

**FY 2013 Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2012 – September 30, 2013**

**Initial Approval Date: June 1, 1984  
State Plan Certification Date: August 16, 2006 (71 FR 47089)  
Final Approval Date: N/A**

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# CONTENTS

## Section

<b>I. Executive Summary</b> .....	<b>3</b>
A. Summary of the Report.....	3
B. State Plan Introduction.....	3
C. Data and Methodology.....	5
D. Findings and Recommendations.....	5
<b>II. Major New Issues</b> .....	<b>6</b>
<b>III. Assessment of State Plan Performance</b> .....	<b>6</b>
<b>IV. Assessment of State Plan Progress in Achieving Annual Performance Goals</b> .....	<b>14</b>
<b>V. Other Special Measures of Effectiveness and Areas of Note</b> .....	<b>17</b>

## Appendices

<b>Appendix A – New and Continued Findings and Recommendations</b> .....	<b>A-1</b>
<b>Appendix B – Observations Subject to Continual Monitoring</b> .....	<b>B-1</b>
<b>Appendix C – Status of FY 2012 Findings and Recommendations</b> .....	<b>C-1</b>
<b>Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report</b> .....	<b>D-1</b>

## **I. Executive Summary**

### **A. Summary of the Report**

The purpose of this report is to assess the activities performed by the New York Public Employee Safety and Health (PESH) State Plan during Fiscal Year (FY) 2013, and its success in resolving its one outstanding finding and recommendation from the FY 2012 FAME.

PESH continues to have a significant enforcement presence in the workplace through its inspection activity. PESH met its goal and conducted a total of 1,900 inspections during FY 2013. The number of public sector fatalities that occurred in New York during FY 2013 declined by 68%.

The FY 2012 FAME found that PESH's whistleblower statute did not allow for the acceptance of oral complaints and required the complainant to put the complaint in writing and sign it. PESH successfully closed out this finding by updating its Field Operations Manual (FOM) and now accepts discrimination complaints by letter, e-mail, FAX, phone, or through an authorized worker representative.

The FY 2013 review of case files noted two new findings. Worker exposure information was lacking in 32% of the case files reviewed and 100% of PESH's 23(g) consultation case files reviewed did not include the Consultation 33 Form (Safety and Health Program Assessment Worksheet).

OSHA identified four items that are being noted as observations which will be closely monitored in FY 2014. The observations identified were noted in very few case files and involved missing notification to the complainant, and when notification was documented, it was not provided in a timely manner. Also noted were excessive abatement time periods and not documenting worker interviews.

### **B. State Plan Introduction**

The PESH State Plan is responsible for promoting the health and safety of more than two million state and local government workers in New York. The New York Department of Labor has been designated as the agency responsible for administering the State 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 workers of the state and its political subdivisions. In addition to the State Plan's enforcement responsibilities, PESH provides free on-site consultation and training services to public sector agencies, upon request.

PESH 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 PESH 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 New York State Department of Labor-Division of Safety and Health (NYSDOL-DOSH) Consultation Services Bureau under Section 21(d) of the OSH Act. PESH adopted all applicable 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 in violation of PESH standards. Per diem penalties can be assessed when failure-to-abate (FTA) notices are issued.

The table below shows PESH’s funding levels from FY 2010 through FY 2013.

<b>FY 2010-2013 Funding History</b>						
<b>FY</b>	<b>Federal Award (\$)</b>	<b>State Match (\$)</b>	<b>100% State Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>% of State Contribution</b>	<b>Deobligated/ One-Time Only/Reclaimed Funds (\$)</b>
<b>2013</b>	\$3,667,600	\$3,667,600	\$1,117,700	\$8,452,900	55.6%	0/16,300/0
<b>2012</b>	\$3,827,300	\$3,827,300	\$1,100,000	\$8,754,600	56.3%	0/0/0
<b>2011</b>	\$3,827,300	\$3,827,000	\$1,250,000	\$8,905,300	57.0%	0/0/35,140
<b>2010</b>	\$3,827,300	\$3,827,300	\$1,250,700	\$8,905,300	61.6%	0/154,200/0

Staffing continues to remain consistent. The table below shows the number of full-time and part-time staff as of the end of FY 2013.

