

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

Wyoming Occupational Safety and Health Administration (Wyoming OSHA)



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

Initial Approval Date: May 3, 1974
Program Date: December 30, 1980
Final Approval Date: June 27, 1985

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I. Executive Summary

A. Summary of the Report

This report assesses the activities of Wyoming OSHA and their progress in resolving outstanding recommendations. During fiscal year (FY) 2013, Wyoming conducted 236 inspections, nine discrimination investigations, and 131 public sector consultation visits. Due to a complex refinery inspection which resulted in a significant case being issued in the first quarter of FY 2014, as well as, the experience level of some of the newer compliance officers, the number of compliance inspections conducted in Wyoming was lower than projected. Wyoming OSHA received one finding in FY 2012 which addressed the development of discrimination case files. Wyoming OSHA conducted training with regard to discrimination; however, deficiencies with regard to the discrimination program continue to exist.

Wyoming OSHA promulgated revised Rules and Regulations for Oil and Gas Well Drilling in January 2013. Wyoming continues to do an excellent job identifying serious hazards, and continues to positively impact the gas and oil industry to bring about an overall change in the industry. However, the project does not consistently document information in the inspection files, or formally develop and evaluate their emphasis programs. Wyoming did not meet its inspection number goals this fiscal year, and were not able to meet their strategic goals this fiscal year.

Based on the on-site audit, as well as a review of the case files, Wyoming OSHA is considered to be At Least As Effective (ALAE) as OSHA.

B. State Plan Introduction

Wyoming OSHA is housed in the Wyoming Department of Workforce Services Agency, under the Office of Workforce Standards and Compliance Division. John Ysebaert, the Administrator of the Office of Workforce Standards and Compliance is the designee. Mike Todd, Deputy Administrator, manages Wyoming OSHA. Wyoming OSHA consists of enforcement, discrimination, compliance assistance, consultation and risk management in both the public and private sectors. Risk Management is 100% funded by the State Plan. Enforcement activities are funded under the 23(g) cooperative agreement. Private sector consultation is funded under the 21(d) cooperative agreement. The main office is located in Cheyenne, Wyoming, with satellite offices in Casper, Gillette, Rock Springs, Worland, Lander and Evanston. The program follows a five-day work week schedule and closely mirrors the federal program. Wyoming has unique Oil and Gas Well Drilling, Servicing and Special Servicing standards.

Although the enforcement program is benchmarked for six safety and two health compliance officers, Wyoming legislators have added one health compliance officer. Additional staff includes one operations manager, one compliance manager, two public sector consultants, one Compliance Assistance Specialist (CAS) and three administrative personnel. The public sector consultant and the CAS position are split among the 21(d) consultants, which allows each consultant to do some work in the public sector and some work in compliance

assistance. The grant and the cooperative agreement appropriately reflect those splits. All compliance assistance work, including the Cowboy Voluntary Protection Program (CVPP), is funded under the 23(g) grant.

C. Data and Methodology

The findings and recommendations in this report are based on the January, 2014, on-site review and the following data sources:

- 2013 State Operations Annual Report (SOAR)
- State Plan Grant Application (2013)
- State Activity Mandated Measures Report (SAMM)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- Minutes from quarterly meetings

The on-site review was conducted the week of January 27, 2014, by five Region VIII representatives. The on-site review focused on a review of the enforcement case files, a review of the discrimination program, a review of the complaint process and a special study focused on targeting.

Enforcement case files were selected using the Fiscal Year 2013 Federal Annual Monitoring and Evaluation (FAME) Guidance *Suggested Procedures for Performing Random Sampling (draft)*. The population of case files evaluated consisted of inspections closed in FY 2013. Forty-eight inspection files were selected. Thirty-nine of these files were safety, nine were health. Five fatality files were selected.

Additionally, seventeen inquiries (phone-and-fax investigations) were reviewed. Interviews of management and staff were conducted.

D. Findings and Recommendations

There are four findings in this report, and six observations. The findings address the lack of documentation and health sampling in case files, an improperly implemented discrimination program, and inadequate documentation of their targeting programs as well as their state internal evaluation program. Recommendations to address these findings include improved documentation within the case files, and of the targeting program as well as following the guidelines in the whistleblower manual.

