



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  
BUTCH TONGATE  
Deputy Secretary

August 8, 2014

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 21, 2014, we hereby submit our formal response to the final report of the FY 2013 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 initiated. 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  
Cabinet Secretary

Enclosure: New Mexico's Response to OSHA's 2013 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  
2013 FEDERAL ANNUAL MONITORING AND EVALUATION (FAME) REPORT  
AUGUST 8, 2014**

**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 2013. 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 FY2013 which has enabled OHSB to quickly initiate processes aimed at improving program performance.

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

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**Recommendation 13-1:** New Mexico OHSB should ensure that the OHS Act, OHS regulations, and New Mexico FOM Chapter 13 are followed for all whistleblower investigations.

**Response:** OHSB is committed to continued improvement of its whistleblower protection program and to working closely with OSHA to ensure appropriate consistency of state with federal investigative procedures.

**Corrective Action:** OHSB management and whistleblower staff conducted additional review of both federal and State Plan whistleblower provisions and policies from August through October 2013 to ensure adherence to statutory requirements. The OHSB investigator received OSHA Whistleblower Investigation training in June 2014. In addition, OHSB has assigned administrative staff to assist with entry and management of data in the federal integrated management information system (IMIS). The bureau is in the process of scheduling additional training for Whistleblower staff with Region VI OSHA in September 2014. OHSB is currently in the process of entering all state whistleblower activities into the federal IMIS system and anticipates this process to be completed by September 30, 2014.

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

**Status:** On-going.

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**Recommendation 13-2:** New Mexico OHSB should evaluate inspection goals and, if appropriate, modify to reflect changes in available resources.

**Response:** OHSB has reviewed inspection goals for recent years and has found several areas where adjustments to activities did not result in goal adjustments. The bureau has adopted federal directives and has developed internal directives which have resulted in an increase in more complex and time-intensive inspections. The additional time resource of staff training, preparation and activities associated with these inspections has resulted in a reduction of overall inspection numbers. Federal OSHA has experienced similar issues related to adjustments based on the federal directives and has been developing a process for weighting of inspection types to account for more complex and time intensive activities.

**Corrective Action:** OHSB reevaluated inspection goals during the FY2014 grant cycle, based on an assessment of agency staffing and changes to emphasis programs. Inspection goals were adjusted for FY 2014. OHSB will work closely with the Regional Office quarterly to review progress and make any adjustments necessary to ensure goals are met.

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

**Status:** On-going.

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**Recommendation 13-3:** New Mexico OHSB should ensure that employer knowledge is documented for all violations.

**Response:** OHSB has incorporated policies for documenting employer knowledge within its Field Operations Manual (FOM) and provides for continuous supervisory and management review of case files to ensure violations are documented in accordance with the FOM.

**Corrective Action:** OHSB continues to stress to compliance staff the importance of documenting employer knowledge when establishing violations. OHSB identified this as an area needing improvement during the FY 2012 SIEP and is reviewing this item again during the 2014 SIEP. The Compliance Program Manager 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 (CO) training sessions, employee evaluations, and future SIEP reviews. The OHSB Bureau Chief and Compliance Manager met with the six attorneys from the state's Office of General Counsel (OGC) on March 3, 2014 to review procedures for evidence collection, with particular emphasis on documenting employer knowledge. OHSB held a training session for compliance staff on March 27, 2014 with the assistance of OGC.

**Actual or Anticipated Completion Date:** September 30, 2015.

**Status:** Ongoing.

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**Recommendation 13-4:** Average health citation lapse time in New Mexico is significantly higher than the National average, and increased 25% from 61.4 to 76.8 Safety and 39% from 71.3 to 99 calendar days, from FY 2010 to FY 2013. NM OHSB should review processes and policies to identify roadblocks and inefficiencies.

**Response:** There are a number of factors which have resulted in excessive lapse times for OHSB health citations. These include high caseloads for health officers, inefficiencies in prioritizing of duties by officers, and a health file tracking process which has not facilitated improvements. In addition, the bureau has increased the proportion of investigations which are more complex and time-intensive as compared to past inspection cycles, which has presented an additional challenge to reducing lapse times.

**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 closely monitor health inspection assignments to ensure caseloads are reasonable. The Compliance Program 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 Program Manager will check file progress weekly and meet with Compliance Officers at least monthly on open cases.

**Actual or Anticipated Completion Date:** September 30, 2015.

**Status:** On-going.

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**Recommendation 13-5:** There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations. New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).

**Response:** OHSB acknowledges the inconsistency in language and interpretation of the private interviewing regulations that were adopted by the Environmental Improvement Board (EIB). As initially noted in the FY 2011 FAME report, OHSB attempted to resolve the issue in 2009 by proposing statutory changes, but was unsuccessful.

**Corrective Action:** OHSB is continuing to work with the Environment Department's Office of General Counsel to review the regulation. We anticipate that the proposed regulatory changes will be presented to the EIB for consideration in FY 2015. As an interim measure, OHSB has instituted procedures for cases where employee representation falls under the provisions of the regulation to include form letters provided to counsel representing employees. The procedures and forms have been used in rare cases as necessary to provide clarification during the interview process.

**Actual or Anticipated Completion Date:** September 30, 2015.

**Status:** On-going.

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**Observation 13-1:** Of the twelve fatalities New Mexico inspected, five (42%) of them were found in compliance. New Mexico OHSB should ensure that New Mexico FOM Chapter 11 procedures are followed for all fatality inspections. We will continue to follow up on this issue at quarterly meetings

**Response:** OHSB has a solid history of thorough and well documented accident investigations as verified through previous federal FAME evaluations of the state program. We are committed to ensuring these investigations are of the highest quality and will carefully review every case to ensure compliance with established procedures.