<b>FY 2013 Staffing</b>					
<b>23(g) Grant Positions</b>	<b>Allocated FTE* Funded 50/50</b>	<b>Allocated FTE 100% State Funded</b>	<b>Total</b>	<b>50/50 Funded FTE On Board as of 09/30/13</b>	<b>100% State Funded FTE On Board as of 09/30/13</b>
<b>Managers/Supervisors (Administrative)</b>	8.12	1.02	9.14	8.06	1.01
<b>Safety Compliance Officers</b>	22.22	2.78	25	16.89	2.11
<b>Health Compliance Officers</b>	13.33	1.67	15	11.55	1.45
<b>Public Sector Safety Consultants</b>	8.89	1.11	10	7.11	0.89
<b>Public Sector Health Consultants</b>	5.33	0.67	6	3.56	0.44
<b>Compliance Assistance Specialist</b>	0.89	0.11	1	0.89	0.11
<b>Clerical</b>	13.78	1.72	15.5	12.89	1.61
<b>Other (all positions not counted elsewhere)</b>	0.893.70	0.11	1	0.89	0.11
<b>Total 23(g) FTE</b>	<b>73.45</b>	<b>9.19</b>	<b>82.64</b>	<b>61.83</b>	<b>7.74</b>

\*Full-Time Equivalent

### **C. Data and Methodology**

Monitoring of the PESH State Plan consisted of a team of OSHA personnel from both the safety and the health side and from the whistleblower 11(c) program. The team conducted the onsite audits at PESH's office in Albany starting on February 10, 2014 and ending on February 13, 2014.

The evaluation of PESH covered FY 2013 (the period of October 1, 2012 through September 30, 2013) and included the following documents:

- State Activity Mandated Measures (SAMM Report)
- Inspection (INSP-8) Report
- Mandated Activities Report for Consultation (MARC)

The OSHA team reviewed a total of 134 case files broken down by the following:

- Fatality/catastrophe case files (21 total – 6 were still open)
- Whistleblower case files (8)
- Consultation case files (11)
- Enforcement case files (94 total – 55 safety and 39 health – complaints, planned, and referrals)

The Region solicited input from stakeholders and reviewed the results from the evaluation period. No notable issues were raised.

### **D. Findings and Recommendations**

The FY 2013 audit of case files revealed two significant findings. Details of the findings and recommendations can be found in Section III and Appendix A of this report.

- Inadequate Evidence to Support Violations:

Worker exposure information was not documented in 32% (23 of 71) of the case files reviewed with violations. OSHA is recommending that additional training be provided to all field staff to ensure the case files are documented in accordance with the FOM and all other applicable New York State enforcement policies and procedures.

- Consultation 33 (Rev. 12/96) "Safety and Health Program Assessment Worksheet" not Utilized:

Consultation visits did not include a review of the employer's safety and health program as documented by use of the Consultation 33 form.

The audit also revealed four items that are being noted as observations. Details of the four observations can be found in Section III and Appendix B of this report.

- Notification to Complainant:

Documentation that the complainant was notified of the results of the inspection, either by letter or phone was missing in 24% (seven of 29) of the case files reviewed.

Timely response to the complainant was excessive in 20% (six of 29) of the case files reviewed. Examples of excessive time include: 60 days from the closing conference to the time the complainant was notified of the results of the inspection, another case file showed the complainant was notified 90 days after the inspection.

- Excessive Abatement Periods:

Abatement periods established for correction of violations were found to be excessive in 14 of the 71 case files (19.7%) that had citations issued. Examples of excessive abatement periods included: 30 and/or 60 days for egress violations, 90 days to obtain a material safety data sheet for disinfectants, 45 days for a cracked duplex receptacle cover.

- Documentation of Worker Interviews:

Worker interviews were not documented in 20% (22 of 109) of the case files reviewed.

PESH was successful in closing out the one finding from the FY 2012 FAME. Details of the FY 2012 finding and status can be found in Section III and Appendix C of this report.

- PESH's whistleblower statute did not allow for the acceptance of oral complaints and required the complainant to put the complaint in writing and sign it. PESH updated its FOM and now accepts discrimination complaints by letter, e-mail, FAX, phone, or through an authorized worker representative.

## **II. Major New Issues**

None

## **III. Assessment of State Plan Performance**

### **1. ENFORCEMENT**

#### **a) Complaints**

During this evaluation period, PESH responded to 362 complaints with an average response time of 24.73 days from notification. This is a slight increase from 18.17 days in FY 2012. (SAMM report 03-07-14 – 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.

