | 19 | 5,030 |
| <i>Initial</i> | 19 | 2,144 |
| <i>Training and Assistance</i> | - | 2,886 |
| Hazards | 425 | 6,063 |
| <i>Imminent Danger</i> | 1 | 3 |
| <i>Serious</i> | 396 | 4,804 |
| <i>Other than Serious</i> | 17 | 1,171 |
| <i>Regulatory</i> | 11 | 85 |
| <i>Referrals to Enforcement</i> | - | 6 |
| Workers Removed from Risk | 10,072 | 171,075 |
| <i>Imminent Danger</i> | 10 | 55 |
| <i>Serious</i> | 7,664 | 136,884 |
| <i>Other than Serious</i> | 428 | 26,046 |
| <i>Regulatory</i> | 1,970 | 8,090 |

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011.