

**ENHANCED FEDERAL ANNUAL MONITORING
EVALUATION (FAME)
REPORT OF THE
NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

DESIGNATED STATE AGENCY:

**NORTH CAROLINA DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

PERIOD COVERED BY THIS REPORT:

October 1, 2008 - September 30, 2009

**NORTH CAROLINA STATE PLAN APPROVED: January 26, 1973
18(e) FINAL APPROVAL RECEIVED: December 10, 1996**

REPORT PREPARED BY:

**U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
REGION IV, ATLANTA**

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I. EXECUTIVE SUMMARY

A. Summary of the Report

This report assessed the North Carolina Department of Labor, Occupational Safety and Health State Plan's (OSHNC) progress towards achieving the performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan and reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009.

North Carolina has made significant progress toward the accomplishment of each of its established goals and completed the promulgation of a crane and derrick standard, which became effective on October 1, 2009. However, during the comprehensive monitoring review, twelve recommendations were made to North Carolina to enhance the performance of the State Program. These recommendations address: procedures to improve case file documentation; procedures to improve communication with next-of-kin; improved written correspondence to complainants; procedures for review of inspection data; improved violation classification and penalty policies and practices; and procedures related to the discrimination program.

North Carolina conducted 5,180 inspections in FY 2009. Problems identified in the report include:

- Supporting documentation (photos, interview statement) is purged from case files when they are closed. Purging of case files limits the state's ability to conduct a complete review of a company's history and of the documentation needed to properly investigate future violations.
- For complaints handled by letter, complainants received insufficient information regarding the results of the investigation of their complaints.
- Victim's families should receive more complete information on the State's fatality investigation.
- Case files do not always contain complete information on hazards or injury/illness data from the 300 logs.
- Case file data is not being kept up-to-date; case files are not closed and a few cases were beyond the 6 month period without citations having been issued.
- Violations are misclassified and willful violations were not cited. More follow-up visits should be conducted.
- State penalty calculation and adjustment policies result in lower penalties for serious violations.
- Review of discrimination case files found that complaints are not accepted unless filed in writing, interviews are conducted by phone, and the results of closing conferences and settlements are not documented.

B. Background on the Program and Methodology

The North Carolina Occupational Safety and Health State Plan (OSHNC) received final approval under Section 18(e) of the OSH Act on December 10, 1996. The official designated as responsible for administering the program under the Occupational Safety and Health Act of North Carolina is the Commissioner of Labor, who, as a constitutional officer, is an elected official. The Commissioner of Labor currently and during the period covered by this evaluation is Cherie K. Berry. Within the NC Department of Labor, the Occupational Safety and Health Division has responsibility for carrying out the requirements of the State Plan. Allen McNeely serves as Deputy Commissioner/Director of the Occupational Safety and Health Division and Kevin Beauregard serves as Assistant Deputy Commissioner/Assistant Director of the OSH Division.

The Occupational Safety and Health Division is organized into the following operating units: East and West Compliance Bureaus; Bureau of Education, Training, and Technical Assistance; Bureau of Consultative Services; Bureau of Planning, Statistics and Information Management; and the Agricultural Safety and Health Bureau. The main office and a district office are located in Raleigh, with four additional offices located in Asheville, Charlotte, Winston-Salem, and Wilmington. There are a total of 213.5 positions funded under the 23(g) grant, with 100.5 of those positions being 100% state funded. This includes 64 safety compliance officers and 50 health compliance officers assigned to district offices throughout the State. Additional safety and health professionals work in Education, Training, and Technical Assistance with responsibilities related to training, development of outreach materials and standards.

Employee protection from discrimination related to occupational safety and health is administered by the Employment Discrimination Bureau, which falls under the Deputy Commissioner for Standards and Inspections, in the North Carolina Department of Labor. This Bureau covers several types of employment-related discrimination in addition to discrimination that falls under jurisdiction of the State Plan.

Private sector on-site consultative services are provided through a 21(d) grant with the North Carolina Department of Labor. There are 31 positions funded under the 21(d) grant, including consultants, administrative staff, and managerial employees. Three of the 21(d) personnel are 100% state funded. Public sector 23(g) grant consultative services, enforcement, and compliance assistance activities, are carried out by the same staff, following the same procedures, with very few exceptions, as the private sector. North Carolina's Carolina Star Program organizationally falls within the Bureau of Consultative Services. However, it falls under the 23(g) grant.

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2008 through September 30, 2009. The North Carolina Department of Labor, Occupational Safety and Health Division, administers the program under the direction of Cherie K. Berry, Commissioner of Labor, and Allen McNeely, Director of the Occupational Safety and Health Division. The report is based on the results of an on-site monitoring visit, OSHNC's State Office Annual Report (SOAR) for FY 2009, as well as the State Activity Mandated Measures (SAMM) Report and State Indicator Report (SIR)

reports ending September 30, 2009. On-site monitoring for this evaluation included 158 case file reviews and interviews of OSHNC staff. Information obtained during routine monitoring of the North Carolina program by federal OSHA's Regional and Raleigh Area Office was also used as a basis for this evaluation. Additionally, during this process stakeholder interviews were conducted with representatives from industry groups, labor unions, and professional organizations. Overall these stakeholders voiced confidence in OSHNC's ability to perform its occupational safety and health mandated activities.

C. Recommendations

Recommendation 1: North Carolina should revise their records retention policy with respect to OSHNC inspection case file documentation.

Recommendation 2: North Carolina should assure that written responses to complainants following investigation of complaints include clear and informative responses to their allegations. (The state has responded to this recommendation by submitting changes to their Field Operations Manual which satisfactorily address this issue.)

Recommendation 3: North Carolina should revise the letter sent to the next of kin at the close of the investigation to improve its clarity and include a description of the findings. (The state has submitted revised letters for the family of deceased workers which satisfactorily address this issue.)

Recommendation 4: North Carolina should assure that each case file includes documentation of the company's injury and illness experiences, safety and health programs, and a description of the processes inspected.

Recommendation 5: North Carolina should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice.

Recommendation 6: North Carolina should monitor the results of its recently revised penalty calculation procedures and its penalty reduction policies to assure that penalties are appropriate for the violations cited. The State should also review its practices on the citing of willful violations and conducting follow-up inspections.

Recommendation 7: North Carolina should review the status of all inspections on the (IMIS) Open Inspections Report and take any needed action to assure that activities related to the case have been taken and correctly entered into IMIS. In addition, procedures for routine review of data should be revised to take into account changes in staffing so that all IMIS data is subject to regular review. (The state has initiated a review of all open cases, and reports associated with previous supervisors have been assigned to current personnel for resolution.)

Recommendation 8: North Carolina should review and revise its debt collection procedures to assure appropriate collection actions, recording of information, and timely closing of cases

The following recommendations relate to North Carolina's retaliatory discrimination program:

Recommendation 9A: North Carolina should review their retaliatory discrimination laws and procedures and discontinue the practice of requiring that safety and health discrimination complaints be submitted in writing. Complaints should be docketed on the date that the complainant contacts the Employment Discrimination Bureau (EDB) and provides information establishing a *prima facie* case.

Recommendation 9B: North Carolina discrimination investigators should conduct interviews in person when possible to assure that the quality of EDB investigations is not negatively impacted by conducting interviews by telephone. (North Carolina OSHNC management stated that they were not made aware of budgetary reasons for this practice and they have not been asked for additional travel funds. They have discussed this issue with the EDB Administrator and agreed that interviews will be conducted in person when it will promote the quality of the investigation.)

Recommendation 9C: North Carolina should assure that safety and health discrimination files include details about the closing conference.

Recommendation 9D: North Carolina should review its settlement policy for safety and health discrimination cases and consider adding criteria consistent with current federal OSHA guidelines.

II. MAJOR NEW ISSUES

North Carolina began a new five-year performance plan in fiscal year 2009, with some goals continued from the prior performance plan, but updated. The new performance plan is streamlined, more results-oriented, and reflects what they have learned from their long experience in using strategic planning to achieve their overall mission of reducing injuries, illnesses, and fatalities.

The North Carolina legislature passed a law effective October 1, 2009, requiring increased penalties for violations where workers under the age of 18 are exposed. This is expected to impact a very low percentage of citations issued.

In fiscal year 2009, there was media coverage from a North Carolina media outlet regarding OSHA's enforcement of injury and illness recordkeeping regulation, with a focus on the food processing industry. The media coverage highlighted alleged deficiencies with federal OSHA, as much as North Carolina, and led to national interest in the issue. North Carolina has been conducting inspections in this industry through their high hazard targeting procedures and has historically issued a large number of citations in poultry and pork manufacturing establishments. In October 2008, in response to the continuing above-average injury and illness rates, the state initiated a performance goal to reduce injuries and illnesses in food processing. According to procedures implemented under this plan, inspections will include comprehensive recordkeeping reviews. North Carolina had adopted the federal recordkeeping national emphasis program.

In response to the new federal OSHA Field Operations Manual (FOM), North Carolina conducted a detailed review of their Field Operations Manual. North Carolina had not adopted the Field Inspection Reference Manual (FIRM) and had retained most procedures from the former federal FOM. North Carolina makes revisions to their operations manual on a regular basis and made some changes in response to the federal FOM. The State provided a comparison chart to explain where their procedures differ from those of federal OSHA. Differences between federal OSHA and North Carolina procedures are described in this report where they are relevant to understanding differences in enforcement data.