#### *Notification to Complainant*

#### **Observation 13-01**

In seven of the 29 complaint files (24%) reviewed, documentation that the complainant was notified of the results of the inspections (either by letter or phone) was missing in the case file.

#### **Federal Monitoring Plan 13-01**

In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

#### **Observation 13-02**

In six of the 29 complaint files (20%) reviewed, where the complainant was notified of the results of the inspection, the amount of time it took to respond to the complainant was excessive. Examples of excessive timeliness included: documentation in one case file of 60 days from the closing conference to the time the complainant was notified of the results of the inspection, while another case file showed the complainant was notified 90 days after the inspection.

#### **Federal Monitoring Plan 13-02**

In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

### **b) Fatalities**

During FY 2013 the number of public sector fatalities reported to PESH was 26 compared to 38 reported in FY 2012 (a decrease of 12). Of the 26 fatalities reported in FY 2013, only 13 were determined to be “work-related.”

Sixteen fatality case files were reviewed (11 closed, two open, and three no jurisdiction) along with four catastrophe cases. The next of kin (NOK) was notified in all but one of the 11 closed case files reviewed. Due to this appearing to be an isolated occurrence, OSHA is not making this a formal finding or observation at this time. Three of the fatalities were appropriately determined to be “no inspection” or “no jurisdiction.”

Case file review showed that citations were issued to employers who failed to notify PESH of a fatality within eight hours. Responses to fatalities were 93% compared to the 100% reference. (SAMM report 03-07-14 – SAMM #21)

### **c) Targeting and Programmed Inspections**

PESH met its goal and conducted a total of 1,900 inspections during FY 2013 – 1,398 were safety inspections and 502 were health inspections. Out of the 1,900 inspections 372 complaints were investigated. (NY SOAR FY 2013) PESH focused programmed

inspection resources within the three public sector agencies targeted for enforcement interventions as follows:

- County Level Police Protection – 69 inspections
- Fire Service – 144 inspections
- Healthcare – 49 inspections

The percent of in-compliance inspections was recorded at 29.1% for safety and 34.1% for health. (SAMM report 03-07-14 – SAMM #20a & #20b)

PESH issued 4,188 violations compared to 4,791 violations issued in FY 2012 – a decrease of 603 violations. Of the 4,188 violations issued, 3,291 were serious, 13 were repeat, six were willful, 35 were FTA, and the remaining 843 were other-than-serious. (INSP8 report 10-29-13)

PESH issued an average of 4.38 serious/willful/repeat (S/W/R) violations per inspection and 1.11 for other-than-serious violations per inspections. PESH continues to be above the national average of 2.04 S/W/R and is slightly above the 0.88 national average for other-than-serious. (SAMM report 03-07-14 – SAMM #9a & #9b)

#### **d) Citations and Penalties**

##### *Inadequate Evidence to Support Violations*

##### **Finding 13-01**

In 23 of the 71(32%) case files reviewed with violations, worker exposure information was not documented on the OSHA 1B or listed on the field notes.

##### **Recommendation 13-01**

Ensure that inspection case files are documented in accordance with FOM and all other applicable New York State enforcement policies and procedures.

PESH issued 4,188 violations compared to 4,791 violations issued in FY 2012 – a decrease of 603 violations. Of the 4,188 violations issued, 79% were issued as S/W/R with 3,291 cited as serious, 13 as repeat, six as willful, 35 as FTA, and the remaining 843 as other-than-serious. (INSP8 report 10-29-13)

Violations for the most part appeared to be classified and grouped appropriately. Citations were issued for apparent violations based on the case files reviewed. During FY 2013, PESH appropriately classified 13 violations as repeat and six violations as willful. (INSP8 report 10-29-13) PESH does not issue monetary penalties except in cases of FTA violations. During FY 2013, PESH issued 35 FTAs and collected a total of \$11,502.00 in penalties. (INSP8 report 10-29-13)



**e) Abatement**

*Excessive Abatement Periods*

**Observation 13-03**

Abatement periods established for correction of violations were found to be excessive in 14 of the 71 case files (19.7%) that had citations issued. Examples of excessive abatement periods included: 30 and/or 60 days for egress violations, 90 days to obtain a material safety data sheet for disinfectants, and 45 days for a cracked duplex receptacle cover.

**Federal Monitoring Plan 13-03**

In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

The review of case files during this audit revealed that adequate verification/evidence of abatement was being obtained in the case files that had citations. When indicated, follow-up inspections were performed.