II. Major New Issues

A significant enforcement case was conducted at Sinclair Wyoming Refining Company, located in Sinclair, Wyoming, beginning on May 13, 2013. On October 21, 2013, this employer received serious, willful and repeat citations totaling \$700,700 in penalties. Wyoming OSHA continues to work to settle this case. Throughout FY 2013, Wyoming OSHA worked with Sinclair Wyoming Refining Company in both enforcement and

observation modes, with management conducting frequent visits to the refinery to address the overall safety culture.

III. Assessment of State Plan Performance

1. ENFORCEMENT

It is the policy of Wyoming OSHA to adopt all federal Occupational Safety and Health Administration standards with no changes. The State Plan also enforces their own unique State Plan standards for Oil and Gas Well Drilling, Servicing and Oil and Gas Special Servicing. By statute, the State Plan is prohibited from adopting more restrictive standards than those used by OSHA.

Wyoming provides effective first instance sanctions and has right of entry into workplaces. Wyoming follows Chapter 3 in The Wyoming Rules of Practice and Procedure (ROPP) for enforcement guidelines in conjunction with the detail provided in the federal Field Operations Manual (FOM). Wyoming did not experience any denial of entries in the 2013 fiscal year.

Wyoming projected 400 inspections in their 2013 grant application and completed 236 inspections. The State Plan attributes this shortfall to a significant amount of time spent by two compliance officers at a refinery, as well as the inexperience of much of their newly hired staff. Eighty-four percent of inspections were safety; sixteen percent of the inspections were health.

The 2013 SAMM table showed a Wyoming inspection lapse time of 95.15 days for safety and 100.94 days for health. Although current national data is not available for this measure, the FY 2011 national averages for lapse times, including state and federal offices, are 43.4 days for safety and 57.05 days for health. Lapse time is the number of working days between the opening conference and citation issue. Compliance officers in Wyoming average 17 hours for a safety inspection and 30 hours for a health inspection.

Forty-eight inspection case files were reviewed on-site for fiscal year 2013. Twenty-eight of the forty-eight inspections reviewed were programmed planned, thirteen were generated by complaints, one was a referral and six were fatality inspections. Thirty inspections were coded as comprehensive, eighteen were partial. Thirty-nine of the forty-eight inspections had citations, and nine had no citations. A union was present at the establishment in only one of the forty-eight inspections.

a) Complaints

Wyoming OSHA addresses un-programmed activity (complaints, referrals, accidents, and catastrophes) in the same manner as OSHA. However, Wyoming has negotiated a complaint response time of 16 days for inspections, due to the potentially long travel distances and one day for inquiries (phone and fax process). Fifty-one of the 236 inspections opened in FY 2013 (or twenty-two percent) were generated due to complaints.

According to the SAMM report for FY 2013, Wyoming OSHA's average response time to initiate complaint inspections was 11.15 days and less than one day to initiate inquiries. Complainants were notified of the inspection results in a timely manner 100% of the time according to the SAMM.

Thirteen complaint inspection case files and seventeen inquiry files were reviewed on site. Inquiry files were addressed informally using a phone and fax method. Six of the inquiry files included the address of the complainant, and the appropriate letters were sent. In the complaint inspection cases, the complaints were addressed in all the cases that were reviewed.

Two of the inquiry files that were reviewed indicated that injuries had occurred to workers, and one of the inquiry files was coded as construction targeting. In these cases, on-site inspections should have been conducted. Additionally, airborne exposure to chemicals was alleged in two of the inquiry files, but, in both cases, the employer did not conduct any sampling to address the airborne exposure issue.

Findings and Recommendations

OB - 1 Two of the inquiry files that were reviewed indicated that injuries had occurred to employees. One inquiry file was coded as construction targeting. Rather than conducting an inquiry, these serious injuries and items addressed by Local Emphasis Programs (LEPs) should have led to inspections as indicated in Chapter 9, Section C of the Field Operations Manual.

OB - 2 Two of the inquiry files indicated that there was potential exposure to airborne contaminants. The employer responses did not include any information that air sampling was conducted.

b) Fatalities

Wyoming investigated ten fatalities in FY 2013. Three of the fatalities occurred in the oil and gas industry, three occurred in trucking, three in general industry, and one in construction. All fatality files that were reviewed were opened within one day of notification of the fatality. Wyoming has access to all Workers Compensation Injury information as well as information from the State Occupational Epidemiologist who works within the Department of Workforce Services. This allows Wyoming OSHA unlimited access to occupational fatality, injury and illness data. The State Epidemiologist has been evaluating trends, data, and patterns throughout different industries, to help the OSHA Division direct its efforts appropriately, as well as to provide information for employers to improve their "safety culture" and reduce fatalities and injuries within their companies and throughout Wyoming.

