

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME)
Report**

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



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I. Executive Summary

The New York State Plan for Public Employee Safety and Health (PESH) 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 Department of Labor has been designated as the agency responsible for administering the plan throughout the State. The Commissioner of Labor, Peter Rivera, 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 State Plan 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 ACT 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.

For FY 2012, PESH's initial total 23(g) grant amount was \$8,754,600, which included federal/state matching funds of \$3,827,300 and state overmatch funds of \$1,100,000. Staffing continues to remain consistent - the total FTE allocated for PESH is 97. PESH currently has 71 FTE on board - of which 41 fall under enforcement and 13 are under consultation (23(g) public sector-only) and the remaining 17 are managers or administrative staff.

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) 2012 Annual Performance Plan. This report incorporated the findings of the 2011 Federal Annual Monitoring Evaluation (FAME) for the State's 23(g) program.

The Annual Performance Plan results, reported by PESH in the State OSHA Annual Report (SOAR), indicate that the program has made advancement toward 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.

PESH continues to have a significant enforcement presence in the workplace through its inspection activity. Overall, PESH reported in their SOAR, a total of 2,057 inspections conducted during FY 2012; this number represents a 17% increase from FY 2011 when there

were 1,759 inspections conducted. There were 4,783 Notices of Violations issued in FY 2012; an increase of 24% from FY 2011.

The total recordable injury and illness rates for state and local government employment in New York State have seen a consistent decrease since the inception of the Strategic Plan in 1998. The Days Away, Restricted or Transfer (DART) rates have seen a similar decrease but to a lesser degree. Overall the injury and illness rate has decreased more than 32% and the DART rate nearly 27% over this same time period.

PESH's 2011 FAME noted eight (8) recommendations. It is OSHA Region 2's assessment that PESH, in its 2011 Corrective Action Plan (CAP), adequately addressed all items.

Next of Kin Letters (NOK): The FY 2011 FAME noted that there was a lack of evidence/documentation in the case files that the NOK were notified of the inspection results.

PESH conducted training to staff so that they are aware that follow up contact needs to be done with the family at the conclusion of the inspection and documentation, whether a letter to the family member or notation of phone conversation shall be placed in the case file. PESH also modified its Field Operations Manual (FOM) to address maintaining contact with the family.

Injury/illness data was not collected: The FY 2011 FAME noted that SH 900 logs were not placed in the case files nor was there documentation that the logs were reviewed by CSHOs for injury/illness trends.

Staff was directed to collect injury and illness data for inclusion in all case files. Instructions were given that all reports must have a narrative which contains a review of injury and illness records.

Inadequate evidence to support violations: The FY 2011 FAME noted that case files lacked critical information and documentation to establish prima facie violations of OSHA standards.

PESH conducted training with the supervisors and field staff to include a review of the required documentation in accordance with their FOM. Supervisors will be responsible for reviewing all case files to ensure that the prima facie information is in the file.

Violation Classification/Missed Violations: The FY 2011 FAME noted that some violations were mis-classified in some case files and some violations may have been missed.

PESH conducted training with supervisors and field staff to include a review of properly classifying violations in accordance with their FOM. The training also addressed adequately documenting all hazards observed on the site. Also included in the training was the requirement to document the reason why a condition observed was not a violation. Supervisors were reminded of the need to review all cases files for proper classification of violations and ensuring that all hazards are addressed.

Excessive Abatement Dates: The FY 2011 FAME noted that excessive abatement periods were proposed in a few case files.

PESH conducted training with supervisors and field staff on appropriate abatement periods. Supervisors will be responsible for monitoring/reviewing case files to ensure abatement dates are adequately assessed.

Employee and Employee Representative Contact: The FY 2011 FAME noted that case files lacked documentation of employee interviews.

PESH shared with staff an interview template used by one of their downstate offices, and a Report Narrative checklist which requires documentation as to employee participation/interviews. Case files will be monitored by supervisors to ensure employee interviews are documented in case files.

Whistleblower Written Reports: The FY 2011 FAME noted that although OSHA may have reached the same conclusion, the case files were difficult to follow and lacked a final investigative narrative report.

Training was conducted with supervisors and discrimination investigators on the requirement for a narrative in all cases, including those that are administratively closed. Supervisors are responsible for ensuring that a narrative is placed in each case file.

II. Major New Issues

The FY 2012 FAME report reveals one (1) new major issue.

- Whistleblower Complaints

PESH's whistleblower statute does not allow for the acceptance of oral complaints and requires the complainant to put the complaint in writing and sign it.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

PESH's 2011 FAME noted eight (8) recommendations. It is OSHA Region 2's assessment that PESH, in its 2011 FAME Corrective Action Plan adequately addressed all items.