**f) Worker and Union Involvement**

PESH continues to follow proper procedures outlined in their FOM with regard to appropriate notification being delivered to workers and their union representatives. Of the 109 closed case files reviewed, 83 (76%) involved unions. Most of these case files contained an interview template or a narrative checklist which provides documentation of worker participation in the opening/closing conferences as well as the walk around.

*Documentation of Worker Interviews*

**Observation 13-04**

In 22 of the 109 case files (20%) reviewed, it appeared worker interviews were not documented.

**Federal Monitoring Plan 13-04**

In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

**2. PROCEDURES**

**a) 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 is turned over to the Industrial Board of Appeals (IBA). During FY 2013, 14 informal conferences were conducted. Of the 14 informal conferences held, only one resulted in violations being vacated.

**b) Formal Review of Citations**

Any investigation that is contested is turned over to the IBA. In FY 2013, PESH had three contested cases compared to six cases in FY 2012. One of the three is still under review and the other two received penalty reductions.

**3. STANDARDS AND FEDERAL PROGRAM CHANGE ADOPTION**

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, PESH responded in a timely manner with the required notice of intent to adopt. The tables below provide a complete list of the federal directives and standards which required action during this period:

**a) Standards Adoption**

<b>Standards Requiring Action</b>	<b>Federal Register Date</b>	<b>Adopted Identical</b>	<b>Date Promulgated</b>
National Consensus Standards; Head Protection	December 2012	Yes	June 2013
Cranes & Derricks in Construction: Underground Construction & Demolition	October 2013	Yes	(anticipated date) 01/30/2104

**b) OSHA/State Plan-Initiated Changes**

<b>FPCs Requiring Action and Federal Directive Number</b>	<b>Date of Directive</b>	<b>Adopted Identical</b>	<b>Adoption Date</b>
Inspection & Citation Guidance for Roadway & Hwy Construction Work Zones	10/22/2012	Yes	11/27/2012
Site-Specific Targeting SST-12	02/21/2013	No	N/A
NEP-Occupational Exposure to Isocyanates	08/09/2013	Yes	08/13/2013
Inspection Scheduling for Construction	09/12/2013	No	N/A
Maritime Cargo gear Stds. & 29 CFR Part 1919 Certification	11/04/2013	Yes	(anticipated date) 12/30/2013

#### **4. VARIANCES**

There were no variance requests received or processed during FY 2013.

#### **5. PUBLIC EMPLOYEE PROGRAM**

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

PESH does not contain provisions for the issuance of monetary penalties for public employers found not to be in-compliance with applicable standards on a first instance basis, except in cases when FTA notices are issued. If an employer incurs penalties for violations the employer may have an informal conference with PESH or can contest the penalties and be heard by the New York State Industrial Board of Appeals (IBA). During FY 2013, PESH conducted (14 informal conferences, none resulted in penalty settlements. The IBA heard three contested cases and two of which resulted in penalty reductions.

#### **6. DISCRIMINATION PROGRAM**

A review of seven case files was conducted during this audit. Of the seven case files reviewed, five were withdrawn by the complainant and two were dismissed as non-meritorious. Determinations reached in the case files were based on substantive evidence and sound legal reasoning. The review also determined that the program is in conformance with guidelines and meets the objectives of the guidelines effectively. Investigations were timely.

PESH was successful in closing out the one finding from the FY 2012 FAME. PESH's whistleblower statute did not allow for the acceptance of oral complaints and required the complainant to put the complaint in writing and sign it. PESH updated its FOM and now accepts discrimination complaints by letter, e-mail, FAX, phone, or through an authorized worker representative. The updated chapter of their FOM has been published on their website. Additionally, a staff memo was sent informing investigators that PESH no longer requires a signed complaint form from a complainant in order to initiate an investigation.

#### **7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS**

The purpose of the Special Evaluation Study is to evaluate the State Plans' targeting programs. The special study contains two components: an analysis of how the State Plan develops a targeting program, and an analysis of how the State Plan evaluates the effectiveness of its program. The findings of the study can be found in the separate template provided by the National Office.

State Plan adoption of Local Emphasis Programs (LEPs) is not required per CPL 2-0.102A (11/10/99) and as such PESH does not have any LEPs.

## **8. Complaints About State Program Administration (CASPA's)**

There were no CASPA's received during FY 2013.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

PESH does not have a Voluntary Compliance Program.