III. ASSESSMENT OF STATE PERFORMANCE

A. Assessment of State Progress in Achieving Annual Performance Goals

North Carolina had good results with previous strategic plans developed to meet their overall outcome goals of reducing fatalities, injuries and illnesses. Fiscal Year 2009 was the first year of North Carolina's new five-year strategic plan, as described in the specific goals below. The state closely tracks data related to each area of emphasis. Available data and activities indicate that the state is making very good progress on these goals and met annual activity goals for numbers of inspections and consultation visits. Delays in filing vacant positions and other cost saving measures are reflected in the lower number of persons trained.

Goal 1.1: Reduce Construction Industry Fatality Rate Statewide by 5% by 2013.

This strategic area is continued from North Carolina's previous strategic management plans. Processes to decrease fatalities in construction include establishing a Special Emphasis Program, Operational Procedures Notice 123J, for counties in the state that have higher fatality rates or high levels of construction activity. The emphasis program was implemented to enable the state to better focus their enforcement, consultative and training resources, and to have a means to track the numbers and results of these activities. The state saw a reduction in the number of construction fatalities from 17 in 2008 to 10 in 2009. To factor in the effect of changes in levels of construction activity, the rate of construction fatalities is also measured. For 2009, the rate of fatalities was .00400, compared to the baseline rate of .01020.

Outreach and training of Hispanic construction workers has been an essential component of North Carolina's strategy to meet this goal. The state has expended a great deal of resources in this area, including bringing construction safety seminars conducted in the Spanish language to construction sites and making most publications readily available in Spanish. Hispanic worker fatalities have dropped from 12 in 2002 to 7 in 2009.

North Carolina has developed a Occupational Fatality Investigation Review (OFIR) report to track a variety of factors associated with fatalities each year. The report is used to identify trends and make adjustments in strategies for preventing fatalities. Although North Carolina does not participate in the federal Immigrant Language Questionnaire (IMMLANG) system to track

Hispanic fatalities, they use the OFIR report to capture the ethnic background of accident victims so that appropriate outreach programs can be developed.

Goal 1.2: Decrease fatality rate in logging and arborist activity by 5% by 2013.

North Carolina has had an emphasis program aimed at reducing fatalities in this industry since 1994, and their established educational, outreach, and enforcement programs have been successful. North Carolina's historically close associations with industry groups were precursors to more recent alliances. In 2009, there were two fatalities in logging and arborists industries, compared to the baseline of four.

Goal 2.1: Reduce the injury and illness rate in sawmills, veneer, manufactured home and other wood products, furniture and related products manufacturing (NAICS 321) by 15% by 2013.

North Carolina is using enforcement, consultation, and training activities to reduce injuries and illnesses in this industry. The 2008 days away restricted and transferred rate in this industry was 2.8 compared to a baseline rate of 3.3. The state conducted 126 inspections and 91 consultation visits in NAICS 321 in fiscal year 2009. A Special Emphasis Program, Operational Procedures Notice 133D, was developed related to this goal.

Goal 2.2: Reduce the days away, restricted, or transferred (DART) rates in long-term care facilities by 15% by 2013.

This is another goal that has been carried over from previous strategic plans, due to the continuing high DART rate in this industry. The state has procedures in their operations manual for addressing ergonomic hazards during inspections. They also place an emphasis on training, in order to reduce hazards to long-term care employees. Procedures for NC's Special Emphasis Program for activities under this goal are contained in Operational Procedures Notice 132B.

Goal 2.3: Conduct emphasis inspections, training, and consultation activity in establishments where employees might be exposed to health hazards such as lead, silica, asbestos, hexavalent chromium and isocyanates.

North Carolina established this goal in order to focus program resources on industrial hygiene activities and to reduce employee exposure to known health hazards. In addition to tracking inspections, consultation visits and training activities related to these health hazards, the state also records the numbers and results of related sampling. Procedures for NC's Special Emphasis Program related to this goal are contained in North Carolina's Operational Procedures Notice 135C.

Goal 2.4: Reduce the injury and illness rate (DART) in establishments in food manufacturing (NAICS 311) by 12% by 2013.

This is a new goal developed with the new five-year strategic plan, in response to the relatively high DART rate in this industry. Fiscal year 2009 was a developmental year for this goal, and directed activities began in fiscal year 2010. A Special Emphasis Program, described in Operational Procedures Notice 140 was developed in 2009 and provides guidance to compliance officers for inspections in food manufacturing. These inspections will include specific reviews of known issues in the industry, such as injury and illness recordkeeping, process safety management, confined dust, and ergonomics.

Goal 2.5: Develop/sustain partnership and alliances supporting OSHNC mission.

North Carolina adopted procedures similar to those of federal OSHA for partnerships and alliances. North Carolina uses these programs as tools to enhance efforts related to specific strategic goals and objectives. They limit the number of construction partnerships due to the program resources required to manage them. In fiscal year 2009, North Carolina had 4 partnerships and 12 alliances. Additional information about the state's alliances and partnerships is included later in this report.

B. Assessment of State Performance on Mandated and Other Related Activities

Enforcement Program

For this evaluation, a total of 138 inspection case files, plus twenty complaint investigation files were reviewed. All fatality investigation files for fiscal year 2009 were reviewed and, in addition, files were randomly selected for review from the following categories: programmed general industry safety, programmed general industry health, programmed construction safety, programmed construction health, complaint inspections, and complaint investigations. This was a small percentage of the 5,180 inspections conducted in 2009, but is believed to provide an accurate picture of the enforcement program throughout the state, when coupled with interviews, a review of procedures and data. Data associated with the case files reviewed was representative of data for all inspections. A comparison of IMIS data for fiscal years 2006 through 2009 did not indicate any notable variations.

In accordance with North Carolina's procedures, some documents are purged from inspection files at the time they are closed. Exceptions are for fatality and catastrophe files and other high profile inspections which are required to go through a citation review committee. Purged material includes photographs, sketches, witness statements, and other information that may have been obtained by the compliance officer during the inspection. Except for the fatality files, many of the case files reviewed had been purged per state retention procedures. Interviews and photographs were referenced in the file, but federal reviewers were not able to see the documentation that had been in the file when it was open. Purging of case files limits the state's ability to conduct a complete review of a company's history and of the documentation used to support citations.

Recommendation 1: North Carolina should revise their records retention policy with respect to OSHNC inspection case file documentation.

Complaints

North Carolina's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of federal OSHA. These procedures are covered in Chapter IX of the state's Field Operations Manual. Inspection data indicates that North Carolina handled 1,825 complaints in 2009 and conducted 869 complaint inspections. According to the State Activity Mandated Measures (SAMM) report, North Carolina responds timely to complaints. Complaint investigations were initiated within an average of 3.62 days, and complaint inspections were initiated within an average of 4.5 days.

North Carolina has a centralized complaint intake procedure with complaints transferred to the district supervisor having geographic jurisdiction on a very timely basis. The state's emphasis has been on customer service and assuring that each complaint is given attention consistent with the severity of the alleged hazards. As a result, North Carolina inspects a relatively high percentage of complaints that have not been formalized with the signature of a current employee. The source of the complaint, with those from a current employee having priority, and the severity of the alleged hazards are primary considerations for supervisors when they decide whether to handle the complaint by letter or by inspection. The state has effective processes in place for assuring that each complaint is entered in IMIS, evaluated by a supervisor, and responded to in a timely manner. And, complainants are timely notified of the status of their complaints.

This evaluation included reviews of twenty complaint investigation files (those complaints handled by letter or by North Carolina's phone, fax and fix procedure) and about twenty complaint inspection files. Several local reports, developed by North Carolina, and standard IMIS reports of complaint activity were also reviewed. A review of complaint inspection files revealed that each allegation was thoroughly investigated, and response letters provided clear and thorough information to complainants. Written responses to the complainant were timely, and procedures were in place for tracking the status of complaints and updating IMIS with complaint activity.

For those complaints handled by letter, during fiscal year 2009, a decision was made to stop providing a copy of the employer's response to the complainant. This decision was made to protect information from being released outside of state disclosure laws. When this change was made, the form letter provided to complainants in response to their complaints was not revised to include a summary of the information provided by the employer. This issue came to the attention of federal OSHA in the course of a CASPA investigation that began in late FY 2009. It was determined that the lack of a clear explanation to the complainant as to why the state was closing their complaint resulted in a misunderstanding. During this CASPA investigation, North Carolina initiated an action request form to review this issue. Shortly before this evaluation began, the final CASPA response was provided to the state, with the following recommendation:

"The response to the complainant should provide sufficient information for the complainant to understand the state's determination. If the employer's letter is not attached to the response

letter, a summary of the employer's response to the complaint allegations should be included in the letter to the complainant so that the complainant has the information needed to either agree or disagree with the results of the employer's investigation."

