



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

***Federal Annual Monitoring Evaluation (FAME) Report
October 1, 2010 - September 30, 2011***

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

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I. Executive Summary:

A: Summary of the report

The purpose of this report is to assess the State's progress related to enforcement activities and progress towards achieving their annual performance goals established in their Fiscal Year (FY) 2011 Annual Performance Plan, and to review the effectiveness of the programmatic areas related to enforcement activities, whistleblower program and other mandated activities.

The annual performance plan results, reported by PESH in the State OSHA Annual Report (SOAR), indicate that the program has made advancement towards achieving its strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed, and the results are identified in this report.

The study identified the following strengths and improvements in PESH's FY 2011 program as compared to the FY 2010 review: all fatality cases contained the Next of Kin (NOK) involvement letters that are sent to the families of victims, PESH continues to achieve 100% abatement and adequately documents how abatement was accomplished. Complainants were notified of complaint inspection results and all complaint items were investigated and addressed in the case files reviewed. Case files also contained documentation of employee representative involvement in the inspection process. PESH's discrimination program has made progress since FY 2010 – improving effectiveness in terms of sending notifications of appeal rights and involvement of Counsel. In addition, most whistleblower case files reviewed contained sufficient documentation to determine that Federal OSHA would have reached the same conclusion as PESH, which represents an improvement over the cases reviewed as part of the 2010 Federal Annual Monitoring Evaluation (FAME).

Challenges still facing PESH that may represent vulnerabilities to the program are varied and briefly described below. FY 2011 review of case files noted eight (8) recommendations including seven (7) repeat recommendations from the 2009 EFAME.

Of the enforcement case files reviewed for the FAME a significant number of case files lacked adequate *prima facie* evidence to support violations (Specifically some case files are lacking evidence of employee exposure), files lacked a description of the cited hazards and the location of the hazardous conditions was not always identified. In some cases the severity and probability of the violation was misclassified. Proposed abatement periods for hazard correction continue to be excessive. Although employee representatives were noted as involved during inspections, case files still lack documentation of employee involvement in the inspection process such as interviews. Also missing from case files reviewed were the SH-900 logs and/or a notation regarding whether injury/illness trends were occurring. Although PESH is sending the initial letters to Next of Kin (NOK) describing how they can become involved in the process during fatality investigations, documentation is not provided in the case files as to whether NOK are notified of the findings of the investigation when it is concluded. As determined in previous reviews, the discrimination case files lacked enough documentation to determine what the investigator did and the reasons for the conclusions drawn despite the fact that all PESH 11(c) investigators had received OTI Whistleblower training in 2010.

B: State Plan Introduction

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

The PESH Program consists of one central office in Albany, New York and eight district offices located in: Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City and New York City (Manhattan).

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

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

New York State Plan Profile

State Plan: Initial Plan Approval – August 19, 1984
Certification: August 16, 2006 (71 FR 47089)
Designee - Colleen C. Gardner, Commissioner
New York State Department of Labor

Excluded Coverage

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

Employee Coverage - Public Employee Coverage Only

- 1,315,300 total State, County and Local employees
- 7,295 Public Sector Employers

FY 2011 23(g) Operational Grant – Per PESH's Financial Close Out Report

- Federal Share: \$3,827,300
- State Match: \$3,827,300
- 100% Overmatch: \$1,250,700
- Total for Grant: \$8,905,300

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

Allocated Staff

Allocated Staff (Full Time Equivalent FTE)

Total FTE:	97.64
Managers:	9.14
Safety Enforcement:	29
Health Enforcement:	16
Safety Consultation:	8
Health Consultation:	8
Compliance Assistance Specialist:	1
Trainers:	0
Clerical:	23.5
Other (positions not elsewhere counted):	3

Actual Staffing in FY 11

Total FTE:	71
Managers:	9.14
Safety Enforcement:	19
Health Enforcement:	13
Safety Consultation:	7
Health Consultation:	4
Compliance Assistance Specialist:	1
Trainers:	0
Clerical:	16
Other (positions not elsewhere counted):	2

C: Data & Methodology

Monitoring of the New York State Plan consisted of a team of Federal OSHA personnel from both the safety and health professional staff and Federal OSHA Whistleblower investigators. The team conducted onsite audits at PESH's office in Albany, NY from January 23rd until February 2nd 2012. The review in the Albany, NY location involved only case files from the 6 upstate offices. The remaining 3 downstate PESH offices were audited at the New York City PESH office on February 8th and 9th of 2012.

The evaluation of the PESH Program covered fiscal year 2011, the period of October 1, 2010 through September 30, 2011 and included the following documents:

- State Activity Mandated Measures (SAMM) Report
- Enforcement Comparison (INSP and ENFC Reports)
- Mandated Activities Report for Consultation (MARC)

The OSHA team reviewed a total of 83 cases that were closed in FY 2011 broken down by the following categories:

- 10 - Fat/Cat case files (5 fatality and 5 catastrophe investigations)

- 54 – Other Enforcement files (safety and health -complaints, planned, referrals, NEP Recordkeeping)
- 9 -Whistleblower case files
- 10 - 23(g) Consultation case files

Formal stakeholder interviews conducted during the FY 2009 EFAME process provided valuable insight into all aspects of the PESH program. Since OSHA conducted an extensive evaluation of the PESH Discrimination Program as part of the FY 2009 EFAME study, and given that OSHA maintains a continuous dialogue, particularly during this rating period (FY 2011), as part of its on-going relationship with these key stakeholders, formal interviews were not conducted during the preparation of this year’s EFAME.

D: Findings & Recommendations

Although PESH has made substantial improvements since the last review in 2010, there still are many areas where the program can be improved. These findings resulted in 7 recommendations. See Section IV and Appendix A.

Fatality – Final Contact With Next of Kin (NOK)

There was no evidence/documentation in the case files that the NOK were notified of the inspection results. (100% or 5 of the 5 fatality files reviewed contained the initial NOK contact letters. PESH’s policy is that after the initial NOK letter, contact is only made upon request of the NOK. PESH states that they believe this policy is “at least as effective as” federal OSHA’s policy).

Injury/illness records – SH-900 logs

Collection of SH-900 logs was lacking in a majority of the case files. Logs were not placed in the file nor did the file contain evidence that the logs were reviewed by CSHO’s for injury or illness trends in the case file.

Excessive Abatement Dates

As in previous years, abatement periods continue to be excessive based on the hazards observed.

Case File Documentation

Case files continued to have insufficient prima facie evidence to support the citations issued. As was the case in FY 2009 EFAME, case files continue to lack the required documentation of employee exposure, a description of the hazard, a description of how employees were exposed to the hazard, and the location of the hazard.