Of the five fatality inspection files reviewed, four of the five files contained an OSHA-36 and an OSHA-170. Three of the five fatality inspection files indicated that both the Next-of-Kin Involvement Letter and the Next-of-Kin Final Letter were sent.

The narratives and descriptions within the fatality files were well developed and generally very well organized. The findings from the fatality cases appeared to be appropriate.

Findings and Recommendations

OB - 3 One of the five fatality files did not contain an OSHA-36 and an OSHA-170. Two of the five fatalities files did not indicate that the appropriate Next-of-Kin letters were sent.

c) Targeting and Programmed Inspections

The Local Emphasis Programs for FY 2013 were as follows:

- Companies identified through workers compensation as having higher than average injury and illness rates
- Construction - including 1500, 1600 and 1700 Standard Industrial Classifications (SIC)
- Oil and gas well drilling (1381 SIC)
- Oil and gas well servicing (1389 SIC)
- Public sector employers with a positive Experience Modification Rate (EMR)
- Nursing and personal care facilities. (8050 SIC)

As activity continues to increase in the Oil and Gas industry in Wyoming, Wyoming OSHA is continuing to increase the number of inspections of oil and gas drilling and servicing rigs.

Potential health concerns, including noise exposure, chemical exposure and ergonomic hazards were not often assessed in targeted inspections throughout all of the LEPs. With the exception of the Wyoming Employer Notification (WEN) list which is a list of employers with high injury and illness rates, similar to OSHA's SST list, the LEPs do not have specific measurable goals in place.

Wyoming OSHA does not have a formal process in place to evaluate the effectiveness of its targeting programs or LEPs. Success is evaluated on whether serious hazards are identified and abated. Wyoming OSHA uses Workers' Compensation data to conduct before and after analysis of the injury rates of employers that are inspected, and has found that employers who are inspected generally have a decreased recordable and lost time injuries. Records are

retained for a total of six years. The LEPs continue from year to year, unless they are cancelled.

Findings and Recommendation:

13-3 The development of Local Emphasis Programs is not formalized to include the reason for the LEPs, how to target the LEP, how to determine if the LEP is effective and whether to continue the LEP. Wyoming OSHA should formalize their LEPs and conduct regular evaluation of their targeting and LEPs to determine that the LEPs are effective.

d) Citations and Penalties

Throughout FY 2013, Wyoming OSHA issued a total of 666 violations, 27 (4 percent) were repeat, 395 (59 percent) were serious, 27 (4 percent) were unclassified, 214 (32 percent) were other-than-serious, and 3 (0.4 percent) were failure-to-abate. Wyoming OSHA did not issue any willful violations in FY 2013. Wyoming OSHA has, however, issued willful citations in past years, as well as in the beginning of FY 2014. Wyoming OSHA averaged 4.06 percent serious, willful or repeat violations per inspection and 1.37 percent other-than-serious violations for inspections with violations. The national average for serious, willful or repeat violations is 2.04 percent. This demonstrates that Wyoming compliance officers are very skilled in hazard recognition and doubling the national average number of citations is outstanding.

The average, initial serious penalty for FY 2013 was \$2,960.93. The average current serious penalty for inspection for FY 2013 is \$1,937.77. This 35 percent difference between initial and current penalty could indicate reductions given in the informal conferences. According to SAMM Indicator Number 24, Wyoming OSHA retains 62.42 percent of their penalty, whereas OSHA retains 66 percent.

Wyoming OSHA utilizes the Notice of Violations (NOV) prior to the issuance of citations. With few exceptions, the NOV is given to the employer at the time of the first closing conference when the CSHO leaves the site. The NOV becomes part of the case file, and would be reviewed when the case is reviewed for improvements on future NOV's. Wyoming OSHA effectively uses the NOV, and this information is helpful to the employer by enabling abatement prior to the issuance of the citation. This tool is considered a crucial document to ensure effective and timely communication of recognized hazard to the employers and assists the employer in identifying the hazards that need to be abated. Wyoming OSHA also takes the time to discuss plans to abate hazards while conducting the inspection.

