



SUSANA MARTINEZ  
Governor  
JOHN A. SANCHEZ  
Lieutenant Governor

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

*Office of the Secretary*

Harold Runnels Building  
1190 Saint Francis Drive, PO Box 5469  
Santa Fe, NM 87502-5469  
Telephone (505) 827-2855 Fax (505) 827-2836  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



RYAN FLYNN  
Cabinet Secretary-Designate  
BUTCH TONGATE  
Deputy Secretary

September 10, 2013

Mr. John Hermanson, Regional Administrator  
Occupational Safety and Health Administration  
525 Griffin Street, Room 602  
Dallas, TX 75202-5024

Dear Mr. Hermanson:

As requested in your letter of July 31, 2013, we hereby submit our formal response to the final report of the FY 2012 Federal Annual Monitoring and Evaluation (FAME) of the New Mexico Occupational Health and Safety Bureau. As you will see, most of the corrective actions to address the recommendations contained in the report have been completed. We anticipate that with the continued assistance of the Region VI staff, we will be able to timely complete all recommended actions.

Please do not hesitate to contact us if you have any questions or comments regarding our corrective action plan.

Sincerely,

Ryan Flynn  
Secretary-Designate

Enclosure: New Mexico's Response to OSHA's 2012 Federal Annual Monitoring and Evaluation (FAME) Report

Cc: Doug Kalinowski, Cooperative and State Programs  
Eric Lahaie, Cooperative and State Programs

**NEW MEXICO'S RESPONSE TO OSHA'S  
2012 FEDERAL ANNUAL MONITORING AND EVALUATION (FAME) REPORT  
SEPTEMBER 10, 2013**

**I. INTRODUCTION**

The New Mexico Occupational Health and Safety Bureau (OHSB) appreciates the opportunity to respond to the federal OSHA evaluation of OHSB's program for the federal fiscal year 2012. Cooperative efforts between federal OSHA and OHSB have facilitated continued improvements in state plan operations. OSHA's evaluation continued to identify areas where OHSB can improve its procedures and operations, and highlighted a number of areas where our performance is excellent. Overall, OHSB produces well documented inspection reports, which has contributed to a strong record in sustaining violations. Still, we recognize the importance of improvement and welcome continued federal evaluation. OSHA provided pertinent information through their quarterly and year-end reviews for FY2012 which has enabled OHSB to quickly initiate processes aimed at improving program performance.

**II. OHSB RESPONSE AND CORRECTIVE ACTION PLAN**

---

**Recommendation 11-1 (Formerly 10-2):** New Mexico OHSB should ensure that:

1) Each case file contains a diary sheet that documents all actions taken, when they were taken, and by whom.

**Response:** OHSB is using diary and tracking sheets and conducts case reviews to ensure appropriate information is documented.

**Corrective Action:** OHSB provided instruction to Compliance Officers on the proper use of diary sheets during a meeting and training session on August 24, 2012.

**Actual or Anticipated Completion Date:** August 24, 2012.

**Status:** Completed.

---

2) Written employee statements are included in all case files.

**Response:** Following the recommendation contained in the 2010 FAME Report, OHSB provided compliance officers with training to ensure relevant employee discussions were documented to support violations and address complaint items. Use of the OHSB field worksheet for documenting employee discussions was reviewed with compliance officers during several staff meetings in 2011. Current internal case file reviews continue to find isolated instances of a lack of documenting statements or comments; OHSB will provide feedback and training to Compliance Officers as needed to ensure proper documentation occurs on a continuing basis.

**Corrective Action:** OHSB implemented the use of interview forms and field worksheets to document employee statements and completed training for Compliance Officers on August 24, 2012.

**Actual or Anticipated Completion Date:** August 24, 2012.

**Status:** Completed.

---

3) Employee exposure to hazards is documented.

**Response:** OHSB recognizes that while its citations are typically sustained at a high rate, continued improvement in violation documentation is desirable. Management continues to stress to compliance staff the importance of documenting employee exposure when establishing violations. On an on-going basis, this issue will be reviewed periodically during internal compliance officer training sessions, employee evaluations, and future SIEP reviews.