Violations were classified as other than serious and would have been more appropriately classified as serious based on the resulting hazard/injury i.e. entrapment, and/or fractures.

It should be noted that documentation of employer knowledge had improved in FY 2011 from the FY 2009 review when it appeared that all case files reviewed lacked evidence of employer knowledge – during this review 59 of the 64 files adequately documented employer knowledge.

Employee Interviews/Involvement

Though there has been a big improvement since 2009, 50% of the case files continue to lack documentation that employees have been interviewed or were involved in any part of the inspection. Other than a check box on a standardized PESH form in the file there was no documentation or notation in field notes that employees had been interviewed. (FY 2009 EFAME documentation of employee interviews was lacking in 79% of case files reviewed).

Missed Violations

Potential violations were not cited in three (3) of the 64 case files reviewed (1 safety and 2 health). The case files contained notes that Personal Protective Equipment (PPE) was lacking but there were no citations in the case files related to that issue.

Whistleblower Case File Documentation

Case files (6 of 9 files) lacked a final investigative report, making it difficult for OSHA to understand the investigative conclusions in the report, particularly in case files that were administratively closed.

II. Major New Issues

There were no major new issues found as a result of the case files review.

III. State Response to FY 2010 Recommendations

There were no outstanding issues or recommendations from the 2010 FAME Report.

IV. Assessment of State Performance

Inspection Activity

The FY 2011 Inspection Activity (Enforcement Comparison Chart) shows that PESH OSHA conducted a total of 1,753 inspections during the fiscal year: 1,207 safety inspections and 546 health inspections. This is 9% lower than their Planned vs. Actual (PVA) projection of 1,900 inspections. The lower percentage can be attributed to new hires and the subsequent training. In addition, PESH created teams to conduct the required recordkeeping inspections under the NEP.

During FY 2011 PESH issued 3,855 violations of which 75% were classified as Serious (2,891), Willful (2), and Repeat (1). The remaining violations issued were classified as Other-Than-Serious (898) and 63 Notifications of Failure to Abate.

There were 12 contested cases for FY 2011 compared to 15 contested cases for FY 2010.

All consultations that are conducted by PESH are in the public sector. The OSHA Mandated Activities Report for Consultation (MARC) for PESH indicates that during FY 2011 PESH conducted a total of 343 public-sector consultation visits. This is 43 (14%) above the goal of 300 consultation visits.

A. Enforcement

1. Complaints – (31 total complaint files were reviewed)

Timeliness of state response and notifications to complainant:

PESH policy requires that complaints alleging serious hazards be opened within 30 days and those alleging non-serious hazards must be opened within 120 days. (Federal OSHA requires all formal complaints to be opened within 5 work days)

During this evaluation period, PESH responded to 377 complaints with an average response time of 29.35 days from notification. This is a decrease from 40.88 days in FY 2010. (SAMM report 11-08-11 – SAMM #1)

Based on the timeliness average, PESH met its established Agency time frames.

14 safety complaint case files were reviewed. The average number of days to open a safety complaint was 5 days, which is well below the PESH policy requirement of 30 days. It should be noted that there was a significant outlier in that one investigation took 6 months from the date of receipt to the opening conference and initiation of the investigation. The complaint item was vermin infestation and the case file lacked documentation on why the investigation was delayed.

17 health complaint case files were reviewed. The average number of days to open a health complaint was 34 days. One notable outlier was a complaint received in the summer of 2010 but not opened until late fall (123 days); the issues were related to heat and lack of drinking water however the inspection was not started until the weather was much cooler. The case file lacked documentation as to why there was a 123 day delay in opening the complaint.

Complainants were notified on time in 88.49% (323 out of 365) of all complaints processed in FY 2011. This is a slight decrease from 91.99% in FY 2010. (SAMM report 11-08-11 – SAMM #3)

All files reviewed contained the required response letters to the complainants and addressed all complaint items.

2. Fatalities – 5 fatality case files were reviewed.

During FY 2011 the number of public sector fatalities reported was 27, a decrease of 10 from FY 2010.

Finding 11-01:(09-7)

Lack of evidence/documentation in the case files that the Next of Kin (NOK) were notified of the fatality investigation results.

Recommendation 11-01:

Provide additional training to CSHO's reiterating the need to maintain follow-up contact with family members and to document in the case files that NOK have been notified of the results of the investigation by sending copies of the citations issued or a standard letter that the investigation is complete and no violations of PESH standards were found.

PESH should follow Federal OSHA's procedures for maintaining contact with family members so that they can be kept up-to-date on the status of the investigation. This includes notifying NOK through a final information letter of the results of the investigation. A copy of the letter should be placed in the case file or a notation made on the case file diary sheet.

NOK OSHA Involvement letters were sent in all 5 of the fatality investigations (100%) compared to only 29% in FY 2009. However, there was no documentation by way of a copy of a letter or notation on the diary sheet that the NOK are notified of the results of the investigation including: if citations are issued or not; and when the investigation has been closed.

PESH's procedure is to send the initial letter to the NOK within 5 days of the start of the investigation. If requested, PESH will maintain contact with the NOK throughout the development of the case. If citations are issued a copy of the citations is sent to the NOK. (The case file lacks documentation that the citations were sent to the NOK). If no citations are issued and/or the NOK does not request to be kept informed, no further contact is maintained and the case is closed.

1 of the fatalities was a non-work related heart attack and it may have been appropriate to code this as a "No Inspection" and update the OSHA 170.

Notification and opening conference were timely in all case files. All the required forms (OSHA 36 and OSHA 170's) and appropriate findings (citations) were in the case file.

3. Targeting and Programmed Inspections

PESH conducted a total of 1,753 inspections in FY 2011 – 1,207 were safety inspections and 546 were health inspections. Out of this 1,753, unprogrammed inspections included 15 accidents and 380 complaints. (Appendix C data)

In FY 2011, 75% (2,894) of violations were classified as serious, compared to 65% in FY 2010 and 44% for all state plans. PESH also issued citations for 2 willfuls, 1 repeat, 63 Failure to Abate violations and 898 other-than-serious violations. In regards to the average number of violations per inspection PESH issued 5.6 violations per initial inspection, which is above the state plan total of 3.4 and federal OSHA total of 2.9 violations per inspection. (Appendix C data)

The percent of inspections with serious/willful/repeat (S/W/R) violations was 78% for safety inspections and 73% for health inspections, both well above the national averages of 59%(S) and 52% (H). (SAMM report 11-08-11 – SAMM #8)

The average violations per inspection for FY 2011 continue to be above the national averages. PESH issued an average of 4.18 S/W/R violations/inspection and 1.29 for “other-than-serious” violations/inspection. PESH continues to be above the national average of 2.1 for S/W/R and slightly above the national average of 1.2 for “other-than-serious” violations/inspection. (SAMM report 11-08-11 – SAMM #9)

PESH conducted all the mandated NEP Recordkeeping audits during FY 2011 and did not identify underreporting trends. During this FAME review 1 NEP Recordkeeping case file was reviewed. The case file was well documented and followed the requirements of the NEP. The format used in this investigation for documenting employee interviews would be beneficial to use in other cases.