The complaint case files reviewed for this evaluation were prepared prior to this issue being brought to the attention of the state. Most of the complaint investigation letters reviewed during this audit did not include specific information to the complainant to adequately explain the results of the investigation, any actions taken by the employer, and why their complaint was being closed. It was determined that revised procedures had not yet been issued, and the following recommendation is being made:

Recommendation 2: North Carolina should assure that written responses to complainants following investigation of their complaints include clear and informative responses to their allegations.

Prior to the completion of this evaluation, North Carolina completed the review of the CASPA recommendation under their quality assurance program and made the decision to revise their complaint procedures so that a copy of the employer's response will be provided to the complainant. A copy of the revised Field Operations Manual section reflecting this change was provided to OSHA and was found to satisfactorily address this concern.

Fatalities

In fiscal year 2009, North Carolina investigated 41 workplace fatalities. The number of construction deaths decreased from 17 in 2008 to 10 in 2009, while the number of fatalities in general industry increased from 4 in 2008 to 13 in 2009 (7 of those fatalities occurred in two incidents). North Carolina's procedures for investigation of occupational fatalities are effectively the same as those of federal OSHA. Investigations are normally initiated within one day of notification of the fatality. During this evaluation all FY 2009 fatality investigation files were reviewed. North Carolina has implemented procedures to assure the quality of fatality investigations. An attorney normally works closely with the compliance officer when the case file is being prepared to assure that the case documentation is legally sufficient. Contacts between the compliance officer and the attorney were documented in the case files. Pursuant to Administrative Procedure Notice (APN) 16D, fatality investigations are required to go through a review by a citation review committee, made up of senior management and legal staff, prior to issuance of citations or determination on compliance. The determination must be signed off on by the OSH Director. Informal settlement agreements related to fatality cases also receive a higher level review.

No problems were noted in the fatality investigation files reviewed. Files included statements and other documentation that supported the violations cited and the cause of the accident was clearly explained. In the seven cases that did not result in issuance of citations, the factors leading to this decision were well documented. The files resulted in a total of 123 serious violations, one willful violation, one repeat violation, and 22 nonserious violations. For citations

that were resolved by means of an informal settlement agreement, the percent of penalty reduction was low and very few violations were deleted or reclassified.

Several accident investigation files were associated with the same event, such as the multiple inspections that were conducted to investigate a catastrophic explosion that occurred at a food manufacturing plant in June, 2009, resulting in the deaths of three employees, and serious injuries to dozens of workers. Several different companies were inspected as part of this investigation, and the state also conducted separate safety, health, and process safety management inspections of the plant. In the immediate aftermath of the explosion, the local incident command system was activated. OSHNC selected an investigation team and developed plans for the investigation immediately. The on-site investigation included setting up a vehicle at the site to use as headquarters and communications center for the investigation team. The team's proximity to the site helped them to assure that access to the site and evidence was controlled at all times. As a result of the investigation, North Carolina issued citations to the food manufacturer for 26 serious violations, with penalties totaling \$134,773. Citations were also issued to another, smaller company, directly involved in the incident, for 28 serious violations and penalties totaling \$58,100.

This explosion was one of three high profile accidents that occurred in North Carolina in the summer of 2009. At a poultry plant an ammonia leak caused by a ruptured line resulted in the death of one worker, several injuries, and an evacuation. This investigation resulted in the company being cited for 20 serious violations, with a total penalty of \$73,325. An explosion during preparations for a Fourth of July fireworks show caused the deaths of four workers. This company has been cited for nine serious and two nonserious violations, with a total penalty of \$44,800.

North Carolina has a longstanding procedure for communication with family members of deceased workers. Letters are sent to the next of kin at the beginning of the investigation and when the investigation has concluded. According to the state's procedures, the investigating compliance officer prepares the correspondence and, in most cases, signs it. The family is provided with the name and telephone number of the "next-of-kin ombudsman" who handles telephone contacts with the family. The ombudsman maintains a log of all contacts with family members and takes measures to assist them with their questions or requests. At the conclusion of the investigation, the next of kin is provided with a letter and a copy of any citation issued, or a letter advising them that no violations were found. Supervisors indicated that they check to assure that the letters have been sent when they review the file. The wording of the form letter used to notify the family of the results of the investigation was found to be somewhat confusing and lacked any explanation of the cause of the accident. As a result, the following recommendation is being made:

Recommendation 3: North Carolina should revise the letter sent to the next of kin at the close of their investigation to improve its clarity and include a description of the findings.

As a result of this matter being brought to the attention of OSHNC management, the letters sent to the next of kin were revised to be similar to that used by federal OSHA. The next of kin letter

including inspection results will be signed by the supervisor. North Carolina does not routinely send letters advising the family of the status of the case after citations are issued, unless the family member has contacted the state and requested to be kept informed.

Targeting/ Inspections

According to inspection statistics run for this report, North Carolina conducted 5,180 inspections in fiscal year 2009, 3,549 of which were programmed inspections. This includes many of the 2,196 inspections conducted in the construction sector. According to the State Indicator Report, 64.8% of programmed safety inspections and 63.6% of programmed health inspections had violations. Additional data indicates that an average of 3.7 violations were cited per inspection, and that 38.3% of the violations were classified as serious, 1.8% repeat, and 0% willful (one willful violation was cited in 2009).

North Carolina has a variety of special emphasis programs, some of which are associated with their strategic goals and some of which are National Emphasis Programs. The state also has safety and health general industry targeting procedures and has adopted the federal Site-Specific Targeting (SST) procedures. The state's general industry programmed safety targeting procedure selects establishments based on their injury and illness rates and number of serious safety violations per inspection for the industry they are in. The general industry programmed health targeting procedure selects establishments based on the number of serious health violations per inspection for the industry they are in. These inspections have lower priority than SST inspections. Data indicates that 1,860 general industry programmed inspections were conducted in 2009, resulting in an in-compliance rate (the percentage of inspections where no violations were found) of about 20%, 5.2 violations per inspection, with 23.8% of violations classified as serious.

North Carolina conducts a high number of programmed inspections in the construction sector, particularly under their Special Emphasis Program for high emphasis counties. These are associated with the state's strategic goal to reduce construction fatalities. Many programmed construction inspections are partial in scope, in accordance with their focused inspection procedure, OPN 96B. OSHNC revised their OPN 123J, Special Emphasis Program for Construction Activities, for 2009, so that all construction inspections would be coded as a local emphasis program, in addition to the strategic coding used previously. The emphasis program coding enables the state to track residential and commercial construction activities. This change in coding resulted in a large increase in the total number of special emphasis program inspections in 2009.

North Carolina also has a public sector inspection targeting procedure, based on injury and illness data that is collected from state and local agencies. According to the SAMM report, 2.68% of inspections were conducted in the public sector in 2009.

During the review of general industry programmed inspections, it was noted that a small number of case files did not include injury or illness data from the OSHA 300 logs or an explanation for the lack of data. Chapter III of North Carolina's Field Operations Manual requires that injury

and illness records be examined and verified on all inspections where the employer is required to keep records. It is important to document the number and type of any recordable injuries or illnesses, particularly in cases where the company was targeted for inspection due to high industry rates. When this matter was brought to the state's attention during the evaluation, each case where the 300 data was missing was reviewed. The state determined that where the employer was required to keep records, the compliance officers had reviewed the records, but had not entered the data into IMIS or documented it in the case file. This was a very small percentage of case files reviewed. Also, some general industry targeted inspection case files contained insufficient information about the operations or potential hazards at the site, any safety or health programs in place, or what the inspection covered.

Recommendation 4: North Carolina should assure that each case file include documentation of the company's injury and illness experiences, safety and health programs, and a description of the processes inspected.

Employee and Union Involvement

North Carolina's procedures for employee and union involvement are identical to those of federal OSHA. Case files reviewed disclosed that employees were included during fatality investigations and other inspections.

Citations and penalties

In fiscal year 2009, the 5,180 inspections conducted resulted in an average of 3.7 violations per inspection, with 44.9% of safety violations and 29.6% of health violations classified as Serious. The average initial penalty per serious violation for private sector inspections was \$627, compared to an average of \$1,335 for national data. North Carolina routinely places an emphasis on keeping citation lapse times low. In 2009, the average lapse time from opening conference to citation issuance was 25.77 days for safety and 29.68 days for health. This compares very favorably to the national rate of 43.8 days for safety and 57.4 days for health.

The case files reviewed included adequate documentation to support the violations, although due to the lack of photographs and other information that had been purged from the files, it was not possible to view all documentation the supervisor had at the time of case file review. Photographs are not printed and placed in the files, but are retained on CD's due to printing costs. Supervisors indicated that they do review each case file before citations are issued, or prior to closing in-compliance cases, and that they look at the photographs during their review.

Although the state's procedures for determining the classification of violations are the same as those of federal OSHA, North Carolina classifies a lower percentage of violations as Serious. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. For consistency in classification and penalty calculation, North Carolina developed procedures for compliance officers to determine the level of serious for fall and electrical hazards. Case file review found that with few exceptions, violations were classified according to the state's procedures. It was noted that some violations that would most likely

have been classified as serious by federal OSHA were classified as non-serious by the state, and some violations categorized as low or medium severity would have been categorized as high severity by federal OSHA.

Recommendation 5: North Carolina should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice.