**Corrective Action:** OHSB provided training to Compliance Officers on August 24, 2012.

**Actual or Anticipated Completion Date:** August 24, 2012.

**Status:** Completed.

---

4) Employer knowledge is documented.

**Response:** OHSB recognizes that while its citations are typically sustained at a high rate, continued improvement in violation documentation is desirable. Management continues to stress to compliance staff the importance of documenting employer knowledge when establishing violations. OHSB has recommended self-improvement as part of its internal evaluation program and is again reviewing this element during the 2012 SIEP.

**Corrective Action:** The Compliance Program Manager provided additional instruction to Compliance Officers during a meeting and training session on August 24, 2012. He will also ensure that case file reviews include checking the adequacy of such documentation on an on-going basis. This issue will be reviewed periodically during internal compliance officer training sessions, employee evaluations, and future SIEP reviews.

**Actual or Anticipated Completion Date:** Initial training completed August 24, 2012. Continued review will be conducted on an on-going basis.

**Status:** On-going.

---

**Recommendation 11-2 (Formerly 10-4):** New Mexico OHSB should continue efforts to further reduce health citation lapse times.

**Response:** OHSB identified a number of factors which resulted in excessive lapse times for health citations. These included high case loads for health officers, inefficiencies in prioritization of duties by officers, and a health file tracking process which did not facilitate improvements.

**Corrective Action:** Corrective action was initiated when the issue was first identified and has been on-going since that time. OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance.

OHSB will continue to closely monitor health inspection assignments to ensure caseloads are reasonable. The Compliance Manager will review assignment reports and compare these with open inspection reports weekly. OHSB will also more closely review health referrals alleging serious hazards to identify those where an initial investigation by inquiry may be appropriate.

OHSB will continue to perform a monthly analysis of lapse times for individual Compliance Officers and will continue to use lapse times as a major factor during employee performance evaluations. Performance reviews will include an analysis of task prioritization to identify potential improvements and Compliance Officers will be coached on task prioritization. OHSB will continue to utilize progressive administrative discipline for Compliance Officers whose performance in this area is substandard.

OHSB will continue to use IMIS reports, and has initiated additional methods for tracking the progress of health case files including a tracking board. The Compliance Manager will check file progress weekly and meet with Compliance Officers at least monthly on open cases.

**Actual or Anticipated Completion Date:** September 30, 2014.

**Status:** On-going.

---

**Recommendation 11-3 (Formerly 10-7):** New Mexico OHSB should ensure that, in accordance with NMFOM Chapter 5, Section II.C.2.k, “The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation.”

**Response:** During FY2013 OHSB has continued to work on evaluating abatement periods to ensure they are as short as reasonable. Abatement timeframes have been discussed with Compliance Officers during monthly staff meetings. Officers are trained to discuss abatement at the time of inspection and in many cases abatement is completed prior to citation issuance.

OHSB also monitors SIR data for “Abatement Periods for Violations” to compare New Mexico data with federal data and ensure that the number of safety violations with abatement periods greater than 30 days, and health violations with abatement periods greater than 60 days, are minimized.

**Corrective Action:** The Compliance Program Manager provided additional instruction to Compliance Officers during a meeting and training session on August 24, 2012. The Compliance Program Manager has continued to emphasize, at staff meetings and during review of individual case files, to Compliance Officers the need to consider abatement periods for violations based on the circumstances in each individual case in order to achieve optimum results in abatement time intervals.

**Actual or Anticipated Completion Date:** August 24, 2012.

**Status:** Completed.

---

**Recommendation 11-4 (Formerly 10-9):** OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).

**Response:** OHSB has developed policies and procedures to ensure private employee interviews are conducted in accordance with the provisions of the New Mexico regulation. The NMED Office of General Counsel assisted in the development of the procedures and associated forms which are used by Compliance Officers during inspections. We have also reviewed those few instances where dual representation situations arose to determine the effectiveness of OHSB procedures, and have found that the potential inconsistency in the regulatory language has not impacted the interview process. OHSB will continue to pursue an amendment to the regulation for consideration by the Environmental Improvement Board (EIB).

**Corrective Action:** OHSB anticipates that the proposed regulatory changes will be presented to the EIB prior to the end of FY2014.

**Actual or Anticipated Completion Date:** September 30, 2014.

**Status:** On-going.