## **10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM**

During FY 2013, PESH's public sector on-site consultation program conducted a total of 297 visits, three visits shy of their projected 300 visits outlined in the Annual Performance Plan. The percentage of visits with hazards abated within a timely manner was 97.50% for the fiscal year. (MARC report 10-29-13 - MARC #4a)

A total of 11 consultation case files were reviewed: five safety, five health, and one training/assistance (TA). Documentation for the most part was adequate in the case files. Visits were performed in a timely manner and written reports were sent to employers after review by the supervisor.

### **Finding 13-02**

Of the 11 case files reviewed, 100% did not contain a Consultation 33 Form (Rev. 12/96) "Safety and Health Program Assessment Worksheet" in accordance with PESH's Consultation Policies and Procedures Manual (CPPM), Chapter IX.

### **Recommendation 13-02**

Ensure that consultation case files are documented in accordance with PESH's CPPM, Chapter IX.

## **11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAMS (KENTUCKY, PUERTO RICO, AND WASHINGTON)**

N/A

## **12. STATE PLAN ADMINISTRATION**

### **Training:**

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

During FY 2013, PESH conducted compliance assistance activities (TA) within the strategic plan's targeted industries: county level police service, fire service, and healthcare facilities.

- For the county level police service, PESH conducted 10 outreach/TA visits.

- For the fire service, PESH conducted 13 outreach/intervention visits and 35 TA visits.
- Residential nursing care facilities saw PESH conduct three outreach and four TA activities in the nursing care facilities (NAICS – 623110).
- Office of Mental Health Facilities (OMH) (NAICS – 623220) received eight (8) technical assistance activities.
- Staff also attended a two-day Safe Patient handling (SPH) conference as well as a three -day train-the-trainer course. As in the past, the sessions include hands-on demonstrations of state of the art equipment used to minimize or eliminate manual handling. Sessions were also held on developing a SPH program, training on the program, as well as cost-benefit of such programs.

### **Funding:**

Due to a sequestration order from Congress, \$320,800 was cut from the PESH 23(g) State Plan during FY 2013.

### **Staffing** (*including benchmarks, furloughs, hiring freezes, etc.*):

Staffing continues to remain consistent – the total FTE allocated for PESH is 82. PESH currently has 70 FTEs onboard of which 32 fall under enforcement, 13 are under consultation (23(g) public sector-only), and the remaining 25 are managers or administrative staff. During FY 2013, PESH did not experience furloughs or hiring freezes.

### **Integrated Management Information System (IMIS):**

PESH continues to use IMIS data for tracking purposes.

### **State Internal Evaluation Program (SIEP) Report:**

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.

## **IV. Assessment of State Plan Progress in Achieving Annual Performance Goals**

(Source: FY 2013 APP and FY 2013 SOAR)

This section focuses on PESH's progress toward meeting its targeted performance goals. These goals were outlined in PESH's FY 2013 Annual Performance Plan (APP) which

consisted of three committees whose purpose is to select a sector and identify the cause(s) of injuries, and develop strategies to reduce their occurrence and/or seriousness in the sector. FY 2013 was the fourth year of PESH’s current Five-Year Strategic Plan.

**Strategic Goal:** Improve workplace safety and health for all public workers.

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

This was the second year for the Police Protection Strategic Plan Committee. As was the case last year, much of the committee’s efforts were focused on obtaining SH 900 and SH 900.1 data from the various county level police departments.

**Police Service Injury and DART Rates**

Year	2010 (Baseline)	2011	2012	% Change from Baseline
Total Recordable Incident Rate*	16	17	16.3	1.9% Increase
DART Rate*	9.4	9.7	9.7	3.2% Increase

\* Based on SH900.1’s collected by the committee

**Partnership Activity:**

The committee members continued to develop partnerships with the county level police departments by assigning counties to the committee participants based on the geographic region of their district office. Improvements have been seen in their interactions with their police protection employer contacts. In FY 2013 committee participants were able to obtain the 2012 injury and illness data more quickly and with fewer issues than the previous year. They also made significant inroads with New York Police Department (NYPD), the largest participant in this sector, as well as with the NYS Division of Criminal Justice Services (NYSDCJS). These two relationships have the potential for great impact and access due to the sheer number of workers at NYPD, and the ability to disseminate valuable information through the extensive contact network established by NYSDCJS.