In 2009, North Carolina's penalty calculation procedures differed in several aspects from federal OSHA. Both federal OSHA and North Carolina consider classification first, then probability for determining the gravity based penalty. North Carolina categorized violations as high, medium or low probability, whereas federal OSHA uses greater or lesser probability. To promote consistency in determining probability, the state procedures include a chart for assigning a numerical rating to the probability that an accident will occur related to the violation. Generally, case file documentation for violations which were either low or high included a justification for the rating, whereas those rated as medium did not. In some files, the probability rating chart was included, or a detailed explanation of the factors considered was discussed. Another difference from federal penalty procedures is that North Carolina's penalty chart begins at \$7,000, whereas Federal OSHA's begins at \$5,000.

Another difference in penalty procedures is in adjustment factors that reduce the gravity based penalty. North Carolina gives percentage reductions for size, good faith, and history, as does federal OSHA, but also gives a 10% reduction for cooperation. Good faith reductions may be 0%, 10%, 25% or 40%, compared to 0%, 15% or 25% for federal OSHA. The state did not adopt federal OSHA's "quick fix" penalty reduction for some violations corrected during the inspection. During case file reviews, it was noted that penalties appeared noticeably lower for North Carolina serious violations.

During discussions with supervisors and management, specific case files were discussed where there were questions about classification and penalty calculations. Interviews of compliance officers included questions about procedures related to classification and penalties. All of the staff referenced Field Operations Manual procedures and appeared to be very familiar with the state's policies and procedures in this area. In early fiscal year 2010, the state conducted a Technical Writing course for all compliance personnel, in part in response to a CASPA recommendation. The purpose of the training was to improve consistency and quality in case file documentation. The training included policies for grouping of violations, with the result that fewer violations are being grouped. In October, 2009, North Carolina revised their penalty procedures so that they now have two levels of probability, greater and lesser, like federal OSHA. The purpose was to make the probability rating less complex and more consistently administered. Data will be reviewed in 2010 to determine how the change has impacted average penalties. The training provided in the Technical Writing course may also have an impact on average penalties.

North Carolina issued one willful violation in 2009, which was associated with a fatality investigation. A review of procedures and discussions with state compliance personnel found

that procedures for determining willfulness are the same as those for federal OSHA. While both programs have a very high bar for willful documentation, it appeared that North Carolina compliance officers rarely consider willful violations due to the belief that it would be too difficult to pass the review process. Of the case files reviewed, two appeared to have circumstances that would have possibly met the qualifications for a willful violation, if the compliance officer and supervisor had identified it at an early stage of the inspection. Discussions with supervisors and higher level management determined that willful violations are neither encouraged nor discouraged, but that a very high level of employer knowledge would be required in order to sustain willful violations. The Technical Writing and Legal Aspects classes do include discussions of what constitutes a willful violation. OSHA discussed with the state that future compliance staff training should include input from their legal staff regarding documentation that is needed to support a willful violation.

It was also noted that 0.8% of inspections were follow ups, with a ratio of failure-to-abate violations to follow ups of 7.7%. Compliance officers may recommend a follow up when they are unable to obtain adequate abatement information. North Carolina management has stated that they would like to conduct a higher percentage of follow up inspections.

Recommendation 6: North Carolina should monitor the results of its recently revised penalty calculation procedures and its penalty reduction policies to assure that penalties are appropriate for the violations cited. The State should also review its practices on the citing of willful violations and conducting follow-up inspections.

Abatement

Case file reviews, available procedures, and inspection data indicate that North Carolina obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. Compliance officers are responsible for following up on the abatement of violations for their inspections. Dunning letters are sent to employers when needed and supervisors review IMIS reports frequently to track the abatement status.

Enforcement Program Management

North Carolina uses available IMIS reports and other data for effective program management. Each supervisor, Bureau Chief, and the Division Assistant Director is familiar with standard IMIS reports and uses them on a frequent and regular basis for tracking and understanding the status of enforcement activity. Each supervisor reviews IMIS reports for compliance officers who currently report to them. A review of current IMIS reports revealed that some inspection cases that were old and possibly should have been closed, were done by compliance officers or supervisors who are no longer with the program or had changed location or supervisors. Some of the oldest cases that were on the open inspection report may be open due to problems that have existed with the NCR computer. Open inspection reports did contain a large number of open inspections that are apparently in debt collection. Although the large number of open inspections on this report is not believed to indicate a serious problem with the state's

management of their program, the data should be closely reviewed and updated where possible. As a result of this evaluation, the following recommendation is being made:

Recommendation 7: North Carolina should review the status of all inspections on the IMIS Open Inspections Report and take any needed action to assure that activities related to the case have been taken and correctly entered into IMIS. In addition, procedures for routine review of data should be revised to take into account changes in staffing so that all IMIS data is subject to regular review.

These issues were brought to the attention of OSH Division management prior to the conclusion of the on-site evaluation, and a Bureau Chief initiated a review of these open cases. Steps were being taken to assure that all open inspection reports would be reviewed regularly, regardless of the current status of the supervisor. Reports associated with previous supervisors have been reassigned to current personnel for resolution.

There were few instances of inspections that were over six months old on the Citations Pending report. The relatively low number of inspections on each supervisor's report is a reflection of North Carolina's low citation lapse times. There were also few cases on the Unsatisfied Activity Report, which tracks complaints, referrals, and fatalities that have not been satisfied by an inspection. The analysis of standard IMIS tracking reports and interviews indicated that supervisors are reviewing these reports frequently. Most instances of very old activities were associated with compliance officers or supervisors who were no longer with the program.

Senior management staff uses a variety of tracking mechanisms and reports so that all staff can readily determine the current status of program goals and other enforcement activities.

Debt Collection

OSHNC has procedures for receipt of payments and handling past due penalties. The North Carolina Department of Labor's Budget Office processes payments and collections, sends past due penalties to a collection agency as part of the process. OSHNC uses Departmental reports to track the status of penalty collections. A report provided during this review indicated there were 1,084 citations with overdue penalties, with a total amount overdue of \$1,556,780. Due to State of North Carolina requirements, overdue debts must go through a specified and often very lengthy process (up to ten years) before they may be reduced or written off. The debt collection status of inspections is not entered into IMIS. As a result, they are not able to use standard IMIS debt collection reports to regularly track overdue penalties. Also, penalty collection status may not appear on the IMIS open inspections report which is reviewed regularly by supervisors. It was noted that there were a large number of open cases on these reports that are several years old, and supervisors believe these to be in debt collection. However, it was difficult to tell why the case was open by looking at the report, and payment may have been received on some of these cases, but they were not closed in IMIS. As a result of discussions with OSHNC management during this review, they are taking a closer look at the collections process and will look for ways to improve tracking and expedite taking final action so that inspections can be

closed. To begin this review, a compliance Bureau Chief met with the general counsel and the department budget office in order to get a better handle on this issue.

Recommendation 8: North Carolina should review and revise its debt collection procedures to assure appropriate collection actions, recording of information, and timely closing of cases.

BLS Rates

Bureau of Labor Statistics (BLS) injury and illness rates for North Carolina have shown a steady decline. The 2008 total case rate for the private sector was 3.4, a 15 % reduction over the 2006 rate. The national total case rate in 2008 was 3.9. The 2008 Days Away Restricted and Transferred (DART) rate was 1.7, a 15 % reduction over the 2006 rate. The national DART rate for 2008 was 2. North Carolina uses injury and illness rates and fatality rates in their strategic planning process to decide where their resources should be focused. Where possible, reductions in rates are used to measure outcome results.

Standard Adoption and Federal Program Changes

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within a 6-month time frame. States that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards. During the period addressed by this evaluation report OSHA initiated the following standards and federal directives, which required action by the State:

Federal Standards

| Standards Requiring Action | Federal Register Date | Adopted Identical | Date Promulgated |
|---|------------------------------|--------------------------|-------------------------|
| Clarification of Employer Duty To Provide Personal Protective Equipment and Train Each Employee | December 12, 2008 | Yes | 04/23/2009 |
| Longshoring and Marine Terminals; Vertical Tandem Lifts; Final Rule | December 10, 2008 | Yes | 04/23/2009 |

Federal Program Changes (excluding Standards)

| Federal Program Changes Requiring Action | Federal Directive Number | Date of Directive | Adopted Identical | Date Adopted |
|--|---------------------------------|--------------------------|--------------------------|---------------------|
| Voluntary Protection Programs (VPP) Policies and Procedures Manual | CSP 03-01-003 2008 314 | April 18, 2008 | No | N/A |
| Site-Specific Targeting 2008 (SST-08) | CPL 02 (08-07) Update | May 19, 2008 | Yes | 06/03/2008 |
| Training Program for OSHA Compliance Personnel | TED 01-00-018 | August 8, 2008 | Yes | 07/13/2009 |
| National Emphasis Program – Lead | CPL 03-00-0009 | August 14, 2008 | Yes | 11/24/2008 |
| Tree Care and Tree Removal | CPL 02-01-045 | August 21, 2008 | Yes | 12/01/2008 |

The North Carolina Department of Labor, Occupational Safety and Health Program adopted both of the standards listed above within the 6-month time frame. Additionally, the State adopted all of the federal program changes initiated during this period with the exception of the revision to the Voluntary Protection Programs (VPP) Policies and Procedures Manual. The Carolina Star Procedures Manual, which was approved January 28, 2004, was equivalent to the federal policy. During fiscal year 2009, federal OSHA issued a new Field Operations Manual that was provided to the states as a federal program change. North Carolina assembled a team to conduct a detailed review of the federal FOM and compare it to the state’s operations manual. As a result, North Carolina made revisions in some areas, and submitted a document to federal OSHA with a side-by-side comparison between the federal and state operations manuals. An effort is being undertaken to ensure that policies and procedures implemented by the States, which are not identical to Federal guidelines, are equivalent. States that do not adopt identical directives are required to submit a comparison document, which illustrates policy-by-policy, how their policies differ, and why those differences are at least as effective.