Finding 11-01

Next of Kin Letters (NOK): Lack of evidence/documentation in the case files that the NOK were notified of the inspection results

Recommendation 11-01

Provide additional training to CSHOs 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 through copies of citations issued or a standard letter that the investigation is complete and there were no violations of PESH standards.

Status 11-01

PESH has committed to conducting training to staff so that they are aware that follow up contact needs to be done with the family at the conclusion of the inspection and documentation, whether a letter to the family member or notation of phone conversation shall be placed in the case file. This training was provided to supervisors on 12/10/12 and the staff received training on 12/18/12. PESH also modified its FOM to address maintaining contact with the family. OSHA considers this item to be completed.

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 CSHOs for injury/illness trends.

Recommendation 11-02

Ensure that CSHOs are collecting the previous three (3) years of SH 900 logs and placing them in the case files. This data is required for calculating the Days Away Restricted Time (DART) rate.

Status 11-02

Direction will be provided to staff to collect injury and illness data for inclusion in the case file. Instructions were given that all reports must have a narrative which contains a review of injury and illness records. Training was provided to supervisors on 12/10/12 and the remaining staff received training on 12/18/12. OSHA considers this item to be completed.

Finding 11-03

Inadequate evidence to support violations- Lack of case file documentation. Case file critical information and documentation missing to establish prima facie violations of OSHA standards.

- No employees exposed with the total number exposed and duration of exposure on the OSHA 1b (24 of 36 enforcement cases)
- No description of the hazard on the OSHA 1b (24 of 36 enforcement cases)
- No description of how employees were exposed to the hazard on the OSHA 1b (24 of 36 enforcement cases)
- No location specified on the OSHA 1b (24 of 36 enforcement cases)
- Employer knowledge was not sufficient in five (5) of the 36 case files with citations reviewed. There was no documentation that the employer was aware of the condition, hazard, etc.

Recommendation 11-03

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.

Status 11-03

PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training included a review of the required documentation in accordance with their FOM and a review of what each reports narrative must contain. OSHA considers this item to be completed.

Finding 11-04

Violation Classification – four (4) of 36 (11%) enforcement case files reviewed that were classified as other than serious and would have been better classified as serious based on the resulting hazard/injury i.e. entrapment (confine space/trench) and or fractures.

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.

Status 11-04

PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training included a review of properly classifying violations in accordance with the FOM. OSHA considers this item to be completed.

Finding 11-05

Missed violations – three (3) of the 64 enforcement case files reviewed (5%) had potential violations that were not cited. In addition one (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.

Recommendation 11-05

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 the 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.

Status 11-05

PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training addressed adequately documenting all hazards observed on the site. Also included in the training was the requirement to document the reason why a condition observed was not a violation. Supervisors were reminded of the need to review all case files for hazards not cited. OSHA considers this item to be completed.

Finding 11-06

Excessive abatement dates were proposed in eight (8) of the 36 (22%) enforcement files with abatement periods compared to FY 2009 when 16 of 65 (25%) enforcement files has 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.

Recommendation 11-06

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

Status 11-06

Training on proposing appropriate abatement dates for the cited hazard was conducted on 12/10/12 for supervisory staff and on 12/18/12 for field staff. Supervisors will be responsible for monitoring/reviewing case files to ensure abatement dates are adequately assessed. OSHA considers this item to be completed.

Finding 11-07

Documentation of employee interviews was not in case files. (32 of 64 enforcement case files or 50% reviewed).

Recommendation 11-07

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.

Status 11-07

PESH has shared an interview template used by their Garden City, NY office, with staff and has also prepared a Report Narrative checklist which requires documentation as to employee participation/interviews to be placed in each case file. Training was provided to supervisors on 12/10/12 and field staff on 12/18/12. OSHA considers this item to be completed.

Finding 11-08

Incomplete documentation - whistleblower case files were difficult to follow and lacked a final investigative narrative report. The reviewer was unable to determine in six (6) of the nine (9) cases 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.

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 for cases that are administratively closed. This final investigative report should be shared and recorded in IMIS.

Status 11-08

Training was held with supervisors and discrimination investigators on 12/11/12. The training involved instruction on the requirement for a narrative in all cases, including those that are administratively closed. Supervisors are responsible for ensuring that a narrative is placed in each case file. OSHA considers this item to be completed.

IV. Assessment of FY 2012 State Enforcement Measures

Inspection Activity

The FY 2012 Inspection Activity micro-to-host report (INSP8 report 1-17-13) shows that PESH OSHA conducted a total of 2,104 inspections during the fiscal year: 1,506 safety inspections and 598 health inspections. This is 10.7% higher than their Planned vs. Actual (PVA) projection of 1,900 inspections.