Finding 11-02:

Injury/Illness Data was not collected – SH-900 logs were not placed in the case files nor was there documentation that the logs were reviewed by CSHO’s for injury/illness trends.

Recommendation 11-02:

Ensure that CSHO’s are collecting the previous 3 years of SH-900 logs and placing them in the case files. This data is required for calculation of Days Away Restricted Time (DART) which is vital for the analysis of injury and illness trends.

4. Citations and Penalties

Finding 11-03: (09- 13, 09-18, 09-22)

Lack of Case File Documentation

Inadequate Evidence to Support Violations – 24 of the 36 enforcement case files (67%) reviewed with citations issued (19 safety and 5 health) were lacking sufficient prima facie evidence to support the citations issued. As was the case in the FY 2009 EFAME, case files were lacking the following:

- Employees exposed, including the total number exposed and duration of exposure was not being documented
- Description of the hazard was not documented
- Description of how employees were exposed to the hazard was not documented
- Location of the hazard was not documented
- Employer knowledge was not sufficiently established in 5 of the 36 case files (9%) reviewed with citations.

It should be noted that documentation of employer knowledge had improved from case files reviewed in the FY 2009 EFAME, when almost all of the case files lacked employer knowledge.

Recommendation 11-03:

Provide additional training to all field staff, including supervisory staff, to ensure that inspection case files are documented in accordance with the FOM and all other applicable NY State enforcement policies and procedures.

In discussions with OSHA, PESH acknowledged that the level of documentation detail in their case files is not at the same level as federal OSHA. PESH states that this has not been a significant issue in achieving compliance by Public Sector employers and this is evidenced by PESH's low rate of contested cases. PESH attributes this to the State's processes and requirements for adjudicating contested citation items through the State of New York Industrial Board of Appeals as well as being partly attributable to the lack of financial sanctions for first instance violations.

Violation Classification

Finding 11-04: (09-12, 09-17)

▪ Misclassified violations. In 11% of the case files reviewed with citations (4 of 36 - 3 safety and 1 health) violations were classified as Other-Than-Serious and would have been more appropriately classified as serious based on the resulting hazard/injury i.e. entrapment, and/or fractures.

Appropriateness of the violation classification improved from FY 2009 when 15 of 65 cases (24%) reviewed with citations had violations classified inaccurately. Examples of the inaccurately classified violations during this FY 2011 review consisted of: 3 safety case files classifying violations as Other-Than-Serious and listed entrapment (confined space/trench), and fractures as the likely injury. 1 health case file classified a lockout/tagout violation as an Other-Than-Serious. These would be better classified as serious.

Recommendation 11-04:

Provide additional training to all field staff, including supervisory staff, to ensure that violations are properly classified in accordance with the FOM and all other applicable NY State enforcement policies and procedures.

Missed Violations

Finding 11-05: (09-13)

During this review, 3 of the 64 enforcement case files (5% - 1 safety and 2 health) had potential violations that were not cited. The potential violations missed were: failure to cite for lack of initial determination for lead exposure, and failure to cite for lack of training on the lead hazards. In addition, one (1) safety case file addressed the lack of Personal Protective Equipment (PPE) for employees but no order to comply (OTC) was issued.

Recommendation 11-05:

Conduct in-house training to ensure that staff are addressing and adequately documenting all relevant hazards on the site. Review with the staff the requirement to note why an obviously volatile condition documented in a case file was not cited (i.e. lack of exposure, knowledge, etc.) Supervisory staff should implement internal controls and oversight to ensure that all hazards are being addressed.

Penalties

The PESH program does not allow for the issuance of “first instance” monetary penalties for public employers found in violation of PESH standards on a first instance basis, including willful and repeat violations. Per Diem penalties can be assessed when Failure-To-Abate (FTA) notices are issued for any type of violation. PESH issued a total of 63 FTA penalties totaling \$82,503 in FY 2011 (Appendix C data) for an average of \$1,310/FTA compared to 58 FTA penalties totaling \$72,013, averaging \$1,241/FTA in FY 2010.

Lapse Time

PESH’s citation lapse time (the average number of calendar days from opening conference to citation issuance) for FY 2011 was calculated at 55.57 days for safety, an increase from 39.87 days in FY 2010 and 76.28 days for health, a decrease from 77.61 days in FY 2010. (SAMM report 11/08/11 – SAMM #7)

It should be noted that a factor in the PESH lapse time increase during FY 2011 was attributed to the implementation of a new Workplace Violence Prevention Regulation. The delay was partially due to increased supervisory review of the new regulation along with concurrent delays attributed to training CSHOs on the regulation’s requirements. An additional factor is that PESH averaged 5.6 violations per inspection (in comparison to the OSHA national average of 2.4 violations per inspection) for FY 2011 and case file preparation time may be high due to the time needed to write the additional citation items. (Appendix C data)

OSHA recommends that PESH continue to implement mechanisms (e.g. expedited case file reviews, review of management reports, and ensuring that CSHOs efficiently manage their workload) in order to improve its citation lapse times.

5. Abatement

Excessive Abatement Periods

Finding 11-06: (09-23)

In 8 of the 36 enforcement case files reviewed (22%) with abatement periods, the number of days proposed to abate the hazard was excessive, showing little improvement since FY 2009, when 16 of 65 cases (25%) reviewed with abatement periods had excessive abatement times proposed. Some examples included: 30 days abatement for a flagger to obtain a flag on a construction site, 30 days for a hole to be covered, 60 days to abate an exposure to a chemical hazard that could cause blindness and 90 days to obtain a tight fitting cover for a garbage can.

Recommendation 11-06:

Provide additional training to all staff including supervisory staff to ensure that abatement dates are appropriate for the cited hazard.