**Outreach:**

Of particular note is the impact the PESH TASER Dart Advisory, created by the Police Protection Committee, had on law enforcement training in New York. This advisory was initiated when a participant on this committee encountered a bloodborne pathogen issue, related to TASER Darts, while conducting an inspection at a police department. The committee participant researched this hazard and found that limited to no information had been developed on TASER Darts and the bloodborne pathogen hazards. The committee participant developed the TASER Dart Hazard Advisory based on the information he found during his research. This information and the advisory were presented to the NYS Criminal Justice Services, Office of Public Safety, the agency responsible for the administration of both mandated police and peace officer certified training programs.

**Performance Goal # 2:** Decrease the Injury and Illness Rate by 1.0%/ Year and Improve Accuracy of Injury and Illness Data in the Fire Service industry (NAICS 922160)

The committee worked on data collection and staff training regarding injury and illness trends in the fire service sector as well as hazard identification during inspections. Several committee participants were involved and continue to be involved in the implementation of Code Rule 800.7, Emergency Escape and Self Rescue Ropes, and System Components for Firefighters, a New York State specific regulation.

**Fire Service Injury and DART Rates**

Year	2008 Baseline	2009	2010	2011	2012	% Change from Baseline
Injury Rate*	53.1	44.4	34.3	29.9	21.8	58.9 % Decrease
DART Rate*	51.1	41.9	20.9	28.7	20.0	60.9% Decrease

\* Based on BLS Data

**Partnership Activity:**

This committee continues to work with the Fireman’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 developed the Ropes Rule training video with assistance from New York State Office of Fire Prevention and Control (OFPC).

**Outreach:**

Following the passage of Code Rule 800.7, considerable outreach and technical assistance was provided in an effort to facilitate compliance. This group developed a training video on the Code Rule and the proper use of escape and self-rescue ropes. This Code Rule is now being reassessed for alternative methods of self-rescue from heights in addition to emergency escape ropes; therefore, outreach has been postponed until alternative methods for engineering and personal protective equipment as a means for hazard reduction or elimination have been resolved.

**Performance Goal 3:** Reduce the DART Rate by 1.0% in Residential Nursing Care Facilities (NAICS 623110), Office for People with Development Disabilities (OPWDD) (NAICS 623210), Office of Mental Health (OHM) (NAICS 623220)

The Healthcare Strategic Plan Committee expanded its focus during this five-year phase from only focusing on nursing homes to including residential mental health facilities (NYS Office of Mental Health (OMH)) and residential intellectual and developmental disability facilities (NYS Office for People with Developmental Disabilities (OPWDD)). The goal is to reduce the Lost Work Day rate by 1% per year or 5% over the five years of this phase.

**Residential Nursing Care Facilities (Calendar Year)\***

Measure	2008	2009	2010	2011	2012	% Change from Baseline
TRC	10.7	10.8	10.5	10.6	10.5	1.9 % Decrease
DART	9.0	9.0	9.2	8.1	8.1	10 % Decrease
Lost Time Case Rate	8.7	8.5	8.9	7.8	7.9	9.2% Decrease

\* This data changes annually because many NYS public nursing homes are closing or privatizing;

Therefore, they are removed from the entire database altering the baseline and subsequent years.

TRC- Total recordable Case Rate = # recordable cases X 200,000/Total work hours

DART Rate = # Incidents resulting in days away, restricted or transfer duty x 200,000/Total work hours

Lost Time Care Rate - # cases resulting in days away x 200,000/ Total work hours

Data taken from SH900.1s received by PESH

**Residential Mental Health and Residential Intellectual and  
Developmental Disability (State Fiscal Year)\***

NAICS	Measure	State Fiscal Year 2008-2009	State Fiscal Year 2009-2010	State Fiscal Year 2010-2011	State Fiscal Year 2011-2012	% Change from Baseline
Residential Mental Health (623220)	Incident Rate %**	16.8	17.1	17.0	16.3	4.5 % Decrease
	Lost Time Case Rate % ***	25.1	26.8	27.1	27.4	9.2% Increase
Residential Intellectual and Developmental Disability (623210)	Incident Rate %**	15.7	16.9	17.2	18.4	17.2% Increase
	Lost Time Case Rate % ***	33.4	35.9	35.4	36.5	9.3% Increase

\* Data based on NYS Annual Worker Compensation Report

\*\* Incident Rate = # Incidents x 100/# FTE's (Full Time Equivalents)

\*\*\* Lost Time Case Rate % = # lost time incidents /# of incidents)