A. Enforcement

1. Complaints

During this evaluation period, PESH responded to 395 complaints with an average response time of 18.17 days from notification. This is decrease from 29.25 days in FY 2011 and 40.88 days in FY 2010. (SAMM report 11-09-12 – SAMM #1)

Based on the timeliness average, PESH met its established Agency time frames of 30 days for serious complaints and 120 days for other-than-serious.

Complainants were notified on time in 92.68% (367 out of 396) of all complaints processed in FY 2012. This is an increase from the 88.49% in FY 2011. (SAMM report 11-09-12 - SAMM#3)

2. Fatalities

During FY 2012 the number of public sector fatalities reported to PESH was 38 compared to 27 reported in FY 2011 (an increase of 11).

Twenty-one (21) of the 38 fatalities were found to be due to natural causes, suicides and homicides. There was an increase in the number of reported fatalities which were found to be due to natural causes, suicides and homicides. In FY 2011 there were 11 fatalities due to natural causes, one (1) suicide and two (2) homicides. In FY 2012, there were 21 fatalities due to natural causes, three (3) suicides and three (3) homicides.

The FY 2011 FAME (11-01) noted that fatality case files lacked evidence/documentation that the Next of Kin (NOK) was notified of the inspection results. PESH committed to conduct training to staff so that they are aware that follow-up contact needs to be done with the family at the conclusion of the inspection and documentation, whether a letter to the family member or

notation of phone conversations shall be placed in the case file. This training was provided to supervisors on 12/10/12 and the staff received training on 12/18/12. PESH also modified its FOM to address maintaining contact with the family. OSHA considers this item to be completed.

3. Targeting and Programmed Inspections

PESH conducted a total of 2,104 inspections (INSP 8 report 1-17-13) in FY 2012 which is an increase of 261 inspections from FY 2011 inspections. Of the 2,104 inspections -1,506 were safety inspections and 598 were health inspections. This is 10.7% higher than their Planned vs. Actual (PVA) projection of 1,900 inspections.

Of the 2,104 inspections: 1,428 were classified as unprogrammed inspections. The unprogrammed inspections included 30 accident investigations, 410 complaint inspections, 84 referral inspections, 118 monitoring inspections, and 786 follow-up inspections.

Of the 676 inspections classified as programmed, 671 were planned, three (3) were program related and two (2) were classified as “other.”

Inspections by industry: 492 inspections were in the construction industry and 1,612 were classified as other inspections.

The FY 2011 FAME (11-02) noted that 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 CSHOs for injury/illness trends. PESH provided direction to staff to collect injury and illness data for inclusion in the case files. Training was provided to supervisors on 12/10/12 and the remaining staff received training on 12/18/12. OSHA considers this item to be completed.

4. Citations and Penalties

Citations/Notices of Violations:

In FY 2012, PESH issued 4,791 violations (INSP 8 report 1-17-13) compared to 3,855 violations issued in FY 2011 an increase of 936 violations. Of the 4,791 violations issued, 3,613 were Serious, 11 were Repeat, 1,122 were Other-than-Serious and the remaining 45 were Notifications of Failure to Abate.

The percent of inspections with serious/willful/repeat (S/W/R) violations is 86.61% for safety inspections and 60.16% for health inspections, both well above the national averages of 58.5% (S) and 53% (H). (SAMM report 11-09-12 – SAMM #8)

The average violations per inspection for FY 2012 continue to be above the national averages. PESH issued an average of 4.15 S/W/R violations per inspection and 1.28 for “other-than-serious” violations per 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. (SAMM report 11-09-12-SAMM #9)

Penalties:

The PESH State Plan 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 45 FTA penalties totaling \$101,902.00 in FY 2012 for an average of \$2,264.00/FTA compared to 63 FTA penalties totaling \$82,503 for an average of \$1,310/FTA in FY 2011 and 58 FTA penalties totaling \$72,013, averaging \$1,241/FTA in FY2010.

Lapse Time:

PESH’s citations lapse time (the average number of calendar days from opening conference to citation issuance) for FY 2012 was calculated at 49.23 days for safety, a decrease from 55.57 days in FY 2011 and below the national average of 55.9 days. The lapse time for health was 78.75 days, a slight increase from 76.28 days in FY 2011 and above the national average of 67.9 days. (SAMM report 11-09-12-SAMM #7) This slight increase could be attributed to the 4 nursing home NEP inspections that were conducted which are comprehensive and time consuming.

The FY 2011 FAME (11-03, 11-04, and 11-05) noted three (3) findings related to Citations and Penalties.

a) Inadequate evidence to support violations (11-03) - Lack of case file documentation. Case file critical information and documentation missing to establish prima facie violations of OSHA standards.