During FY 2011, the percentage of serious, willful, repeat violations cited that was verified as abated within the abatement date plus 30 days was 90.93% instead of 100%. (2,306 SWR out of 2,536) The 90.93% is comparable to FY 2009 (93%) and FY 2010 (91.07%). (SAMM report 11-08-11 – SAMM #6)

PESH conducts follow-up inspections regardless of whether acceptable abatement certification is received from employers. 100% of the case files reviewed were well documented as to how the condition was abated.

6. Employee and Union Involvement

Documentation of Employee Interviews

Finding 11-07: (09-11)

Documentation of employee interviews was lacking in 32 of the 64 enforcement case files reviewed (10 safety and 22 health) or 50%, an improvement when compared to 79% in FY 2009.

Recommendation 11-07:

Instruct PESH staff to include interview notes and documentation in case files. Supervisors should be responsible for monitoring the case files. The Garden City, NY PESH office uses an employee interview template which contains all required information – use of this template in all PESH offices is advised.

The 2011 FAME case file review found that employees were represented by unions in 52 of the 64 enforcement case files reviewed. 2 of the 52 case files lacked evidence that either the union or employee representative were notified. 2 other case files where the union or employee representative was not available were well documented as to why representatives were not contacted and/or available. In one case contact was made by phone and the other case the union representative was informed on-site prior to closing the case.

Improvement was noted regarding inclusion of Union representative in the case files reviewed, however documentation of employee involvement was still lacking. As was the case in FY 2009, there was no documentation of employee interviews in field notes or final case file documents.

B. Review Procedures

1. Informal Conferences

PESH has no first instance penalties and therefore conducts very few informal conferences. When an informal conference is requested proper procedures are followed and if no settlement can be reached the case file is turned over to the Industrial Board of Appeals (IBA). The 2011 FAME noted that an informal conference was conducted for 1 complaint (safety) case and was turned over to the IBA.

2. Formal Review of Citations

Any investigation that is contested is turned over to the New York State Industrial Board of Appeals (IBA). During this FAME review 1 complaint (safety) case was turned over to the IBA due to the complainant contesting the Petition for Modification of Abatement (PMA). The case was later dismissed as the complainant failed to reply to the IBA.

Contested cases were not logged into the IMIS database, so no data was available on average lapse time from receipt of contest to first level decision. (SAMM report 11/08/11 – SAMM #12) Once the new OSHA Information System (OIS) is rolled out, PESH anticipates being able to log the information needed to evaluate this measure.

C. Standards and Federal Program Changes Adoption

1- Standards Adoption:

A total of two (2) Federal Standards were issued during FY2011; all were submitted for adoption. The notice of intent to adopt was timely for both standards.

STANDARDS ADOPTION
For period covering: October 2010 – September 2011
Region: II State: New York (PESH)

Instruction/Notice Number and Subject	Date State E-mailed Response	Intent to Adopt (Y/N)	Adopt Identical (Y/N)	State Adoption Status Change	Adoption Date
Standard Log 1910,1915 (5/03/11) Working Conditions in Shipyards Due – 7/02/11 Adoption Req. – Yes Intent Req. - Yes	6/08/11	Y	Y		6/9/11 PESH Directive A11- 04
Standard Log 1910 – 15,18,19,26,28 Standards Improvement Project Phase III 6/17/11	6/17/11	Y	Y		12/08/11 anticipated Proposed rule in state register on

Instruction/Notice Number and Subject	Date State E-mailed Response	Intent to Adopt (Y/N)	Adopt Identical (Y/N)	State Adoption Status Change	Adoption Date
Due – 8/16/11 Adoption Req. –Yes Intent Req. - Yes					10/5/11

2- Federal Program/State Initiated Changes

During FY 2011, PESH adopted a total of eleven (11) OSHA instructions. A timely response was received for all 11.

FEDERAL PROGRAM CHANGE LOG For period covering: October 2010 – September 2011 Region: II State: New York (PESH)

Instruction/Notice Number and Subject	Date State E-mailed Response	Intent to Adopt (Y/N)	Adopt Identical (Y/N)	State Adoption Status Change	Adoption Date
CPL-02-01-049 PPE in Shipyard Employment (11/4/10) Due -1/11/11 Adoption Req. – No Intent Req. – Yes	11/15/10	Y	Y	N	TBD
STD-03-11-002 Compliance Guidance for Residential Construction (12/16/10) Due- 2/26/11 Adoption Req.-No Intent Req. - Yes	12/30/10	Y	Y	N	3/3/11 PESH directive A11-01
CPL-03(11-01) NEP Microwave Popcorn Processing Plants (1/18/11) Due-4/16/11 Adoption Req.-Yes Intent Req. - Yes	2/22/11	N	N	N	No popcorn processing sites under PESH jurisdiction
CPL-02-01-050 PPE in General Industry (2/10/11) Due – 4/16/11 Adoption Req.-No Intent Req. - Yes	2/15/11	Y	Y	N	3/3/11 PESH Directive A11-02

Instruction/Notice Number and Subject	Date State E-mailed Response	Intent to Adopt (Y/N)	Adopt Identical (Y/N)	State Adoption Status Change	Adoption Date
CPL-03-00-013 NEP Primary Metal Industries (5/19/11) Due-8/01/11 Adoption Req.- Yes Intent Req. - yes	6/08/11	N	N	N	NY-PESH doesn't have any applications to this program
CPL-02-00-150 Revisions to FOM (4/22/11) Due – 7/02/11 Adoption Req. – Yes Intent Req. - Yes	6/08/11	Y	Y		6/17/11 ANTICIPATED done
CPL-02-01-051 Confined & Enclosed Spaces & Other Dangerous Atmospheres in Shipyard Employment (5/20/11) Due – 7/24/11 Adoption Req. – No Intent Req. - Yes	6/08/11	Y	Y		6/11/11 PESH Directive A11-05
CPL-02-00-151 Subpart T – Commercial Diving (6/13/11) Due – 8/16/11 Adoption Req. – No Intent Req. – Yes	6/17/11	Y	Y		7/1/11 PESH Directive A11-06
CPL 02-01-052 Enforcement Procedures for Investigating /Inspecting WPV Incidents (9/8/11) Due – 11/12/11 Adoption Req. – No Intent Req. - Yes	9/13/11	N	N		PESH has a rule regarding WPV Prevention Programs effective 4/29/09.
CPL 02-11-03 Site Specific Targeting 2011 (SST-11) (9/9/11) Due – 11/12/11 Adoption Req.-Yes Intent Req.- Yes	9/13/11	N	N		Anticipate submission date 9/30/11 —
CPL 02-03-003 Whistleblower Investigations Manual (9/20/11) Due – 11/21/11 Adoption Req. – Yes Intent Req. - Yes	12/5/11	Y	N		Anticipated 1/20/12

D. Variances

There were no variances requests received or processed during FY 2011.