In addition to responding to changes to federal policies and standards, North Carolina initiated a number of changes to their program. Significant changes were shared with federal OSHA while in the draft stage. In 2009, North Carolina completed the promulgation of a crane and derrick standard, which was published in the NC Register on August 3, 2009, and became effective on October 1, 2009. Also, the state-specific permissible exposure limits (PEL) were repealed effective May 1, 2009, making the North Carolina standards for PELs the same as those of federal OSHA. This rule was repealed on the advice of the North Carolina Attorney General’s office due to North Carolina’s inability to legally support the more stringent PELs.

Variations

North Carolina currently has eleven permanent variations, six of which were multi-state variations approved by federal OSHA. There are no temporary variations. The state shares

variance requests with federal monitors and requests input prior to approval. The status of all variance requests are tracked by the state on the internet. No issues related to variances have been identified. The state has not issued any variances since 2007.

Review Procedures

North Carolina has procedures in place for conducting informal conferences and proposing informal settlement agreements, and these procedures appear to be followed consistently by District Supervisors. According to the State Indicator Report, 2.1% of violations were vacated and 1.8% of violations were reclassified as a result of informal settlement agreements. The penalty retention rate was 71.3%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and most cases were resolved with some penalty reduction. Where there were vacated or reclassified violations, or a larger penalty reduction, the files normally included the rationale for the changes. Informal settlements for cases that are required to go through the citation review committee process prior to the issuance of citations, must also go through a review procedure prior to settling the case.

In fiscal year 2009, 2.2% of inspections were contested. The Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The three members of the Review Commission are appointed to the part-time positions by the Governor and generally serve a six-year term, with one of the members serving as the Chairman. The North Carolina Department of Labor has taken steps to reduce the lapse time between receipt of contest and the first level decision. The Attorney General for North Carolina provides legal representation for the Department of Labor. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. Compliance officers and supervisors stated that they have a very good working relationship with the attorneys assigned to them, and they are very knowledgeable of OSHA requirements and what is needed for a case to be legally sufficient. SIR data indicates that, for violations that were contested, 37% were vacated, and 9.9% were reclassified. 49.4% of penalties were retained. The Review Commission provides a copy of each decision to the OSHA Area Director. No negative trends or problems with citation documentation have been noted.

Discrimination Protection Program

Overview

Employment Discrimination Bureau (“EDB”) of the North Carolina Department of Labor, is responsible for enforcing the North Carolina Retaliatory Employment Discrimination Act (“REDA”) (N.C.G.S. §95-240 through §95-245). REDA prohibits discrimination against employees who engage in protected activities as defined by North Carolina law, including the Occupational Safety and Health Act of North Carolina (§ 95-151, Chapter 95, Article 16 of the General Statutes). This is comparable to federal OSHA protection from discrimination under Section 11c of the OSHA Act. This evaluation included a thorough review of North Carolina’s discrimination program to determine whether EDB is following its own policy and procedures, and whether EDB is operating at least as effectively as OSHA. Organizationally, EDB falls

under the Standards and Inspections Division of the Department of Labor, not within the Occupational Safety and Health Division. The OSHNC Director is responsible for assuring federal OSHA grant support and effective coordination between EDB and OSHNC. The organizational structure has not had a detrimental effect on the ability of the state plan to carry out their responsibilities related to safety and health discrimination protection effectively. The review of North Carolina's discrimination protection program included an analysis of data, review of case files, interviews, and a review of North Carolina's laws and procedures related to safety and health discrimination protection. The Administrator, four Investigators and the Intake Officer were interviewed on-site. The policy and procedures that EDB follows in the handling of discrimination complaints are provided in the EDB Operations Manual (Rev. 05/28/2009). All discrimination CASPA reviews conducted during the years 2007, 2008 and 2009 were examined. Another source of information was the EDB *2008-2009 Annual Report*, and the EDB 2008-2009 Strategic Plan. Finally, EDB maintains an informational website for the general public; the website was visited and its content reviewed.

The EDB currently employs eight Investigators and one Information Officer. Five of the Investigators report to work at the EDB office in Raleigh, NC; the other three work from assigned flexi-place locations throughout North Carolina. The Information Officer is assigned to the Raleigh office. The program is supervised by an Administrator/Bureau Chief.

In addition to investigating complaints alleging retaliation for raising safety and health concerns, EDB is responsible for investigating other discrimination complaints filed under the employee protection provisions the North Carolina Wage and Hour Act, Fair Labor Standards Act, Workers' Compensation Act, Mine Safety and Health Act; and portions of law prohibiting discrimination against employees on the basis of sickle cell/hemoglobin C trait(s), genetic testing information, North Carolina National Guard service, participation in the juvenile justice system, and employees who report domestic violence and agricultural pesticide exposure.

Findings

During fiscal year 2009, EDB docketed 772 discrimination complaints. Of these, 88, or 11.39%, were safety and health discrimination complaints. The status of these cases and the percentage of total cases they represent are presented below.

| Dismissed Non-Merit | Withdrawal | Settlement | Referred for Litigation | Pending |
|---------------------|------------|------------|-------------------------|---------|
| 60 | 7 | 8 | 4 | 9 |
| 75% | 7.95% | 10% | 4.54% | 10.22% |

According to the State Activity Mandated Measures (SAMM) report, which uses cases closed during the fiscal year, 15.85% of complaints were meritorious and 69.23% of the merit cases were settled. 14 cases from the above 88 cases were selected for review. All 8 of the settlements were reviewed, 2 of the 5 withdrawals were reviewed, and 1 of the 2 cases recommended for litigation was reviewed.

Reduction of case processing time is an EDB goal and is listed as one of the agency's strategic objectives. The EDB timely completion goal for all cases is 90 days, which is the same as federal OSHA. 79 cases filed in FY 2009 had been completed at the time of this review. Of those 79, 13 or 16.45%, were overage, or completed in more than 90 days. 9 of the above 88 cases are still pending and are overage. If the pending overage cases are factored into the overall caseload of 88, the overage rate is 25%. According to the SAMM report, 54% of investigations were completed within 90 days. The number of overage cases has increased somewhat in comparison to previous years. However, the overage rate is less than the rate for the national OSHA whistleblower program. North Carolina's Investigator case loads are substantially higher than in previous years and this has contributed to the increase in overage cases. At the time of this review, the average caseload per investigator was 36, of which only a small number were safety and health discrimination complaints. The highest caseload carried by an individual investigator was 56; the lowest caseload was 26.

The intake process is well organized and pertinent records are maintained. North Carolina law requires complaints to be filed in writing. Appendix A-1 of the *EDB Operations Manual (OM)* explains the steps that the Information Officer is to take when contacted by a potential complainant. The manual advises that if there appears to be a basis for filing a REDA complaint, the information officer is to advise the potential complainant that the complaint must be in writing and must be filed within 180 days of the alleged adverse action. (the OSHA time-filing requirement is 30 days). A form is utilized for this purpose. The time filing information is also provided on the EDB-1 form and correspondence mailed to the potential complainant. The potential complainant is to be advised that, "there will be no follow-up by EDB, the burden on submitting the signed complaint is on the potential Complainant." The information officer and investigators advised during interviews that in practice, a questionnaire is provided to the potential complainant in addition to the EDB-1 form. The potential complainant is not required to complete it in order to file a complaint. If the potential complainant only provides that questionnaire and not the EDB-1 form, the Information Officer will send a follow-up letter. All advised that if neither the EDB-1 form nor questionnaire is returned, no follow-up is performed and no complaint docketed. The state's procedures differ from those of federal OSHA, in that OSHA does not require that 11 (c) safety and health complaints be filed in writing, and generally the date a complaint is considered to be filed is the date the complainant visits, e-mails, faxes, or telephones a USDOL official.

It was determined that travel for the purpose of conducting investigations had been significantly curtailed at some time in the past, possibly as a cost-saving measure. As a result, almost all interviews are conducted telephonically. Federal OSHA procedures call for interviews of the complainant to be conducted in person except in unusual circumstances. The Whistleblower

Investigation Manual states that, “Cases recommended for litigation must have in-person interviews of the complainant and pertinent witnesses in order to assess credibility and demeanor, and to ensure availability and willingness of witnesses to testify.” It could not be determined whether the lack of in-person interviews by North Carolina impacted the findings of the investigation.