Injuries in OPWDD are a mix of workplace violence, resident handling, slip trips and falls, and other causes of injuries. Identifying injuries trends in these facilities is challenging. OPWDD facilities are nearly all small community homes. Collecting hundreds of SH900s and analyzing the data has been very difficult. Identifying prevention strategies has been equally challenging since many of the injuries are related to the specific home. OPWDD has been active in implementing resident handling programs and a number of homes have lifting and repositioning equipment. Staff from OPWDD facilities has regularly attended the SPH conferences. Members of this committee have inspected IRAs across the state ensuring that they have Workplace Violence Prevention Plans. IRAs are providing information regarding the prevention of slips, trips, and falls. It is anticipated that all of these efforts will result in an improvement in their injury and illness rates in the future.



**Office of Mental Health**

<b>NAICS</b>	<b>Measure</b>	<b>State Fiscal Year 2010-2011</b>	<b>State Fiscal Year 2011-2012</b>	<b>% Change from Baseline</b>
Residential Mental Health (623220)	Incident Rate %**	17.0	16.3	4.1% Decrease
	Lost Time Rate	4.6	4.5	2.2% Decrease
	# Lost Work Days****	47,986	43,705	8.9% Decrease

OMH is closing facilities and merging others. It is believed this is resulting in a much higher acuity level in the remaining facilities. The majority of the injuries in OMH are due to workplace violence involving patients toward staff. PESH has a Workplace Violence Prevention regulation which was fully implemented in August 2009. Among other things, this regulation requires employers to prepare a policy statement and written workplace violence prevention program. It also requires employers to conduct risk assessments and implement control measures. Workplace Violence incident forms must be completed and evaluated at least annually. Data from State FY 2010/2011 which was the first full year of implementation shows that the incident rate dropped 4.1%, the Lost Time Rate decreased 2.2% and the number of Lost Work Days decreased 8.9%.

**Partnership Activity:**

Focus continued on building partnerships with nursing homes, acute care facilities, and several organizations affiliated with healthcare. The partnership with Kaleida Health continues and the committee has developed a Safe Patient Handling video which focused on the tools typically available in a Safe Patient Handling environment.

This committee has also reached out to OPWDD and OMH facilities in an effort to work together toward the goal of injury reduction. After initially focusing on recordkeeping, the focus now is on-site assessments. The committee participants continue to work with the NYS Zero Lift Task Force and WNYCOSH in promoting Safe Patient Handling and planning another SPH conference based on feedback from the conference held in 2013.

**V. Other Special Measures of Effectiveness and Areas of Note**

None

## Appendix A – New and Continued Findings and Recommendations

### FY 2013 New York Public Employee Safety and Health (PESH) State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 2012
13-01	<p><i>Inadequate Evidence to Support Violations</i></p> <p>In 23 of the 71 case files (32%) with violations reviewed, worker exposure information was not documented on the OSHA 1b or listed on the field notes.</p>	<p>Ensure that inspection case files are documented in accordance with FOM and all other applicable New York State enforcement policies and procedures.</p>	
13-02	<p><i>Case File Documentation</i></p> <p>Of the 11 case files reviewed, 100% did not contain a Consultation 33 (Rev. 12/96) form “Safety and Health Program Assessment Worksheet” in accordance with PESH’s Consultation Policies and Procedures Manual, Chapter IX.</p>	<p>Ensure that consultation case files are documented in accordance with PESH’s CPPM, Chapter IX.</p>	

## Appendix B – Observations Subject to Continued Monitoring

### FY 2013 New York Public Employee Safety and Health (PESH) State Plan Comprehensive FAME Report

Observation # [FY13-OB-1]	Observation# [FY12-OB-1]	Observation	Federal Monitoring Plan	Current Status
FY13-OB-01		<p><i>Notification to complainant:</i> In seven of the 29 complaint files (24%) reviewed, documentation that the complainant was notified of the results of the inspections, either by letter or phone was missing in the case file.</p>	In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY13-OB-02		<p>In six of the 29 complaint files (20%) reviewed, where the complainant was notified of the results of the inspection, the amount of time it took to respond to the complainant was excessive. Examples of excessive timeliness included; documentation in one case file of 60 days from the closing conference to the time the complainant was notified of the results of the inspection while another case file showed the complainant was notified 90 days after the inspection.</p>	In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY13-OB-03		<p><i>Excessive Abatement Periods</i> Abatement periods established for correction of violations were found to be excessive in 14 of the 71 case files (20%) that had citations issued. Examples of excessive abatement periods included: 30 and/or 60 days for egress violations, 90 days to obtain a material safety data sheet for disinfectants, 45 days for a cracked duplex receptacle cover.</p>	In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY13-OB-04		<p><i>Documentation of Worker Interviews:</i> In 22 of the 109 case files (20%) reviewed it appeared worker interviews were not documented.</p>	In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New