E. Public Employee Program

100% of all inspections conducted by PESH occurred in the Public Sector. The PESH program assesses penalties only in cases where willful, repeat and Failure-to-Abate notices are issued. During FY 2011 PESH issued 63 FTA's.

F. Discrimination Program – Special Study

A comprehensive review of PESH's whistleblower program was performed in FY 2009. During this evaluation Regional Discrimination Investigators conducted a study of the PESH Discrimination Program and were on site between February 6, 2012 and February 17, 2012. In order to evaluate the program, nine (9) investigative case files were reviewed.

Finding 11-08: (09-37)

Incomplete documentation – whistleblower case files were difficult to follow and lacked a final investigative report. The reviewer was unable to determine in 6 of the 9 case files reviewed (66%), what the investigator did and the reasons for the investigative conclusions despite the fact that all PESH 11(c) investigators had received OTI Whistleblower training in 2010.

Recommendation 11-08:

For whistleblower cases, develop and implement a document in narrative form that outlines the steps that were taken and the reasoning behind the results, particularly in cases that are administratively closed. This final investigative report should be dated and recorded in IMIS.

Some of the case files examined (6/9 or 66%) were not sufficiently documented which made it difficult for OSHA to determine the investigative conclusions in the report. Although OSHA may have reached the same conclusions in all of the cases, it was not possible to definitively make this determination in 2 of the 9 cases reviewed compared to FY 2010 when it was not possible to determine the same conclusion in 17 of the 24 cases reviewed (71%). In addition, 6 of the 9 case files reviewed, lacked a final investigative report for files that were administratively closed. Although most of the cases contained a table of contents many still lacked tabs so that the documents were not easily identified.

Determinations were reached based on evidence developed and maintained in each of the 9 case files examined. Improvement was made regarding complainants being advised of each determination reached and the pertinent appeal right. During this FY 2011 review all complainants were advised of their rights compared to the FY 2009 EFAME review when complainants were informed of their rights in 5 of the 24 cases reviewed. To the extent that files are not properly maintained it is not possible to reach a conclusion with respect to merit, settlement and litigation rights.

Program Management

Not all data entries were made in an accurate and timely manner. Only 19% of whistleblower investigations (3 of 16) were completed within 90 days (SAMM report 11/08/11 – SAMM #13), though 66% were completed timely in 2010 and 60 % in 2009. The decrease in FY 2011 can be attributed to a staffing issue, a whistleblower investigator was on extended sick leave and his case load was not distributed to other investigators until the end of the fiscal year.

One (1) case was determined to be meritorious and was also settled and deemed to be meritorious in FY 2011 (SAMM report 11/08/11 – SAMM #14,15).

There were no complaints referred to Federal OSHA during the period reviewed

Resources

Interviews conducted with two (2) District Supervisors and two (2) Program Managers, along with review of the 9 case files, shows that progress has been attained in the area of program training. PESH Supervisors and Program Managers feel their resources are limited with regards to handling the number of discrimination complaints filed in the State because CSHO's are responsible for the investigation of these discrimination complaints.

G. Complaint About State Program Administration (CASPA)

There were no CASPA's filed during FY 2011.

H. Voluntary Compliance Program

PESH does not have a Voluntary Compliance Program.

I. Public Sector On-site Consultation Program (MARC report 11/04/11)

PESH's public sector consultation program conducted a total of 343 consultation visits during FY 2011, which were 43 visits above their projected 300 visits outlined in the Annual Performance Plan. In 90% of the visits the hazards were abated in the required time frame, the remaining 10% will be verified by follow up visits.

A total of ten (10) Consultation case files were reviewed. – 6 Safety and 4 Health.

Documentation in all case files was adequate. All consultation visits were performed in a timely manner (1 of the visits was cancelled by the requestor and rescheduled for a later date – this was well documented in the case file). Written reports were sent to employers after review by the supervisor and abatement was verified via a certified letter from the employer. The only outliers observed was that 7 of the 10 case files reviewed lacked OSHA 300/PESH logs, and there was no indication as to whether the employers' 300/PESH logs had been reviewed by the Consultant. Potential hazards could have been missed due to the lack of review of the recordable injuries on the 300/PESH logs.

The following MARC statistics are provided:

MARC 1: Percent of initial visits in high-hazard establishments – PESH conducted 91.94% of its initial visits in high hazard establishments, a slight decrease from FY 2010 indicator of 97.17 but

still within the reference point of not less than 90%.

MARC 2: Percent of initial visits in smaller business – 95.24% of initial visits were conducted in establishments with less than or equal to 250 employees; 82.05% in establishments with less than or equal to 500 employees. The reference point is no less than 90%.

The percentage increased from FY 2010 for both establishments with less than or equal to 500 employees as well as establishments with less than or equal to 250 employees.

MARC 3: Percent of visits where consultants conferred with employees - PESH conferred with employees in 96.70% or 264 out of 273 initial visits (FY 2010 the percentage was 97.88%). FY 2011 percentage for follow-up visits was 100% or 6 out of 6 visits and 85 % or 17 out of 20 training and assistance visits. Reference point is 100%.

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

89.94% of serious hazards were verified abated in a timely manner compared to 95.38% in FY 2010. Reference standard is 100%

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

10.06% of serious hazards were not verified corrected in a timely manner.

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

No serious hazards were referred to enforcement during FY 2011.

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

The percent of serious hazards verified corrected in original time or on site is 74.86% an increase from 70.15% in FY 2010. The reference standard is 65%.

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

There were no serious hazards uncorrected as of the end of FY 2011.

J. Private Sector 23(g) On-site Consultation Programs

N/A

K. Program Administration

Training:

PESH continues to provide CSHO's the opportunity to attend the OSHA Training Institute (OTI)

for the much needed safety and health technical training. As in the past a concerted effort is made to provide the mandatory training to their personnel but due to the limited number of openings at OTI for the mandatory classes they are forced to waitlist their employees.