Investigative case files were found to be well organized and contained all documents created during intake and investigation, including complaint opening and closing letters, records of all communications, interview statements, memorandums, Final Investigative Reports (FIR), copies of executed settlements, etc. With few exceptions, the FIR presented investigative results in a clear and succinct manner; however, neither the FIR nor case file documentation provided substantive information regarding the closing conference held between the investigator and the complainant. Federal OSHA requires investigators to provide and obtain specific information during the closing conference and to record this information in the FIR.

All 8 of the settlements that EDB approved during FY 2009 were reviewed. In some cases, the EDB executed, or approved, settlement agreements that contain provisions federal OSHA would not approve. The state’s settlements have included provisions that waive a complainant’s statutory and legal rights to future actions, and “gag” provisions that may restrict the complainant’s ability to participate in investigations or testify in proceedings relating to matters that arose during his or her employment. A review of EDB’s policies related to discrimination case settlements, contained in their Operations Manual, found that they are not inconsistent with those followed by federal OSHA. However, North Carolina’s guidance is more limited and certain OSHA settlement requirements are not included. For example, there is no requirement that the investigative case file address all elements of a *prima facie* allegation, nor a requirement that the investigator address what remedy would make the complainant whole, and, if the settlement does not provide this remedy, what justification is sufficient for accepting a lesser remedy. The Operations Manual also does not include certain settlement criteria that OSHA has followed since 2003. North Carolina’s Operations Manual is, in general, less detailed than federal OSHA’s Whistleblower Investigator Manual.

In accordance with North Carolina’s discrimination laws, if a complaint is determined to be non-merit, the complainant is provided with a right-to-sue letter when their case is closed. This letter enables them to file a private suit in the matter within a specified time period. North Carolina does not have a formal appeal procedure for complainants who are not satisfied with the results of the investigation, but complainants have a private right of action. According to the state’s legal staff, an appeal procedure would interfere with the right-to-sue process. Complainants may file a Complaint About State Plan Administration (CASPA) with federal OSHA if they believe their complaint was not handled appropriately by the state. Currently, the EDB also does not inform a complainant of his or her right to file a CASPA if the complainant is dissatisfied with the conduct or outcome of the State’s investigation. Issues related to state plan discrimination complaints and the rights of complainants to appeal to federal OSHA or file a CASPA are under review by federal OSHA.

EDB maintains a website that provides information to the general public concerning its program. The website, located at <http://www.nclabor.com/edb/edb.htm>, includes a description of the EDB, its services, and contact information. Additionally, the website includes information on REDA, a FAQ section, its annual report, information pertaining to case file disclosure requests, etc. The website is an exceptional source of information for the general public and is user-friendly.

All CASPA reviews of EDB discrimination investigations conducted during the years 2007, 2008 and 2009 were examined and no EDB programmatic issues were identified.

As a result of the evaluation of North Carolina's discrimination protection program, the following recommendations were made:

Recommendation 9A: North Carolina should review their retaliatory discrimination laws and procedures and discontinue the practice of requiring that safety and health discrimination complaints be submitted in writing. Complaints should be docketed on the date that the complainant contacts EDB and provides information establishing a *prima facie* case.

Recommendation 9B: North Carolina discrimination investigators should conduct interviews in person when possible to assure that the quality of EDB investigations is not negatively impacted by conducting interviews by telephone. (North Carolina OSHNC management stated that they were not made aware of budgetary reasons for this practice and they have not been asked for additional travel funds. They have discussed this issue with the EDB Administrator and agreed that interviews will be conducted in person when it will promote the quality of the investigation.)

Recommendation 9C: North Carolina should assure that safety and health discrimination files include details about the closing conference.

Recommendation 9D: North Carolina should review its settlement policy for safety and health discrimination cases and consider adding criteria consistent with current federal OSHA guidelines.

Complaints About State Plan Administration (CASPA)

During this period, there was two CASPAs filed with the OSHA Area Office in Raleigh, North Carolina. The first CASPA #113 - FY09 involved an appeal of a workplace safety and health complaint. The second CASPA #114-FY09 concerned an appeal of the employee's discrimination complaints, as well as a workplace safety and health complaint. A detailed review revealed that both CASPAs' complainants were properly notified by the Area Office and their concerns were thoroughly investigated. In fact, CASPA #113-FY09 resulted in two recommendations, regarding eight of the investigation findings. These recommendations were focused on the establishment of procedures to prevent the expiration of the six-month statute of limitations and following effective industrial hygiene practices. The State Program provided a response within 30 days and this matter is effectively closed. CASPA #114 - FY09 was also

properly handled and coordinated with the State Plan. It also included a recommendation that the State more effectively communicate the inspection results to the complainant. The state has determined that complainants will be provided with a copy of the employer's response, effective April, 2010.

North Carolina CASPAs in FY 2009

| Complaint About State Plan Administration (CASPA) | Final Notification to Complainant | Recommendation(s) | State Response Letter |
|--|--|--------------------------|------------------------------|
| CASPA 113 - FY09 | March 25, 2009 | Yes | Yes |
| CASPA 114 - FY09 | December 1, 2009 | Yes | Yes |

Voluntary Compliance Programs

Training

The North Carolina Occupational Safety and Health Division contains a separate bureau titled Education, Training and Technical Assistance (ETTA). ETTA conducted 764 training sessions to outside interests and trained a total of 13,208 employers and employees. The 10 most frequently taught topics were: PPE; fall protection; and hazard communication; excavation and trenching; electrical safety; inspection process; bloodborne pathogens; recordkeeping; cranes and derricks; and OSHNC overview/reading the CFR. ETTA also maintains the Division's website and publications. OSHNC's publications and training materials, standards, directives, and procedures are available to the public through the internet.

ETTA, among its other functions, conducts OSHA Technical Institute (OTI) equivalent training for OSH Division compliance staff. A North Carolina OSH Division Directive, Operating Procedure Notice (OPN) 64B, establishes the policies and procedures for the initial training of compliance staff and, with a few exceptions, mirrors OSHA's TED-01-00-018. The same core courses are required for OSH Division compliance officers and ETTA utilizes the former OTI course numbering system, i.e., 100 for the Initial Compliance course, 105 for the Safety Standards course, etc. By conducting training internally, ETTA is able to train employees promptly and at a much lower cost than would be incurred by sending compliance staff to OTI for training. ETTA has conducted its own training courses since 1994. ETTA staff performs most of the training with assistance from senior compliance staff who are used as subject matter experts for selected topics.

A review of selected training records showed that newly hired compliance officers are on track to receive all of the required initial training courses well within the three year period prescribed by both OSHA TED-01-00-018 and OPN 64B. More experienced compliance officers also receive formal training on a regular basis. North Carolina policies mandate formal training for

experienced compliance officers at least every three years, and ETTA is able to exceed that requirement with their training schedule. Interviews with trainees and experienced compliance staff revealed that they think the training they receive is excellent and of a sufficient frequency.

Two items found during the review of North Carolina's training program were identified as excellent practices. ETTA conducts peer reviews of its trainers. The trainers present their training modules to the rest of the ETTA staff who critique the training methods, content and delivery. The review assists the trainers in strengthening their abilities and leads to better instruction. ETTA has also developed a compliance officer certification program. After completing any eight of ten course offerings, the compliance officer is awarded the OSH Construction Safety Specialist (OCSS) certificate. The certification process results in additional training for the compliance officer and gives them a goal to attain with the training they receive. The compliance officers interviewed thought highly of the certificate and several expressed a desire to receive the certificate.

Overall, the review of North Carolina's training programs resulted in a very favorable impression of their efforts and no deficiencies were noted.

Alliances

ETTA is the bureau responsible for the Alliance programs in North Carolina. Administrative Procedure Notice (APN) 18D addressing Cooperative Programs is the document used to establish the procedures to be followed for Alliance agreements. With two exceptions, the document's procedures are the same as federal OSHA procedures. Those exceptions are that generally, North Carolina will only renew an Alliance one time. This is due to limited resources and to afford opportunities for other groups to participate in Alliances. The other exception is that North Carolina has Alliances with certain safety and health groups within the state that have an indefinite time period set. One Alliance is with the North Carolina Safety and Health Council and another is with the North Carolina State University Industrial Extension Service, which is an OTI Education Center. A standard 30 day termination clause, which can be exercised by either party, is contained in these Alliances and the audit revealed that it is in the OSH Divisions best interests to have an indefinite expiration for these Alliances. Randomly selected Alliances were reviewed and found to contain the necessary information in the files, including the annual milestone reports.

Partnerships

ETTA is also the bureau responsible for Partnership agreements in North Carolina. Again, APN 18D establishes the procedures to be followed for these agreements. The only deviations from the federal OSHA Partnership requirements found during the audit are that North Carolina's current Partnerships include only the construction industry, and a particular company is limited to two partnerships within a ten year period unless a third partnership is approved at the Director or Commissioner level. This limit is set to allow other companies the opportunity to participate in a Partnership and to allow North Carolina to have Partnerships with varying types of construction projects.

Partnership agreements require that technical assistance visits be conducted quarterly and that the general contractor must provide monthly reports addressing their work site inspections and any hazards found as well as report of any recordable injuries and near miss events. ETTA also holds a quarterly meeting with its staff and compliance personnel serving as Partnership coordinators. During these video conference meetings, the Partnerships are discussed, addressing any training opportunities at a work site, any significant events at a site, and any changes in the general contractor's injury and illness rates. There is also a sharing of experiences with the contractor and the Partnership where others can learn of things that have worked well and things that have not so mistakes can be avoided in the future. These meetings serve as a valuable learning tool for the Partnership coordinators and for ETTA for any future Partnerships and they were viewed as an excellent practice during the audit.