## Appendix C - Status of FY 2012 Findings and Recommendations

### FY 2013 New York Public Employee Safety and Health (PESH) State Plan Comprehensive FAME Report

FY 2013 New York Public Safety & Health (PESH) State Plan Comprehensive FAME Report					
FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status
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 worker to meet the Federal whistleblower standard 29 CFR Part 1977.	The Field Operations Manual (FOM) will be modified to make it clear that oral complaints of discrimination will be accepted from workers. That change will be shared with PESH staff.	10/1/13	PESH updated their FOM and now accepts discrimination complaints by letter, e-mail, FAX, phone, or through an authorized worker representative. The updated chapter of their FOM has been published on their website. Additionally, a staff memo was sent informing investigators that PESH no longer requires a signed complaint form from a complainant in order to initiate an investigation. <b>This item is closed.</b>

**Appendix D**  
**FY 2013 State Activity Mandated Measures (SAMM) Report**  
**FY 2013 Comprehensive FAME Report**

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

<b>U.S. Department of Labor</b>				
<b>Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)</b>				
State: New York			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
<b>1</b>	Average number of work days to initiate complaint inspections	24.73	(Negotiated fixed number for each state) - 30 days serious; 120 days - other than serious	State data taken directly from SAMM report generated through IMIS.
<b>2</b>	Average number of work days to initiate complaint investigations	0	(Negotiated fixed number for each state) - 1	State data taken directly from SAMM report generated through IMIS.
<b>4</b>	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	0	0	State data taken directly from SAMM

**Appendix D**  
**FY 2013 State Activity Mandated Measures (SAMM) Report**  
**FY 2013 Comprehensive FAME Report**

				report generated through IMIS.
<b>9a</b>	Average number of violations per inspection with violations by violation type	4.38	SWR: 2.04	State data taken directly from SAMM report generated through IMIS;
<b>9b</b>	Average number of violations per inspection with violations by violation type	1.11	Other: .88	national data was manually calculated from data pulled from both IMIS and OIS for FY 2011-2013.
<b>11</b>	Percent of total inspections in the public sector	100	(Negotiated fixed number for each state) - 100%	State data taken directly from SAMM report generated through IMIS.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	25	100%	State data taken directly from SAMM report generated through IMIS.
<b>14</b>	Percent of 11c complaints that are meritorious	0	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
<b>16</b>	Average number of calendar days to complete an 11c investigation	88	90 Days	State data taken directly from SAMM report

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**FY 2013 Comprehensive FAME Report**

				generated through IMIS.
<b>17</b>	Planned vs. actual inspections - safety/health	1399/504	(Negotiated fixed number for each state) - 1350/550	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
<b>18a</b>	Average current serious penalty - 1 -25 Employees	a.		Not applicable to state and local government only State Plans.
<b>18b</b>	Average current serious penalty - 26-100 Employees	b.		
<b>18c</b>	Average current serious penalty - 101-250 Employees	c.		
<b>18d</b>	Average current serious penalty - 251+ Employees	d.		
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Employees	e.		
<b>19</b>	Percent of enforcement presence		National Average 1.5%	Not applicable to state and local government only State Plans.
<b>20a</b>	20a) Percent In Compliance – Safety	Safety -	Safety - 29.1	State data taken directly from SAMM

**Appendix D**  
**FY 2013 State Activity Mandated Measures (SAMM) Report**  
**FY 2013 Comprehensive FAME Report**

<b>20b</b>	20b) Percent In Compliance – Health	Health -	Health - 34.1	report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>21</b>	Percent of fatalities responded to in 1 work day	93%	100%	State data is manually pulled directly from IMIS for FY 2013
<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
<b>23a</b>	Average Lapse Time - Safety	37.51	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and
<b>23b</b>	Average Lapse Time - Health	69.66	57.05	



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				federal OSHA for FY 2009-2011.
<b>24</b>	Percent penalty retained			Not applicable to state and local government only State Plans.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.