- No employees exposed with the total number exposed and duration of exposure on the OSHA 1b.
- No description of the hazard on the OSHA 1b.
- No description of how employees were exposed to the hazard on the OSHA 1b.
- No location specified on the OSHA 1b.
- Employer knowledge was not sufficient. There was no documentation that the employer was aware of the condition, hazard, etc.

PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training included a review of the required documentation in accordance with the FOM. OSHA considers this item to be completed.

b) Violation Classification (11-04) - enforcement case files reviewed that were classified as other than serious and would have been better classified as serious based on the resulting hazard/injury i.e. entrapment (confine space/trench) and or fractures.

PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training included a review of properly classifying violations in accordance with the FOM. OSHA considers this item to be completed.

c) Missed violations (11-05) – three (3) of the 64 enforcement case files reviewed (5%) had potential violations that were not cited. In addition one (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.

PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training addressed adequately documenting all hazards observed on the site. Also included in the training was the requirement to document the reason why a condition observed was not a violation. Supervisors were reminded of the need to review all case files for hazards not cited. OSHA considers this item to be completed.

5. Abatement

During FY 2012, the percentage of serious, willful, repeat violations cited that was verified as abated within the abatement date plus 30 days was 93.03% instead of 100%. (2,950 SWR out of 3,171) The 93.03% is above the 90.93% from FY 2011 and FY 2010's 91.07%. (SAMM report-11-09-12 – SAMM #6)

The FY 2011 FAME (11-06) noted that excessive abatement dates were proposed in 22% of case files reviewed.

PESH has shown some improvement with reducing excessive abatement periods based on the percentages for SAMM #6 this fiscal year. Training on proposing appropriate abatement dates for the cited hazard was conducted on 12/10/12 for supervisory staff and on 12/18/12 for field staff. Supervisors will be responsible for monitoring/reviewing case files to ensure abatement dates are adequately assessed. OSHA considers this item to be completed.

6. Employee and Union Involvement

The FY 2011 FAME (11-07) noted documentation of employee interviews was lacking in case files.

PESH has shared an interview template used by their Garden City, NY office, with staff and has also prepared a Report Narrative checklist which requires documentation as to employee participation/interviews to be placed in each case file. Training was provided to supervisors on 12/10/12 and field staff on 12/18/12. OSHA considers this item to be completed.

B. Review Procedures

1. Informal Conferences

PESH has no first instance penalties and therefore conducted very few informal conferences. Proper procedures are followed if an informal conference is requested by an employer and if no settlement can be reached the case file is turned over to the Industrial Board of Appeals (IBA). During FY 2012, twenty-one (21) informal conferences were conducted.

2. Formal Review of Citations

Any investigation that is contested is turned over to the New York State Industrial board of Appeals (IBA). In FY 2012 PESH had six (6) contested cases – three (3) of the six (6) have been closed compared to 12 contested cases in FY 2011.

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 11-09-12-SAMM #12) Once the new OSHA Information System (OIS) is rolled out to state plan states, PESH anticipated 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 FY 2012. The notice of intent to adopt was timely for both standards.

2. Federal Program/State Initiated Changes

During FY 2012 there were a total of six (6) Federal Program Changes that required a notice of intent to adopt. PESH responded in a timely manner with their intent.

D. Variances

There were no variances requests received or processed during FY 2012.

E. Public Employee Program

One hundred percent (100%) of all inspections conducted by PESH occurred in the public sector.

F. Discrimination Program

Only 28.57% of whistleblower investigations (2 of 7) were completed within 90 days (SAMM report 11-09-12-SAMM #13). The 28.57% is an increase from the 19% in FY 2011. It should be noted that PESH reported in their SOAR that there were 19 allegations of discrimination by employers investigated during FY 2012.

The FY 2011 FAME (11-08) noted that whistleblower case files were difficult to follow and lacked a final investigative narrative report.

Supervisors as well as discrimination investigators received training on the requirement for a narrative in all cases, including those that are administratively closed. This training was conducted on 12/11/12. Supervisors will be responsible for ensuring that a narrative is placed in each case file. OSHA considers this item to be completed.

Finding 12-01

PESH's whistleblower statute does not allow for the acceptance of oral complaints and requires the complainant to put the complaint in writing and sign it.

Recommendation 12-01

In addition to receiving written complaints, PESH must accept complaints filed orally by the affected employee to meet the Federal whistleblower standard 29 CFR Part 1977.

G. Voluntary Compliance Program

PESH does not have a Voluntary Compliance Program.

H. Program Administration

Training:

PESH continues to provide CSHOs the opportunity to attend the OSHA Training Institute (OTI) for the much needed safety and health technical training.