Findings and Recommendations

13 - 1 OSHA inspections in Wyoming do not consistently address health hazards. Wyoming OSHA should continue to target industries where there is an increased likelihood

of workers being exposed to potentially harmful levels of chemical and noise and ensure that health hazards are identified, addressed and corrected.

OB - 4 Based on the case files reviewed, Wyoming OSHA generally did not address electrical safe work practices (1910.331 - 1910.335). While many inspection files indicated problems with electrical components, additional information was not in files to address potential hazards related to working safely on energized electrical equipment.

e) Abatement

The State Plan generally assigns appropriate abatement periods, and ensures that abatement is performed. It is rare that follow-up inspections are required, which suggests that employers are working in good faith with Wyoming OSHA to correct hazards identified in a timely manner.

f) Worker and Union Involvement

The State of Wyoming is a "right to work state" and very few workers are represented by unions. During every inspection, CSHOs are required to have employers fill out the "Employer Contact Sheet" which documents union presence and participation. Of the 48 files reviewed on site, only one establishment had workers represented by a union, and in that case the union representative participated in the inspection.

Worker interviews were appropriately documented in 28 of the 48 files reviewed. In some cases, workers were not interviewed due to a language barrier, or because the workers were not available to talk. In more complicated cases, such as fatalities, worker interviews were recorded.

Findings and Recommendations

OB - 5 Wyoming OSHA is not consistently conducting worker interviews. Some case files indicated that workers were not interviewed. In some cases, workers were not interviewed due to a language barrier, or because the workers were not willing to be interviewed.

2. REVIEW PROCEDURES

a) Informal Conferences

The State Plan recommends that a letter of contest be submitted to Wyoming OSHA within 15 working days after the receipt of citations. According to the Rules of Practice and Procedures (ROPP), the State Plan has unlimited time to informally settle cases; therefore, informal conference are not routinely scheduled within the 15 working days. Wyoming OSHA does not forward the letter of contest for litigation to the Attorney General's Office immediately upon receipt, but continues to work informally with each employer to settle the

case until there is no forward progress or there is a lack of good faith to resolve issues. At the point where no progress is being made, the letter of contest is officially filed and the case is turned over to the state Attorney General's Office for formal settlement or litigation.

Of the 38 inspection files that were reviewed on site, 25 requested informal conferences. Twenty-two of the 25 were filed in a timely fashion.

The percent penalty retained in FY 2013 was 62.42%. Whether an employer receives a penalty reduction and the amount of that reduction is based upon the abatement, the development of safety and health programs and additional training the employer is willing to provide. Eighty-eight percent of the inspection files audited with informal conference contained the reason for the penalty reduction as well as the amount of the penalty reduction.

Most of the enforcement work conducted by Wyoming OSHA does not involve the use of solicitors.

b) Formal Review of Citations

Because of the unlimited time to settle a case informally, few cases go to litigation. In FY 2013, no cases went to litigation.

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

a) Standards Adoption

The standards adoption process in Wyoming begins once the State Plan is notified electronically that a new federal standard has been promulgated. Once this occurs, Wyoming OSHA sends a courtesy memo to the governor explaining that OSHA is promulgating a new rule. The governor then has ten days to reply. After the ten days have passed, the standard is filed with the Legislative Service Office and the Secretary of State where a 45-day period for public comments begins. After the forty-five days have passed, the Wyoming OSHA Commission meets to vote on the adoption of the standard. Once the commission approves the standard, it is then sent to the Governor's office for his signature. The Governor has 75 days to accept the federally promulgated standard, and it becomes law in the State of Wyoming.

During FY 2013, Wyoming adopted the following federal standard changes:

Standard, 1910, 15, 17, 18 & 26 Updating OSHA Standards Based on National Consensus Standards; Head Protection - Wyoming adopted the change with an anticipated adoption date of 9/4/2013.

Standard, 1926 - Direct Final Rule - Cranes and Derricks in Construction: Underground Construction and Demolition - The State Plan adopted this with an anticipated adoption date of 12/11/2013.

Standard, 1910, 1910.102, 1911 Revising Standard Referenced in the Acetylene Standard -
The State Plan promulgated this standard on 10/23/12 and it became effective on 1/8/13.