A review of two of the three current Partnerships showed that the files contained results of the technical assistance visits and the monthly information sent from the general contractor.

Voluntary Protection Programs (VPP)

The Consultation Services Bureau is responsible for administering the VPP/Carolina STAR in North Carolina, which has been in existence since 1994 and has grown to over 100 companies, placing North Carolina behind only Texas for the most VPP sites. The North Carolina program requirements are more stringent than federal OSHA's in that Carolina Star sites must have injury and illness rates and lost time rates at least 50% below the national average for that industry. North Carolina was also the first to begin recognizing construction companies for VPP through their Building Star program and they were also the first to recognize public sector employers with their Public Star program. What federal OSHA calls a Merit site is known as a Rising Star in the Carolina Star program and companies are allowed to be a Rising Star for only one year before a re-evaluation of the company is performed. Another difference in terminology is that North Carolina uses Provisional status for what federal OSHA calls a one year conditional status. A company is placed on a one year conditional status in the federal VPP program for failing to maintain all VPP elements at the Star level. In the Carolina Star program, a company may be placed in provisional status for additional reasons, such as a rate increase or too much management involvement which would not trigger the one year conditional status in the federal program. The Carolina Star program also allows for the reevaluation to take place in less than one year.

A review of selected evaluation files showed that the evaluations are well documented. The worksheets used in the evaluations are very thorough and address all of the elements and sub-elements contained in the federal program. The reports generated for the company contain very useful information for the company to improve its already outstanding safety and health management system. The employer is required to respond in writing to address any hazards or program deficiencies that were observed during the evaluation and this information is maintained in the Consultation Services office.

Program administration

Ability to Meet Compliance Staffing Benchmarks

North Carolina has had budget challenges in the past several years and has had to make cutbacks in some areas. As reported in their SOAR, the State operated with 18 vacancies as of November 1, 2009, and four noncompliance positions were cut from the program in FY 2009. However, they have been able to maintain their compliance staffing to meet benchmarks of 64 safety compliance officers and 50 health compliance officers.

Impact of State funding and other fiscal Issues

In accordance with U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA) Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements, the USDOL/OSHA has conducted an on-site monitoring visit. The monitoring visit encompassed the financial and administrative aspects of the Fiscal Year (FY) 2007 23(g) Grant with North Carolina Department of Labor. Following are the results of the on-site monitoring visit.

Total 23(g) grant authorized funding was \$15,688,152 (federal funds amounted to \$5,180,570 and non-federal funds equaled \$10,507,582). Actual federal expenditures recorded on the November 28, 2007, final Financial Status Report (SF-269), and amounts drawn down from the Health and Human Services Payment Management System (HHSPMS) equaled \$5,180,570. Our review of the 23(g) Grant revealed North Carolina expended 100% of authorized funds and submitted the final Financial Status Report (SF-269) to the Regional Office to close the agreement in a timely manner.

Federal funds were properly disclosed in the financial system and comparisons of actual outlays, with budget amounts for each award, were properly listed in accordance with OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.

Samples of expense reports were reviewed and tested. Our review indicated expense reports were properly prepared and certified by the requesting employee and authorized by the appropriate manager.

Time Record reports were reviewed to determine proper authorization of federal dollars. Reports reviewed were properly authorized by approving officials and properly coded to applicable personnel.

Proper cash management practices were noted for the award in accordance with the Cash Management Improvement Act as verified through record reviews and discussions with appropriate personnel.

Per the U.S Department of Labor Occupational Safety and Health Administration Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative

Agreement, Appendix B “Financial Monitoring Guidelines – Grants and Cooperative Agreements,” we have reviewed the above award and found no issues to report.

State Internal Evaluation Program

North Carolina has an effective internal audit procedure, documented in Administrative Procedures Notices 14. The Director’s office staff conducts regular comprehensive assessments of Bureaus within the Occupational Safety and Health Division, including case file reviews. In fiscal year 2009, the Agriculture Safety and Health (ASH) Bureau was the subject of a comprehensive audit which resulted in a written report which included a number of nonconformities with Division policies and procedures. In prior years, the Consultative Services Bureau and Planning, Statistics, and Information Management Bureau and the Compliance Bureau were the subjects of internal audits. Audits of specific program areas are also conducted under these procedures. For example, audits were conducted of the strategic management planning process and of citation lapse times for fatality and catastrophe investigations. The proposed subjects of internal audits are discussed with the Federal OSHA Area Director during preparation of the annual monitoring plan and the results of internal audits are shared with federal OSHA. The Bureaus of Compliance and Consultative Services also routinely conduct case file audits as part of their quality procedures.

North Carolina also has an active quality assurance program, which is contained in APN 13. Any division employee may submit action requests which are reviewed by the quality team and a response is sent to the person submitting the action request. Action requests may also originate from a CASPA recommendation or an internal audit finding.

Furloughs, Office Closures or Other Changes in Services

North Carolina Department of Labor does not anticipate any changes in the level of services provided by the state or its current operations. During this period, the OSH Division furloughed employees for ten hours due to state budget cuts. Employees each chose the time they would be off of work, and this had minimal effect on state activity.

Summary of Stakeholder Interviews

During this monitoring effort an attempt was made to contact a wide range of stakeholders within the State to obtain their feedback regarding the program. Stakeholders contacted in connection with this effort primarily included members of the North Carolina Advisory Council on Occupational Safety and Health. This diverse group consists of leaders from the construction industry, manufacturing, the insurance industry, the public-sector, as well as organized labor. An attempt was made to interview all eleven member of the group. Unfortunately, only 8 of the 11 members of the group could be successfully reached. Therefore, additional interviews were conducted with representatives from a construction company engaged in a formal partnership with the State, the Carolinas AGC, and the Carolinas Section of the American Industrial Hygiene Association.

The stakeholder interviews were all conducted by telephone. Following an introduction, the stakeholders were provided a brief explanation for the call and asked, “How would you assess the North Carolina Department of Labor, Occupational Safety and Health Division (OSHNC)?” The reason for this broad-based question was the desire not to lead the stakeholders or pre-determine their response. However, depending on the stakeholder, this question took on many forms, such as the following:

- What can the agency do to enhance a specific program feature (i.e., complaint response, accident investigation)?
- What emerging issues need to be addressed by the program?
- What does the agency need to do to enhance workplace safety and health for the workers in the State?

Overall the stakeholders indicated that North Carolina operated an effective safety and health program. Several individuals offered evidence of the success of the State’s OSH Program, based on the decline in the injury and illness rates for North Carolina. Several stakeholders also commended Commissioner Berry for her excellent leadership of the program. The most common statement made regarding challenges facing the State’s program concerned its current economic crisis and the impact on the program’s resources. However, according to several stakeholders interviewed for this evaluation, North Carolina has achieved the proper balance between compliance assistance and enforcement.

Appendix A: Findings and Recommendations Table
 FY 2009 North Carolina State Plan (OSHNC) Enhanced FAME Report
 Prepared by Region IV

Italics = paraphrase

| | Findings | Recommendations |
|---|---|---|
| 1 | <i>Except for fatality, catastrophe and other significant case files, some supporting documentation (photos, interviews) is purged once the inspection is closed. (p. 9-10)</i> | North Carolina should revise their records retention policy with respect to OSHNC inspection case file documentation. |
| 2 | <i>The report indicates that for complaints handled by letter, insufficient information was provided to complainant due to a decision to no longer provide a copy of the employer's response. (p. 10-11)</i> | North Carolina should assure that written responses to complainants following investigation of complaints include clear and informative responses to their allegations. (The state has responded to this recommendation by submitting changes to its Field Operations Manual.) |
| 3 | <i>The next of kin form letter was found to be somewhat confusing and lacked explanation of the cause of the accident. In addition, these letters were usually signed by the compliance officer. (p. 11-12)</i> | North Carolina should revise the letter sent to the next of kin at the close of their investigation to improve its clarity and include a description of the findings. (The state has submitted revised letters for the family of deceased workers.) |
| 4 | <i>Case files contained insufficient information about the operations or potential hazards at the site, any safety or health programs in place, or what the inspection covered and some case files did not include injury or illness data from the 300 log. (p. 13-14).</i> | North Carolina should assure that each case file includes documentation of the company's injury and illness experiences, safety and health programs, and a description of the processes inspected. |
| 5 | <i>State-specific CSHO violation classification guidelines result in a lower percentage of serious violations. Several of the violations in the case files were not classified as serious or as severe as Federal OSHA would have classified them. (p. 14-15)</i> | North Carolina should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice. |
| 6 | <i>State penalty calculation and adjustment policies result in lower penalties for serious violations. Violations are misclassified and willful violations were not cited. More follow-up visits should be conducted. (p. 15-16)</i> | North Carolina should monitor the results of its recently revised penalty calculation procedures and its penalty reduction policies to assure that penalties are appropriate for the violations cited. The State should also review its practices on the citing of willful violations and conducting follow-up inspections. |
| 7 | <i>The report found untimely closing of inspections in IMIS. (p. 16-17)</i> | North Carolina should review the status of all inspections on the IMIS Open Inspections Report and take any needed action to assure that activities related to the case have been taken and correctly entered into IMIS. In addition, procedures for routine review of data should be revised to take into account changes in staffing so that all IMIS data is subject to regular review. (The state has initiated a review of all open cases, and reports associated with previous supervisors have been assigned to current personnel for resolution.) |
| 8 | <i>Many penalties remain uncollected. Due to internal procedures for collections, debt collection status is not entered into IMIS so standard IMIS debt collection reports cannot be used to regularly track overdue</i> | North Carolina should review and revise its debt collection procedures to assure appropriate collection actions, recording of information, and timely closing of cases |