During FY 2012 PESH conducted compliance assistance activities within the Strategic Plan's targeted industries: county Level Police Service, Fire Service and Residential Nursing Care Facilities.

- For the county Level Police Service, PESH conducted three (3) Outreach Visits and six (6) Technical Assistance Activities.
- For the Fire Service, PESH conducted five (5) Outreach/Intervention Visits and 50 Technical Assistance Activities.
- Residential Nursing Care Facilities saw PESH conduct one (1) Outreach and six (6) Technical Assistance Activities in Nursing Care Facilities (NAICS – 623110). Residential Mental Health (NAICS – 623220) facilities received four (4) Technical Assistance Activities. Staff also attended a two (2) day Safe Patient Handling conference which included sessions on developing a Safe Patient Handling (SPH) program, training on the program as well as cost benefit of such programs.

Funding:

PESH did not return any 23(g) funding during FY 2012.

Staffing (furloughs and hiring freeze): During FY 2012 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 2012.

Information Management (IMIS):

PESH continues to use the IMIS system for information management.

State Internal Evaluation Program (SIEP):

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. State Progress in Achieving Annual Performance Goals

In addition to PESH’s accomplishments with regard to their Strategic Plan, PESH continues to demonstrate a credible enforcement presence in the public sector in New York. This can be measured by the continuing decrease in Injury and Illness Incident Rates for public sector employment. The Total Recordable Injury and Illness Incident Rate for CY 2011 for state and local government employment in New York State were 7.1 per 100 full-time equivalent workers. This is a 2.8% decrease from 2010 when it was 7.3. The total recordable injury and illness rates have seen a fairly consistent decrease since the inception of the Strategic Plan in 1998. The DART rates have seen a similar decrease but to a lesser degree. Overall the injury and illness rate has decreased more than 32% and the DART Rate nearly 27% over this same time period.

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

Performance Goal #1: Reduce Injury and Illness Rate by 1% in NAICS 922120 (county Level Police Protection)

As this is the first year for the Police Protection Strategic Plan committee, their primary goal was to reduce the injury Rate by 1%. Much of the committee’s efforts have been focused on obtaining SH 900 and SH 900.1 data from the various county level police departments and identifying contacts within these agencies. All Logs and Summary reports have been collected for 2010 and 2011. The committee is in the process of reviewing the data for trends. This information, coupled with existing research, literature and hazard recognition will be used to develop strategies to help reduce injuries in this sector.

The baseline year is CY 2010. The SH 900.1 was used to calculate the rates and was provided directly by the counties.

Police Service Injury and DART Rates

Year	2010 (Baseline)	2011	% Change from Baseline
Total Recordable Incident Rate*	8.8	8.3	5.7% Decrease
DART Rate*	5.0	4.9	2.0% Decrease

* Based on SH 900.1’s collected by the committee

Secondary Outcome Measures:

	2010 Baseline	FFY2011	FFY 2012	% Change from Baseline
# Inspections *	62	77	113	82% Increase
# Consultations *	4	8	6	50% Increase
# Outreach Visits *	7	1	3	57% Decrease
#Technical Assistance *	6	6	6	No Change
# S/W/R/U and FTA Violation *	41	127	133	224% Increase
# Fatality Inspections *	2	2	1	50% Decrease
# Fatalities *	2	2	1	50% Decrease
# Interventions **	2	6	11	450% Increase

* OSHA Performance Indicators

** PESH Intervention Database

Partnership Activity:

The committee members have networked with the NYS Sheriffs' Association which holds winter and summer training conferences and members of this committee have contacted individual county Sheriff staff, promoting injury reduction through the PESH consultation program. The co-chairpersons of this committee participated in the 2012 NYS Sheriff's Association Winter Training Conference held in Albany. They received a lot of positive interaction at their booth.

Performance Goal #2: Decrease the Injury and Illness Rate by 1.0% per year in NAICS 922160 (Fire Service). Improve accuracy of Injury and Illness data.

After not being part of the PESH Strategic Plan for a year, this committee reconvened in FFY 2011. They have worked on data collection and staff training regarding injury and illness trends in the fire service sector and hazard identification during inspections. Several committee members provided input on the revision of the Rope Rescue bill that has been passed both houses of legislature.

Primary Outcome Measures:

Fire Service Injury and DART Rates

Year	2008	2009	2010	2011	% Change from Baseline
Injury Rate*	53.1	44.4	34.3	29.9	44% Decrease
DART Rate*	51.1	41.9	20.9	28.7	44% Decrease

* Based on BLS Data

Partnership Activity:

This committee continues to work with the Firemen’s Association of the state of NY (FASNY), NYS Association of Fire Chiefs (NYSAFC) and county Fire Coordinators as it relates to PESH activities. Members attend county Level Emergency Management meetings.