The Wyoming Rules and Regulations for Oil and Gas Well Drilling were revised in the second quarter of FY 2013.

Findings and Recommendations

OB - 6 Wyoming OSHA does not update the Automated Tracking System when regulations specific to the State of Wyoming are promulgated or changed.

b) OSHA/State Plan Initiated Changes

The following represent federal program initiated changes during FY 2013 and the State Plan's corresponding action:

CPL 02-03-004 Section 11(c) Appeals Program - The State Plan adopted this with an anticipated adoption date of 3/12/2013.

CPL 02-01-054 Inspection and Citation Guidance for Roadway and Highway Construction Workzones - The State Plan adopted this CPL with an anticipated adoption date of 4/17/2013.

CPL 02-13-01 Site Specific Targeting 2012 - The State Plan adopted the change, but not the identical CPL due to a different targeting system using their Workers' Compensation System.

CPL 03-00-017 National Emphasis Program Occupational Exposure to Isocyanates - The State Plan adopted this CPL with anticipated adoption date of 10/1/2013.

CPL 02-00-155 Federal Program Change Memo for OSHA Instruction CPL 02-00-155 - The State Plan adopted this with an anticipated adoption date of 1/1/2014.

CPL Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification - The State Plan did not adopt this as there is no maritime activity in Wyoming.

4. VARIANCES

There were no new variances granted in Wyoming during this fiscal year.

5. PUBLIC EMPLOYEE PROGRAM

According to the most recent data available (2012), approximately 23 percent of workers in Wyoming work in the public sector. Wyoming projected 65 inspections in the public sector for FY 2013, and completed eight. This is under four percent of the total inspections. At this

time, the State Plan does not assess monetary penalties to public sector employers, but is considering this as an option for the future.

6. DISCRIMINATION PROGRAM

The audit was conducted by an on-site visit on January 27 to 30, 2014, and consisted of a review of the Investigative Case Files, Policies and Procedures, and Investigation Results.

The audit involved a review of screening files and investigative case files from FY 2013. The review included nine investigative case files and one administratively closed file. Wyoming OSHA has assigned one compliance officer as the primary investigator for all discrimination complaints and has not developed their own Whistleblower Investigations Manual, rather choosing to follow the instructions in the federal Whistleblower Investigations Manual.

The following table is a summary of discrimination investigations during FY 2013:

Disposition	Totals
Total Cases from FY 2013	9
Cases completed in FY 2013	9
Case completed timely	25%
~Withdrawn	2
~Dismissed	4
~Merit	0
~Settled	3
~Settled other	0
~Litigated	0
Administratively Closed	1
Investigator on Staff (collateral duty)	1

Findings and Recommendations:

13 - 2 Wyoming OSHA does not consistently follow the established guidelines found in the Whistleblower Investigations Manual throughout the screening, development and disposition of a discrimination case. Wyoming OSHA should follow the instructions in each of the chapters outlined in the Whistleblower Investigations Manual throughout the entire discrimination process.

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

Development of Targeting Programs

Wyoming OSHA targets both construction and general industry for inspection based on their workers compensation data. Wyoming has access to Workers' Compensation data and uses this data to focus some of their inspection efforts. There is no written policy in place that provides guidance on how to develop a targeting program. The State Plan did not adopt CPL 04-00-001 *Procedures for Approvals of Local Emphasis Programs*.

The LEPs that are in place are Lumber and Wood Products, Trucking and Warehousing,

Construction, Nursing and Personal Care Facilities, Oil Drilling, Oil Servicing, and Workers' Compensation Information.

8. CASPAs

There were no CASPAs filed against the State Plan this fiscal year.

9. VOLUNTARY COMPLIANCE PROGRAM

Wyoming uses one full time equivalent (FTE) position that is divided among their 13 consultants for Compliance Assistance Specialist (CAS) work. This work involves providing training and outreach to employer groups and workers. For FY 2013, 37 outreach training seminars and presentations were conducted, reaching a total of 797 attendees. The Division's education and training efforts are comprised of a 10- or 30-hour course covering general industry standards or construction industry standards, as well as construction safety courses specifically targeting excavation, asbestos removal, confined space, scaffolding, residential fall protection, the new crane standards, oil and gas drilling and servicing rules, OSHA 300 recordkeeping classes, and Global Harmonization System (GHS) training classes.