The following is the status of PESH's training relative to the TED Mandatory Training Requirements and is based on records provided by PESH-

- #1000 – Initial Compliance – 3 CSHO's have completed the course. (4 are waitlisted).
- #1050 – Introduction to Safety Standards for Safety Officers – 2 CSHO's have completed the course (3 are waitlisted).
- #1080 – Health Hazard Awareness for Safety Officers – 5 CSHO's completed the course.
- #1230 – Accident Investigation – 4 CSHO's completed the course (2 are waitlisted).
- #1250 – Introduction to Health Standards for Industrial Hygienists – 3 CSHO's have completed the course.
- #1280 – Safety Hazard Awareness for Industrial Hygienists – 1 CSHO completed the course (2 are waitlisted).
- #1310 – Investigative Interviewing Techniques – 3 CSHO's completed the course.
- #1410 – Inspection Techniques and Legal Aspects – 7 CSHO's completed the course (1 is waitlisted).
- #2000 – Construction Standards – 2 CSHO's have completed the course.
- #2070 – Fire Protection and Life Safety – 2 CSHO's have completed the course.
- #2200 – Industrial Noise – 1 CSHO completed the course.
- #2210 – Principles of Industrial Ventilation – 1 CSHO completed the course.
- #2260 – Permit-Required Confined Space Entry – 1 CSHO completed the course.
- #2450 – Evaluation of Safety & Health Management Systems – 14 CSHO's completed the course.

In addition to the OTI courses, staff attended Workplace Violence Prevention training specific to the NAICS within the Residential Nursing Care Facilities goal, HAZWOPER Refresher Training, Incident Command I-300. Staff from the PESH offices took advantage of CSHO In-Service Training provided by Federal OSHA at two different locations (1 upstate-Syracuse and 1 downstate-NYC).

Funding:

PESH did not return any 23(g) funding during FY 2011.

Staffing (furloughs and hiring freezes):

During FY 2011 NY State employees (PESH) recorded nine (9) days of unpaid leave - known as "deficit reduction leave." PESH did not experience a hiring freeze during FY 2011.

Information Management (IMIS):

PESH continues to use IMIS data for tracking purposes.

State Internal Evaluation Program:

The New York State Internal Evaluation Program (SIEP) incorporates both field assessments, performed by supervisors and case file assessments, performed by a Program Manager. PESH conducts at least one field and one case file assessment for each inspector as well as each consultant. These assessments are documented.

V. Assessment of State Progress in Achieving Annual Performance Goals

PESH's accomplishments with regard to their Strategic Plan, continues to demonstrate a credible enforcement presence in the public sector in New York. The Total Recordable Injury and Illness Incident Rate for Public Sector Employment in New York State was 7.3 per 100 full-time workers. Although CY 2010 saw a 2.8% increase from CY 2009, a steady decrease of 20% has been seen over the last 3 years.

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

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

The goal of this committee was to decrease the injury rate by 1%, using 2008 as the baseline year. The average injury rate in 2010 for NY county highway departments (data is missing from 2 counties) was 10.3. This represents a 3.7% reduction from the 2008 rate of 10.7. This is the final year for the Highway Strategic Plan.

Year	Total Recordable Injury Rate¹	% Change From Baseline	DART Rate	% Change
2008	10.7	Baseline	5.8	Baseline
2009	9.9	7.5% Reduction	6.3	8.6% Increase
2010	10.3	3.7% Reduction	5.7	1.7% Reduction

The committee continued to collect 2010 Annual Summary of Work-Related Injuries and Illnesses (SH900.1) data from the various counties to close-out the old plan and establish a baseline for the new Police Protection Strategic Plan (NAICS 922120). The transition has involved identifying and developing new contacts, separate from some of the safety officers the committee worked with in the past.

Partnership Activity:

¹ Number of recordable injuries and illnesses (N) divided by total hours worked (EH) multiplied by 200,000.

PESH continued to build partnerships with local government agencies. The partnership with CSEA (Civil Service Employees Association) is an important one as CSEA represents approximately 80% of the NY county highway department employees.

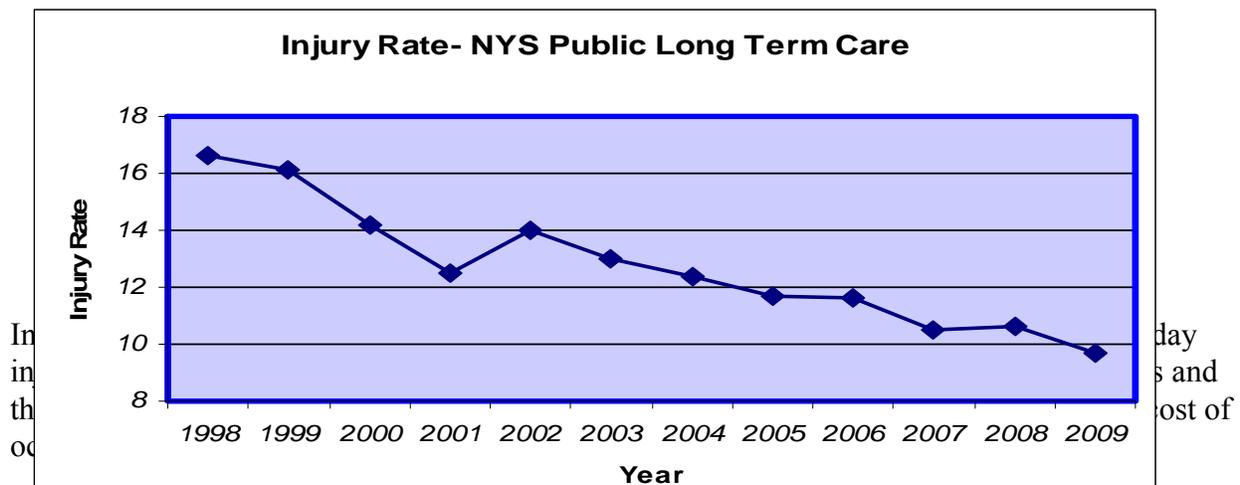
Since this committee will shift its focus to county level police protection, new partnerships were identified during this past year.

Outcome Measures:

The SH-900.1 Summary of Work Related Occupational Injuries and Illnesses from all New York counties including the New York City boroughs was reviewed analyzed and used to calculate injury rates and lost work day rates. From this data totals were entered into the database where the average rate was 10.3 which represent a 3.7% reduction from the 2008 rate of 10.7. PESH met its goal.

Performance Goal # 1B: Reduce the lost workday rate by 2.5% in NAICS 623110 (Nursing Care Facilities), 623210 (Residential Mental Retardation Facilities, 623220 (Residential Mental Health & Substance Abuse Facilities).

PESH continued to have success in reducing the Total Recordable Injury Rate in county nursing homes and state veteran homes. The overall injury rate has decreased by 36.1% since the beginning of this initiative in 1998.