Performance Goal #3: Reduce the DART rate by 1.0% in NAICS 623110 (Residential Nursing Care Facilities), 623210 (NYS Office for People with Developmental Disabilities), 623220 (NYS Office of Mental Health).

The PESH Healthcare Strategic Plan began in 1998, focusing on occupational injuries and illnesses in county nursing homes and state veterans’ homes. The initial goal was focused on reducing the Total Recordable Injury Rate. The focus now is to reduce the DART rate while continuing to track the overall injury rate.

The committee expanded its focus to include residential mental health facilities (NYS Office of Mental Health) and residential mental retardation facilities (NYS Office for People with Developmental Disabilities). The goal is the same for these facilities and it is to reduce the DART rate by 1% each year of this phase. To do this, SH 900’s and SH 900.1’s were collected. Just as what was seen with the nursing home initiative, the committee found that much of the injury data did not provide enough detail to identify trends in these injuries. Much of this year was spent working with these facilities to improve the quality of information. As with public nursing homes, it is difficult to compare injury data for OPWDD facilities because many of the districts are closing their institutions and providing care at small community based Individual Residential Alternatives (IRAs).

Primary Outcome Measures – Residential Nursing Care Facilities

NAICS	Measure	CY 2008	CY 2009	CY 2010	CY 2011	% Change from Baseline
623110 Nursing Care Facilities	TRC	11.0	11.1	10.7	10.5	4.5% Decrease
	DART	9.3	9.2	9.3	8.1	12.9% Decrease

TRC- Total recordable Case Rate = # recordable cases X 200,000/Total number of work hours
DART Rate = # Incidents resulting in days away, restricted or transfer duty x 200,000/Total number of work hours
Data taken from SH 900.1’s received by PESH

Primary Outcome Measures- Residential Mental Health and Residential Mental Retardation, Incident Rate and Lost Time Rate*

NAICS	Measure	State Fiscal Year 2007-2008	State Fiscal Year 2008-2009	State Fiscal Year 2009-2010	State Fiscal Year 2010-2011	% Change from Baseline
Residential Mental Health (623220)	Incident Rate **	13.9	16.8	17.1	17.0	22.3% Increase
	Lost Time Case Rate % ***	27.1	25.1	26.8	27.1	No Change
Residential Mental Retardation (623210)	Incident Rate **	16.6	15.7	16.9	17.2	3.6 % Increase
	Lost Time Case Rate % ***	33.8	33.4	35.9	35.4	4.7 % Increase

* Data based on NYS Annual Worker Compensation Report

** Incident Rate = # Incidents X 200,000 / Total Work Hours (includes all workers' compensation incidents reported)

*** Lost Time Case Rate % = # lost time incidents /# of incidents (includes accidents with 6 or more work days lost)

PESH attributes the increase in the incident rates for the Office of Mental Health (OMH) and the Office for People with Developmental Disabilities (OPWDD) is the result of increased awareness. While PESH is performing visits at these facilities, particularly at OPWDD, their time is being spent focusing on recordkeeping and reporting of incidents during these visits. PESH has also been more active in enforcing the Workplace Violence (WPV) regulation in both of these facilities. They have been addressing the patient to employee assaults and the fact that many of these have gone unreported.

Intermediate Outcome Measures

Nursing Care Facilities

	FY2008	FY2009	FY2010	FY2011	FY2012	% Change from baseline
# Inspections*	12	8	6	6	7	42% Decrease
# Consultations*	5	8	5	0	1	80% Decrease
Outreach*	7	3	2	4	1	86% Decrease
Technical Assistance*	9	16	12	2	6	33% Decrease
# S,W,R, FTA Violations*	4	7	0	3	19	375% Increase

*Based on OSHA Performance Indicators

Residential Mental Health Facilities

	FY2010	FY 2011	FY 2012	% Change from baseline
# Inspections*	8	15	6	25% Decrease
# Consultations*	2	2	0	100% Decrease
Outreach*	0	0	0	No Change
Technical Assistance*	1	1	4	300% Increase
# S,W,R, FTA Violations*	8	2	22	175% Increase

•Based on OSHA Performance Indicators

Residential Mental Retardation Facilities

	FY2010	FY 2011	FY 2012	% Change from baseline
# Inspections	8	15	7	12.5% Decrease
# Consultations	2	2	0	100% Decrease

Note:

- Residential Mental Health and Residential Mental Retardation were added in 2010; therefore, performance measures are not available for earlier years.
- Performance Indicators for OPWDD did not capture inspection/consultation data for the target years. Data is from IMIS reports run by PESH.
- OPWDD institutions are closing and moving toward community based Individual Residential Alternative (IRA's) making data collection much more difficult.