The Consultation program sponsored a highly successful annual Department of Workforce Services Safety Award Conference in June, with safety awards presented to state businesses with outstanding safety and health programs. In FY 2013, a new collaboration of the OSHA Safety Awards Conference, the Wyoming Workforce Development Council, the Wyoming Oil and Gas Industry Safety Alliance (WOGISA), Western Wyoming Community College and other private industry members sponsored a two-day annual "Wyoming Safety and Workforce Summit." During this Summit, employers and workers had the opportunity to hear from safety and workforce development experts from across the country regarding the importance of education, work ethic, customer service, health care, safety strategies, and developing a safety culture in the work environment. The two-day conference featured four keynote speakers, ten award categories, 47 safety and business related conference exhibitors and 55 safety and business related seminars, providing an important educational and networking opportunity for approximately 450 attendees.

10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

Public and private sector consultation and compliance assistance are provided by the 21(d) consultation group, with funding from the 23(g) grant. The Consultation program is benchmarked for four safety and two health consultants. Seven additional consultants were approved and funded through state legislation to support the CAS and public sector programs. Wyoming projected 50 public sector consultation visits for FY 2013, and completed 131 visits. The increased number of public sector consultation visits is due, in part, to the additional consultation staff listed above. One hundred and twenty-seven of these

visits were initial visits; eight were follow-ups. Seventy-one visits addressed both safety and health. Thirty visits addressed only safety; thirty visits addressed only health. One imminent hazard was found and addressed during a safety visit.

11. STATE PLAN ADMINISTRATION

- *Training*

Wyoming conducts "in-house" initial training for new CSHOs during the first year of employment. This training consists of both classroom training (approximately nine weeks) and "on-the-job" training. The classroom training is conducted by the administrator, the manager and 21(d) consultants (for technical issues). Presentations shared by the OSHA Training Institute (OTI) have been incorporated into the initial training. On-the-job training is provided by experienced compliance officers. Data-entry training is done by the compliance supervisor. The State Plan also conducts "in-house" training for their staff when they gather in one location for a week-long meeting twice a year. During that week, one or two issues are identified and training is conducted.

Wyoming does not typically send their compliance officers to the OSHA Training Institute (OTI) except for specialized training such as the Process Safety Management classes.

The following is a breakout of the training that Wyoming compliance officers/consultants attended in FY 2013:

Webinars:

OTI Webinar #0061 - State Plan Changes

OTI Webinar #0066 - Standards and Citation Policy for Roadway and Work Zone

OTI Webinar #0068 - Documenting Heat Stress Violations

OTI Webinar #0069 - Recognizing Failures in Machine Safeguarding Systems

OTI Webinar #0070 - OSHA Logs - How to Use Them

OTI Webinar #0071 - Isocyanates NEP

OTI Webinar #0072 - Unique Hazards in Grain Handling

OTI Webinar #0073 - Navigating BLS Site

OTI - Chicago:

OTI Training in Chicago - #3430 Advanced PSM (1 CSHO)

OTI Training in Chicago - Discrimination Training (1 CSHO)

In-House Training for New Hires:

Oil & Gas Well Drilling, Well Servicing, and Special Servicing

Conferences:

OSHSPA Conference - January 2013 (Wyoming OSHA Management Team)

VPP Conference - May 2013 (Wyoming OSHA Consultation Manager & VPP Consultant)

- *Funding*

The federal 23 (g) grant for Wyoming OSHA for FY 2013 was \$545,800 which the State Plan matched. Wyoming continued to overmatch their grant by \$692,357 in order to maintain the integrity of the program. The total funding in FY 2013, including federal and state monies, was \$1,783,957. The State Plan has no funding problems at this time.

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

Wyoming OSHA historically has had serious issues with retention of compliance officers. Throughout FY 2013, Wyoming OSHA maintained a compliance staff of six safety compliance officers and three health compliance officers; their federal benchmark is six safety compliance officers and two health compliance officers. Additionally, Wyoming OSHA has a compliance manager and administrative staff.

- *Information Management (including use of IMIS reports for State Plan management)*

The State Plan is using IMIS reports and is proactively entering data and making corrections as needed. Wyoming plans to participate in the rollout of the OIS in their enforcement program when it is ready to implement.