The cost of the lost work days from 2003-2010 equates to \$50,528,129 in wages when using the average salary of a CNA2; This is wages only (not including benefits) and does not take into account other direct and indirect costs of work related injuries. These additional costs are typically estimated to be 4-20 times the wage amount. Using the conservative figure of 4%, these lost work days amount to more than \$225,200,000. As can be seen in the table below, the savings due to the reduction in lost work days from 2003-2010 equates to more than \$7,400,000.

Year	# Lost Work Days	Salary Cost of Lost Work Days ³	Gain or Loss in Wages Based on CY
2003	1,000	\$1,000,000	
2004	900	\$900,000	
2005	800	\$800,000	
2006	700	\$700,000	
2007	600	\$600,000	
2008	500	\$500,000	
2009	400	\$400,000	
2010	300	\$300,000	
2003-2010	4,700	\$4,700,000	\$7,400,000

2 NYS Veterans' Home at Batavia
 3 Based on \$143./day (NYS Veterans' Home at Batavia)

			2003
2003	55,718	7,967,674	
2004	56,026	8,011,718	+44,044
2005	52,934	7,569,562	-398,112
2006	49,205	7,036,315	-931,359
2007	39,971	5,715,853	-2,251,821
2008	42,423	6,066,489	-1,901,185
2009	45,036	6,440,148	-1,527,526
2010	52,590	7,520,370	-447,304
Total	393,903	56,328,129	-7,413,263

Partnership Activity:

Focus continued on maintaining partnerships with facilities and organizations under the Health Care Strategic Plan. Partnerships with Kaleida Health and NYS Veterans’ Home at Batavia have continued as these facilities have become model employers in reducing injuries due to resident handling and repositioning. A new partnership has been developed with Upstate Medical University. They co-sponsored the Safe Patient Handling Conference that was held in October 2010.

Committee members through the NYS Zero Lift Task Force worked with NYCOSH and held two other SPH conferences held in Brooklyn and Long Island during FY2011. The taskforce also held a SPH conference on October 17-19th, 2011 in Albany, NY.

Outcome Measures

Two sets of data are used, PESH required records including the SH900 and 900.1 for Long Term Care facilities and the Annual Report of NYS Government Employees’ Workers’ Compensation Claims for OPWDD and OMH . PESH met its goal.

Performance Goal #1C: Fire Service – NAICS 922160 -Improve accuracy of Injury and Illness recordkeeping with focus on NYC, Initiate 10 Records Only Inspections

This committee reconvened during FY 2011 and performed inspections, consultations and outreach on strategic plan activities and continued to refine goals and objectives with emphasis on the proper recording of Injury and Illness rates with overall goal of Injury and Illness reduction.

The goal of this committee was to improve accuracy of Injury and Illness recordkeeping with focus on NYC and to initiate 10 Records Only Inspections.

Measure Description	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Records Only Visits *	0	5	0	4	9

- **IMIS report**

Partnership Activity:

This committee continues to work with FASNY, NYSAFC and County Fire Coordinators as it relates to PESH activities. Members attend County Level Emergency Management meetings.

Staff responded to the recent Hurricane Irene and Tropical Storm by providing just-in-time training, assisting at the New York State Emergency Operations Center and at the FEMA JFO as Safety Officer. Outreach was also performed to first responders and other state, county and local agencies.

Outcome Measures:

Staff performed a total of 197 enforcement inspections during FY 2011, 9 of which were records only. There were no complaint inspections conducted in FY 2011. PESH did not meet the goal of 10 records only visits.

Appendix A
FY 2011 New York State Plan (PESH) FAME Report
Findings and Recommendations

Rec #	Findings	Recommendations	FY 10 #
11-1	<u>Next of Kin letters.</u> Lack of evidence/documentation in the case files that the Next of Kin (NOK) were notified of the fatality investigation results.	Provide additional training to CSHOs reiterating the need to maintain follow-up contact with family members and to document in the case files that Next of Kin (NOK) have been notified of the results of the investigation through copies of citations issued or a standard letter that the investigation is complete and there were no violations of PESH standards. PESH should follow Federal OSHA’s procedures for maintaining contact with family members so that they can be kept up-to-date on the status of the investigation. This includes notifying NOK through a final information letter of the results of the investigation. A copy of the letter should be placed in the case file or a notation made on the case file diary sheet.	09-7
11-2	<u>Injury/illness data was not collected.</u> SH900 logs were not placed in the case files nor was there documentation that the	Ensure that CSHOs are collecting the previous 3 years of SH-900 logs and placing them in the case files. This	

	logs were reviewed by CSHO's for injury/illness trends.	data is required for calculation of Days Away Restricted Time (DART), which is vital for the analysis of injury and illness trends.	
11-3	<p><u>Inadequate evidence to support violations</u>- Lack of case file documentation. Case file critical information and documentation missing to establish prima facie violations of OSHA standards</p> <ul style="list-style-type: none"> •No employees exposed with the total number exposed and duration of exposure on the OSHA 1b (24 of 36 enforcement cases or 67%) •No description of the hazard on the OSHA 1b (24 of 36 enforcement cases or 67%) •No description of how employees were exposed to the hazard on the OSHA 1B (24 of 36 enforcement cases or 67%) •No location specified on the OSHA1b (24 of 36 enforcement cases or 67%) •Employer knowledge was not sufficient in 5 of the 36 (7%) case files with citations reviewed. There was no documentation that the employer was aware of the condition, hazard, etc. 	Provide additional training to all field staff to ensure that inspection case files are documented in accordance with the FOM and all other applicable New York State enforcement policies and procedures.	09-13 09-18 09-22
11-4	<u>Violation classification</u> – 4 of 36 (11%) enforcement case files reviewed had violations that were classified as other than serious and would have been better classified as serious based on the resulting hazard/injury i.e. entrapment (confined space/trench) and or fractures.	Provide additional training to all field staff, including supervisory staff, to ensure that violations are properly classified in accordance with the FOM and all other applicable NY State enforcement policies and procedures.	09-12 09-17
11-5	<u>Missed violations</u> - 3 of the 64 enforcement case files reviewed (5%) had potential violations that were not cited. Failure to cite for lack of initial determination to lead exposure, and failure to cite for lack of training on the hazards of lead. In addition 1 safety case file addressed in the field notes the lack of PPE for employees but no order to comply (OTC) was issued and no notation as to why it was not issued.	Conduct in-house training to ensure that CSHOs are addressing and adequately documenting all relevant hazards on the site. Review with the staff the requirement to note why an obviously volatile condition documented in a case file was not cited (i.e., lack of exposure, knowledge, etc.) Supervisory staff should implement internal controls and oversight to ensure that all hazards are being addressed.	09-13
11-6	<u>Excessive abatement dates</u> were proposed in 8 of the 36 (22%) enforcement files with abatement periods compared to FY 2009 when 16 of 65 (25%) enforcement files had excessive abatement dates - 30 days abatement for a flagger to obtain a flag on a construction site, 30 days for a hole to be covered and 90 days to obtain a tight fitting cover for a garbage can.	Provide additional training to all staff including supervisory staff to ensure that abatement dates are appropriate for the cited hazard.	09-23
11-7	<u>Documentation of employee interviews</u> was not in case files. (32 of 64 enforcement case files or 50% reviewed).	Provide re-training to staff to include interview notes and documentation in case files. The Garden City PESH office uses an employee interview template which contains all required information – use of this template in all PESH offices is advised.	09-11
11-8	<u>Incomplete documentation – whistleblower case files</u> were difficult to follow and lacked a final investigative report. The reviewer was unable to determine in 6 of the 9 case files reviewed, (67%) what the investigator did and the reasons for the investigative conclusions despite the fact that all PESH 11(c) investigators had received OTI Whistleblower training in 2010.	For whistleblower cases, develop and implement a document in narrative form that outlines the steps that were taken and the reasoning behind the results particularly for cases that are administratively closed. This final investigative report should be dated and recorded in IMIS.	09-37