The lower number of total inspections and consultations in nursing care, residential health and residential mental retardation facilities can be attributed to the focused recordkeeping NEP inspections performed in 2012. PESH utilized a team approach which resulted in drawing resources from other inspection and consultation activities. Although fewer inspections were performed, the number of violations identified did show an increase.

Partnership Activity:

Focus continued on building partnerships with nursing homes, acute care facilities and organizations affiliated with them. The partnership with Kaleida Health continues with the development of a Safe Patient Handling video focusing on the tools which are typically available in a Safe Patient Handling environment. Civil Service Employees Association (CSEA) and NYS Veterans' Home at Batavia have co-produced a Safe Patient Handling video which focuses on the benefits to residents, workers and employers when a facility implements a functional program. Copies of this video are being used to promote Safe Patient Handling programs in all facilities covered by this Strategic Plan. The success of their SPH programs and the rate of return on their investments have provided much needed concrete evidence of the positive impact Safe Patient Handling Programs can have.

This committee has also reached out to OPWDD and OMH facilities in an effort to work together toward injury reduction. Currently recordkeeping is a major focus.

Members of this committee are working with NYS Zero Lift Task Force and NYS Nursing Association (NYSNA) planning a Safe Patient Handling Conference in April, 2013 in Albany.

VI. Other Areas of Note

Public Sector On-site Consultation Program (MARC report 11-07-12)

PESH's public sector consultation program conducted a total of 376 consultation visits during FY 2012, which were 76 visits above their projected 300 visits outlined in the Annual Performance Plan. In 99% of the visits the hazards were abated in the required time frame. In addition to consultation visits, PESH staff conducted 221 outreach visits in FY 2012.

Appendix A – New and Continued Findings and Recommendations

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
12-01	PESH's whistleblower statute does not allow for the acceptance of oral complaints and requires the complainant to put the complaint in writing and sign it.	In addition to receiving written complaints, PESH must accept complaints filed orally by the affected employee to meet the Federal whistleblower standard 29 CFR Part1977.	

Appendix B – Observations Subject to Continued Monitoring

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

New York does not have any new or continued observations.