- *State Internal Evaluation Program (SIEP) Report*

Wyoming OSHA continually evaluates their own progress using NCR reports, case file reviews, and worker training. They have developed an audit worksheet that they use in their inspection files to ensure that the appropriate information is included in the file. However, Wyoming OSHA has not formalized the State Internal Evaluation Process and does not generate a State Internal Evaluation Program Report.

Findings and Recommendations

13 - 4 Wyoming OSHA has not formalized their State Internal Evaluation Program Report. Wyoming OSHA should develop and implement a formal State Internal Evaluation

Program.

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

Fiscal Year 2013 marked the fifth year of Wyoming's five-year Strategic Management Plan (2009 - 2013).

Strategic Goal #1 - By 2013, improve workplace safety and health for all Wyoming workers by reducing workplace fatalities.

Annual Performance Goal #1 - Reduce fatalities by minimizing occupational hazards, promoting safety and health cultures, and maximizing Workforce Services, OSHA Division effectiveness and efficiency.

In FY 2013, Wyoming investigated 10 workplace fatalities. Wyoming compares their fatalities to a baseline of 10.4 fatalities which was calculated as the average annual fatalities between the fiscal years of 2004 - 2008. FY 2013 had the highest number of fatalities in the past five fiscal years. The total number of covered, work-related fatalities from FY 2009 to FY 2013 was 33. This yields an annual fatality rate for those years of 6.6, which, when compared to the baseline of 10.4 shows an overall decline in workplace fatalities of 36.5 percent.

Strategic Goal #2 - Reduce injuries and illnesses (Workers' Compensation claims) by 10 percent (over five years) by focusing enforcement on workplaces identified through the Workers' Safety Compensation Division (WSCD) data and by conducting consultation visits.

Annual Performance Goal #2 - Reduce injuries and illnesses (Workers' Compensation claims) by 2 percent by focusing enforcement on workplaces identified through Workers' Safety and Compensation Division (WSCD) data and by conducting consultation visits.

Wyoming OSHA has access to Workers' Compensation data, and analyzes data from the companies that it inspects to determine if there was a change in both the number of claims and the cost of claims from the 12 months prior to the inspection to the 12 months after the inspection.

At the beginning of FY 2013, the Wyoming Workers Compensation Division rolled out an updated, computerized data collection system which they had been developing over the prior five years. An unfortunate glitch in this roll-out was that the Wyoming OSHA Division could no longer export the pre- and post-data to determine if the second annual performance goal was met. A review of the previous four years, however, showed excellent results with employment up, claims down, and decreased costs. There were a total of 1,192 companies analyzed during the five-year strategic plan period, and the inspected companies' employment increased 2.1% to 194,906. Claims decreases from 12,228 to 11,394, a reduction of 834 (7%). The cost of claims decreased from \$46,436,667 to \$35,818,864 which represents a 22.9% reduction. The average cost per claim in the pre-inspection period

was \$3,798 compared to the 17.2% decrease in the post period (\$3,144 per claim), which is a sizable reduction in injury costs.

In the course of compliance inspections and consultation visits, the inspector or consultant presents a cost benefit analysis to the employer. In this analysis, the employer is shown their number of claims reported to Wyoming Workers' Compensation, the body part injured, the cost of these claims, and the amount of money held in reserve for future medical treatment of these claims. Lastly, the employer is shown current and past premium amounts, which is compared to the amount the employer would have paid to the highest possible premium assessment.

Strategic Goal #3 - By 2013, promote a safety and health culture in Wyoming through a strong and effective consultation and cooperative program.

Annual Performance Goal #3 - Increase new participants in the VPP and SHARP Recognition Programs by four percent by developing relationships with companies applying safety and health best practices.

In FY 2013, Wyoming OSHA did not have any new CVPP participants. Two employers withdrew from the CVPP program. Interviews with consultation management indicated that a more thorough review process was implemented to ensure those in CVPP met all CVPP requirements, and that Wyoming is working diligently to ensure that any participants in the CVPP meet the appropriate criteria.

V. Other Special Measures of Effectiveness and Areas of Note

None.