Appendix B

Status of State Actions in Response to FY 2010 EFAME Follow Up
Recommendations

There were no follow-up recommendations included in the 2010 NY PESH -
EFAME

Appendix C

FY 2011 Enforcement Activity

	NY*	State Plan Total	Federal OSHA
Total Inspections	1,753	52,056	36,109
Safety	1,207	40,681	29,671
% Safety	69%	78%	82%
Health	546	11,375	6,438
% Health	31%	22%	18%
Construction	340	20,674	20,111
% Construction	19%	40%	56%
Public Sector	1,753	7,682	N/A
% Public Sector	100%	15%	N/A
Programmed	552	29,985	20,908
% Programmed	31%	58%	58%
Complaint	380	8,876	7,523
% Complaint	22%	17%	21%
Accident	15	2,932	762
Insp w/ Viols Cited	670	31,181	25,796
% Insp w/ Viols Cited (NIC)	38%	60%	71%
% NIC w/ Serious Violations	89%	63.7%	85.9%
Total Violations	3,855	113,579	82,098
Serious	2,891	50,036	59,856
% Serious	75%	44%	73%
Willful	2	295	585
Repeat	1	2,014	3,061
Serious/Willful/Repeat	2,894	52,345	63,502
% S/W/R	75%	46%	77%
Failure to Abate	63	333	268
Other than Serious	898	60,896	18,326
% Other	23%	54%	22%
Avg # Violations/ Initial Inspection	5.6	3.4	2.9
Total Penalties	\$82,503	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation	\$ -	\$ 963.40	\$ 2,132.60
% Penalty Reduced	0.0%	46.6%	43.6%
% Insp w/ Contested Viols	0.0%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	12.5	17.1	19.8
Avg Case Hrs/Insp- Health	18.1	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	34.1	35.6	43.2
Lapse Days Insp to Citation Issued- Health	51.8	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	25	1,387	2,436

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

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011.

Appendix D

FY 2011 State Activity Mandated Measures (SAMM) Report

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U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
S T A T E A C T I V I T Y M A N D A T E D M E A S U R E S (S A M M s)

State: NEW YORK

RID: 0253600

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate for each State	11066	1102	Negotiated fixed number
Complaint Inspections	29.35 377	38.00 29	
2. Average number of days to initiate for each State	0	0	Negotiated fixed number
Complaint Investigations	0	0	
3. Percent of Complaints where Complainants were notified on time	323 88.49 365	39 100.00 39	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	9 90.00 10	1 100.00 1	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	0 0	0 0	100%
Public	2306 90.93 2536	118 38.19 309	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	28675 55.57	4975 56.53	2631708 51.9
Data (1 year)	516	88	50662
Health	13349 76.28	2127 81.80	767959 64.8
Data (1 year)	175	26	11844

*NY FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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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)

State: NEW YORK

RID: 0253600

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
Safety	332	65	90405
Data (3 years)	78.12	86.67	58.5 National
Health	425	75	154606
Data (3 years)	73.33	82.35	51.7 National
9. Average Violations per Inspection with Violations			
S/W/R	2898	461	419386
Data (3 years)	4.18	4.07	2.1 National
Other	692	113	198933
Data (3 years)	1.29	1.34	1.2 National
10. Average Initial Penalty per Serious Violation (Private Sector Only)			
Data (3 years)	0	0	611105829 1679.6 National
11. Percent of Total Inspections in Public Sector in this State (3 years)	1753	173	6316
	100.00	100.00	100.0 Data for
12. Average lapse time from receipt of Contest to first level decision			
Data (3 years)	0	0	3533348 199.7 National
13. Percent of 11c Investigations Completed within 90 days	3	1	100%
	18.75	50.00	
	16	2	
14. Percent of 11c Complaints that are Meritorious	1	0	1517
Data (3 years)	6.25	.00	23.0 National
15. Percent of Meritorious 11c Complaints that are Settled	16	2	6591
Data (3 years)	100.00	0	1327 87.5 National
	1	0	1517

Appendix E

State Information Report (SIR)

Not Applicable for NY Public Sector Only State Plan (PESH)

Appendix F

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

Appendix G
 FY 2011 23(g) Consultation Data
 New York Public Sector Only State Plan
 FY 2011 23(g) Consultation Activity

	NY* Public Sector	Total State Plan Public Sector
Requests	146	1,328
<i>Safety</i>	2	576
<i>Health</i>	142	560
<i>Both</i>	2	192
Backlog	15	123
<i>Safety</i>	9	51
<i>Health</i>	6	58
<i>Both</i>	-	14
Visits	345	1,632
<i>Initial</i>	275	1,336
<i>Training and Assistance</i>	64	175
<i>Follow-up</i>	6	121
<i>Percent of Program Assistance</i>	17%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
Employees Trained	1,247	5,030
<i>Initial</i>	385	2,144
<i>Training and Assistance</i>	862	2,886
Hazards	549	6,063
<i>Imminent Danger</i>	-	3
<i>Serious</i>	498	4,804
<i>Other than Serious</i>	51	1,171
<i>Regulatory</i>	-	85
<i>Referrals to Enforcement</i>	2	6
Workers Removed from Risk	44,369	171,075
<i>Imminent Danger</i>	-	55
<i>Serious</i>	43,239	136,884
<i>Other than Serious</i>	1,130	26,046
<i>Regulatory</i>	-	8,090