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-01	Next of Kin Letters (NOK): Lack of evidence/documentation in the case files that the NOK were notified of the inspection 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 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.	Staff training will be held so that they are aware that follow up contact needs to be done with the family at the conclusion of the inspection. Documentation i.e. letter to the family member or notation of phone conversation shall be placed in the case file. PESH will review its current procedure for maintaining contact with family members and make appropriate modifications to ensure that there is a final follow up with the family. We will provide information to the family so that they are aware of the outcome and any violations identified.	PESH has committed to conducting training to staff so that they are aware that follow up contact needs to be done with the family at the conclusion of the inspection and documentation, whether a letter to the family member or notation of phone conversation shall be placed in the case file. This training was provided to supervisors on 12/10/12 and the staff received training on 12/18/12. PESH also modified its FOM to address maintaining contact with the family.	Completed
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 CSHOs for injury/illness trends	Ensure that CSHOs are collecting the previous three (3) years of SH900 logs and placing them in the case files. This data is required for calculating the Days	Direction will be provided to staff to collect injury and illness data for inclusion in the case file.	Direction will be provided to staff to collect injury and illness data for inclusion in the case file. Instructions were given that all reports	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		Away Restricted Time (DART) rate.		must have a narrative which contains a review of injury and illness records. Training was provided to supervisors on 12/10/12 and the remaining staff received training on 12/18/12.	
11-03	<p>Inadequate evidence to support violations- 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) ▪No description of the hazard on the OSHA 1b (24 of 36 enforcement cases) ▪No description of how 	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.	PESH will schedule staff training including supervisory staff, in order to review these deficiencies in the documentation of violations on the 1b form. It is expected that the training will be completed before the end of the calendar year 2012.	PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training included a review of the required documentation in accordance with their FOM and a review of what each reports narrative must contain.	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>employees were exposed to the hazard on the OSHA 1b (24 of 36 enforcement cases)</p> <ul style="list-style-type: none"> ▪No location specified on the OSHA1b (24 of 36 enforcement cases) ▪Employer knowledge was not sufficient in five (5) of the 36 case files with citations reviewed. There was no documentation that the employer was aware of the condition, hazard, etc. 				
11-04	<p>Violation Classification – four (4) of 36 (11%) enforcement case files reviewed that were classified as other than serious and would have been better classified as serious based on the resulting hazard/injury i.e. entrapment (confine space/trench) and or fractures.</p>	<p>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.</p>	<p>A review of violation classification will be performed with field and supervisory staff. This will be performed before then end of the 2012 calendar year.</p>	<p>PESH provided training to supervisory staff on 12/10/12 and to the remaining field staff on 12/18/12. The training included a review of properly classifying violations in accordance with the FOM.</p>	Completed
11-05	<p>Missed violations – three (3) of the 64 enforcement case files reviewed (5%) had potential violations that were</p>	<p>Conduct in-house training to ensure that CSHOs are addressing and adequately</p>	<p>In-house training will be performed for field staff to try and ensure that violations are issued for all</p>	<p>PESH provided training to supervisory staff on 12/10/12 and to the remaining field</p>	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	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.	documenting all relevant hazards on the site. Review with the staff the requirement to note why an obviously volatile condition documented in the 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.	the violations identified. If there is a reason a violation was not prepared, the file will need to include the reason why it was not prepared. This issue will be reviewed with Supervisors to ensure they are aware of the need to review all case files for hazards not cited.	staff on 12/18/12. The training addressed adequately documenting all hazards observed on the site. Also included in the training was the requirement to document the reason why a condition observed was not a violation. Supervisors were reminded of the need to review all case files for hazards not cited.	
11-06	Excessive abatement dates were proposed in eight (8) of the 36 (22%) enforcement files with abatement periods compared to FY 2009 when 16 of 65 (25%) enforcement files has 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.	Although PESH has made a significant improvement with reducing excessive abatement periods, this issue will be reviewed during training for all staff. Training will be completed by the end of the 2012 calendar year. Supervisors will continue to monitor/review case files ensuring abatement dates are adequately assessed.	Training on proposing appropriate abatement dates for the cited hazard was conducted on 12/10/12 for supervisory staff and on 12/18/12 for field staff. Supervisors will be responsible for monitoring/reviewing case files to ensure abatement dates are adequately assessed.	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-07	Documentation of employee interviews 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.	This issue will be reviewed with staff again in order to improve the percentage of case files with documented employee interviews. An interview template will be shared with all field staff. This will be performed by the end of the 2012 calendar year.	PESH has shared an interview template used by their Garden City, NY office, with staff and has also prepared a Report Narrative checklist which requires documentation as to employee participation/interviews to be placed in each case file. Training was provided to supervisors on 12/10/12 and field staff on 12/18/12.	Completed
11-08	Incomplete documentation - whistleblower case files were difficult to follow and lacked a final investigative narrative report. The reviewer was unable to determine in six (6) of the nine (9) cases 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 shared and recorded in IMIS.	Staff will receive instruction on the requirement for a narrative in all cases, including those that are administratively closed. This will be performed by the end of the 2012 calendar year. Supervisors will be responsible for ensuring that a narrative is placed in each case file.	Training was held with supervisors and discrimination investigators on 12/11/12. The training involved instruction on the requirement for a narrative in all cases, including those that are administratively closed. Supervisors are responsible for ensuring that a narrative is placed in each case file.	Completed

Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

NOV 09, 2012
RID: 0253600

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	7180 18.17 395	324 17.05 19	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	0 0	0 0	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	367 92.68 396	20 100.00 20	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	10 100.00 10	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	1 100.00 1	0 0 0	100%
Public	2950 93.03 3171	130 40.50 321	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	34068 49.23 692	2675 47.76 56	2032800 55.9 36336 National Data (1 year)
Health	14333 78.75 182	815 101.87 8	647235 67.9 9527 National Data (1 year)

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

NOV 09, 2012
RID: 0253600

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	498	50	76860
Safety	86.61	89.29	58.5
	575	56	131301
	77	4	9901
Health	60.16	80.00	53.0
	128	5	18679
9. Average Violations per Inspection with Violations			
	3625	301	367338
S/W/R	4.15	4.70	2.1
	873	64	175950
	1123	76	216389
Other	1.28	1.18	1.2
	873	64	175950
10. Average Initial Penalty per Serious Violation (Private Sector Only)	0	0	624678547
	.00		1990.5
	1	0	313826
11. Percent of Total Inspections in Public Sector	2098	149	6067
	99.90	100.00	100.0
	2100	149	6069
12. Average lapse time from receipt of Contest to first level decision	0	0	3197720
			187.0
	0	0	17104
13. Percent of 11c Investigations Completed within 90 days*	2	0	
	28.57	.00	100%
	7	2	
14. Percent of 11c Complaints that are Meritorious*	0	0	1619
	.00	.00	23.4
	7	2	6921
15. Percent of Meritorious 11c Complaints that are Settled*	0	0	1444
			89.2
	0	0	1619

*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013

Appendix E – FY 2012 State OSHA Annual Report (SOAR)

FY 2012 New York Public Employee Safety & Health (PESH) State Plan Abridged FAME Report

[Available Upon Request]