Appendix A – New and Continued Findings and Recommendations
 FY 2013 Wyoming State Plan Comprehensive FAME Report

Rec #	Findings	Recommendations	FY 2012
13-1	OSHA inspections in Wyoming do not consistently address health hazards.	Wyoming OSHA should continue to target industries where there is an increased likelihood of workers being exposed to potentially harmful levels of chemical and noise and ensure that health hazards are identified, addressed and corrected.	
13-2	Wyoming OSHA does not consistently follow the established guidelines found in the Whistleblower Investigations Manual throughout the screening, development and disposition of a discrimination case.	Wyoming OSHA should follow the instructions in each of the chapters outlined in the Whistleblower Investigations Manual throughout the entire discrimination process.	
13-3	The development of Local Emphasis Programs is not formalized to include the reason for the LEPs, how to target the LEP, how to determine if the LEP is effective and whether to continue the LEP.	Wyoming OSHA should formalize their LEPs and conduct regular evaluation of their targeting and LEPs to determine that the LEPs are effective.	
13-4	Wyoming OSHA has not formalized their State Internal Evaluation Program Report.	Wyoming OSHA should formalize their State Internal Evaluation Program.	

Appendix B – Observations Subject to Continued Monitoring
FY 2013 Wyoming State Plan Comprehensive FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 2012
OB - 1	Two of the inquiry files that were reviewed indicated that injuries had occurred to workers. One inquiry file was coded as construction targeting. Rather than conducting an inquiry, these serious injuries and items addressed by Local Emphasis Programs (LEPs) should have led to inspections as indicated in Chapter 9, Section C of the Field Operations Manual.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2014.	
OB-2	Two of the inquiry files indicated that there was potential exposure to airborne contaminants. The employer responses did not include any information that air sampling was conducted	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area and will discuss during quarterly meetings throughout FY 2014.	
OB-3	One of the five fatality files did not contain an OSHA-36 and an OSHA-170. Two of the five fatalities files did not indicate that the appropriate Next-of-Kin letters were sent.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area and will discuss during quarterly meetings throughout FY 2014.	
OB-4	Based on the case files reviewed, Wyoming OSHA generally did not address electrical safe work practices (1910.331 - 1910.335). many inspection files indicated problems with electrical components, additional information was not in files to address potential hazards related to working safely on energized electrical equipment	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area and will discuss during quarterly meetings throughout FY 2014.	
OB-5	Wyoming OSHA is not consistently conducting worker interviews. Some case files indicated that workers were not interviewed. In some cases, workers were not interviewed due to a language barrier, or because the workers were not willing to be interviewed.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area and will discuss during quarterly meetings throughout FY 2014.	
OB - 6	Wyoming OSHA does not update the Automated Tracking System when regulations specific to the State of Wyoming are promulgated or changed.	The OSHA Regional Office will continue to effectively monitor the State Plan's performance in this area and will discuss during quarterly meetings throughout FY 2014.	

Appendix C – Status of FY 2012 Findings and Recommendations
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FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status
12-1	Discrimination: Some Whistleblower case files were not fully developed as reflected by the reports. Wyoming has asked that OSHA come up and help train their staff on 11c procedures.	Continue improving the discrimination program by having OSHA come and train staff on 11(c) procedures.	One compliance officer was sent to OTI for the Whistleblower Course.	December 2012	Training was completed, but significant issues with regard to the discrimination complaints were encountered.

Appendix D - FY 2013 State Activity Mandated Measures (SAMM) Report

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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.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Wyoming			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	11.15	(Negotiated fixed number for each state) - 16	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	0.76	(Negotiated fixed number for each state) - 1	State data taken directly from SAMM report generated through IMIS.
4	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.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	4.06	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	1.37	Other: .88	

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11	Percent of total inspections in the public sector	3.46	(Negotiated fixed number for each state) - 5%	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	0	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	50	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	25.75	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	193/38	(Negotiated fixed number for each state) - 340/60	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 - 25 Employees	a. 753.75		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26- 100 Employees	b. 1878.25		
18c	Average current serious penalty - 101-250 Employees	c. 3769.26		
18d	Average current serious penalty - 251+ Employees	d. 2523.25		
18e	Average current serious penalty - Total 1 - 250+ Employees	e. 1937.79		
19	Percent of enforcement presence	1.42%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 14.96	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available.
20b	20b) Percent In Compliance –	Health - 16.67	Health - 34.1	Reference data is based on the FY 2011 national average, which draws from the collective

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	Health			experience of State Plans and federal OSHA for FY 2009-2011.
21	Percent of fatalities responded to in 1 work day	70%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	95.15	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 federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	100.94	57.05	
24	Percent penalty retained	62.42	66	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 federal OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.