| | Findings | Recommendations |
|---|---|---|
| | <i>penalties. (p. 17-18)</i> | |
| 9 | <i>The report noted deficiencies in North Carolina's discrimination program, including the state policy that complaints must be received in writing, all interview are conducted by phone not in persons, the lack of closing conference information in case files, and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual. (p.20-24)</i> | A. North Carolina should review their retaliatory discrimination laws and procedures and discontinue the practice of requiring that safety and health discrimination complaints be submitted in writing. Complaints should be docketed on the date that the complainant contacts the Employment Discrimination Bureau (EDB) and provides information establishing a prima facie case. |
| | | B. North Carolina discrimination investigators should conduct interviews in person when possible to assure that the quality of EDB investigations is not negatively impacted by conducting interviews by telephone. (North Carolina OSHNC management stated that they were not made aware of budgetary reasons for this practice and they have not been asked for additional travel funds. They have discussed this issue with the EDB Administrator and agreed that interviews will be conducted in person when it will promote the quality of the investigation.) |
| | | C. North Carolina should assure that safety and health discrimination files include details about the closing conference. |
| | | D. North Carolina should review its settlement policy for safety and health discrimination cases and consider adding criteria consistent with current federal OSHA guidelines. |

Appendix B: North Carolina State Plan (OSHNC) FY 2009 Enforcement Comparison

| | North Carolina | State Plan Total | Federal OSHA |
|--|---------------------|----------------------|----------------------|
| Total Inspections | 5,180 | 61,016 | 39,004 |
| Safety | 3,344 | 48,002 | 33,221 |
| <i>% Safety</i> | <i>65%</i> | <i>79%</i> | <i>85%</i> |
| Health | 1,836 | 13,014 | 5,783 |
| <i>% Health</i> | <i>35%</i> | <i>21%</i> | <i>15%</i> |
| Construction | 2,196 | 26,103 | 23,935 |
| <i>% Construction</i> | <i>42%</i> | <i>43%</i> | <i>61%</i> |
| Public Sector | 139 | 7,749 | N/A |
| <i>% Public Sector</i> | <i>3%</i> | <i>13%</i> | <i>N/A</i> |
| Programmed | 3,549 | 39,538 | 24,316 |
| <i>% Programmed</i> | <i>69%</i> | <i>65%</i> | <i>62%</i> |
| Complaint | 869 | 8,573 | 6,661 |
| <i>% Complaint</i> | <i>17%</i> | <i>14%</i> | <i>17%</i> |
| Accident | 111 | 3,098 | 836 |
| Insp w/ Viols Cited | 3,649 | 37,978 | 27,165 |
| <i>% Insp w/ Viols Cited (NIC)</i> | <i>70%</i> | <i>62%</i> | <i>70%</i> |
| <i>% NIC w/ Serious Violations</i> | <i>70%</i> | <i>62%</i> | <i>87%</i> |
| Total Violations | 13,713 | 129,363 | 87,663 |
| Serious | 5,254 | 55,309 | 67,668 |
| <i>% Serious</i> | <i>38%</i> | <i>43%</i> | <i>77%</i> |
| Willful | 1 | 171 | 401 |
| Repeat | 247 | 2,040 | 2,762 |
| Serious/Willful/Repeat | 5,502 | 57,520 | 70,831 |
| <i>% S/W/R</i> | <i>42%</i> | <i>44%</i> | <i>81%</i> |
| Failure to Abate | 15 | 494 | 207 |
| Other than Serious | 8,196 | 71,336 | 16,615 |
| <i>% Other</i> | <i>60%</i> | <i>55%</i> | <i>19%</i> |
| Avg # Violations/ Initial Inspection | 3.7 | 3.3 | 3.1 |
| Total Penalties | \$ 3,273,354 | \$ 60,556,670 | \$ 96,254,766 |
| Avg Current Penalty / Serious Violation | \$ 512.10 | \$ 800.40 | \$ 970.20 |
| Avg Current Penalty / Serious Viol- Private Sector Only | \$ 505.00 | \$ 934.70 | \$ 977.50 |
| % Penalty Reduced | 40.5% | 51.9% | 43.7% |
| % Insp w/ Contested Viols | 3.1% | 13.0% | 7.0% |
| Avg Case Hrs/Insp- Safety | 18.9 | 15.7 | 17.7 |
| Avg Case Hrs/Insp- Health | 29.1 | 26.6 | 33.1 |
| Lapse Days Insp to Citation Issued- Safety | 18.5 | 31.6 | 34.3 |
| Lapse Days Insp to Citation Issued- Health | 21.9 | 40.3 | 46.7 |
| Open, Non-Contested Cases w/ Incomplete Abatement >60 days | 239 | 2,010 | 2,234 |

Source: DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

Appendix C: OSHNC FY 2009 State OSHA Annual Report (SOAR)

(Available Separately)

**Appendix D: FY 2009 State Activity Mandated Measures (SAMM) Report
(End of Year Run)**

RID: 0453700

| MEASURE | From: 10/01/2008 To: 09/30/2009 | CURRENT FY-TO-DATE | REFERENCE/STANDARD |
|---|------------------------------------|-----------------------|--|
| 1. Average number of days to initiate Complaint Inspections | 4108 4.50 912 | 89 2.96 30 | Negotiated fixed number for each State |
| 2. Average number of days to initiate Complaint Investigations | 2802 3.62 772 | 129 2.68 48 | Negotiated fixed number for each State |
| 3. Percent of Complaints where Complainants were notified on time | 870 97.75 890 | 26 100.00 26 | 100% |
| 4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger | 1 100.00 1 | 0 0 0 | 100% |
| 5. Number of Denials where entry not obtained | 0 | 0 | 0 |
| 6. Percent of S/W/R Violations verified | | | |
| Private | 196 4.05 4845 | 0 .00 4639 | 100% |
| Public | 15 17.44 86 | 0 .00 71 | 100% |
| 7. Average number of calendar days from Opening Conference to Citation Issue | | | |
| Safety | 62426 25.77 2422 | 3515 26.42 133 | 2489573 43.8 56880 |
| Health | 38563 29.68 1299 | 2273 31.13 73 | 692926 57.4 12071 |

RID: 0453700

| MEASURE | From: 10/01/2008 To: 09/30/2009 | CURRENT FY-TO-DATE | REFERENCE/STANDARD |
|---|------------------------------------|-----------------------|--------------------|
| 8. Percent of Programmed Inspections with S/W/R Violations | | | |
| | 1429 | 63 | 92328 |
| Safety | 57.76 | 60.00 | 58.6 |
| | 2474 | 105 | 157566 |
| | 586 | 24 | 11007 |
| Health | 52.94 | 45.28 | 51.2 |
| | 1107 | 53 | 21510 |
| 9. Average Violations per Inspection with Vioations | | | |
| | 5935 | 362 | 420601 |
| S/W/R | 1.59 | 1.75 | 2.1 |
| | 3731 | 206 | 201241 |
| | 8065 | 357 | 243346 |
| Other | 2.16 | 1.73 | 1.2 |
| | 3731 | 206 | 201241 |
| 10. Average Initial Penalty per Serious Violation (Private Sector Only) | 3474880 | 253097 | 492362261 |
| | 627.23 | 742.21 | 1335.2 |
| | 5540 | 341 | 368756 |
| 11. Percent of Total Inspections in Public Sector | 138 | 6 | 559 |
| | 2.68 | 4.84 | 3.7 |
| | 5148 | 124 | 15228 |
| 12. Average lapse time from receipt of Contest to first level decision | 20630 | 0 | 4382038 |
| | 375.09 | | 246.1 |
| | 55 | 0 | 17807 |
| 13. Percent of 11c Investigations Completed within 90 days | 45 | 0 | 100% |
| | 54.88 | | |
| | 82 | 0 | |
| 14. Percent of 11c Complaints that are Meritorious | 13 | 0 | 1466 |
| | 15.85 | | 20.8 |
| | 82 | 0 | 7052 |
| 15. Percent of Meritorious 11c Complaints that are Settled | 9 | 0 | 1263 |
| | 69.23 | | 86.2 |
| | 13 | 0 | 1466 |

Appendix E: FY 2009 State Indicator Report (SIR)

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | -----12 MONTHS----- | | -----24 MONTHS----- | |
|---|---------------------|-------|---------------------|-------|---------------------|-------|---------------------|-------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| C. ENFORCEMENT (PRIVATE SECTOR) | | | | | | | | |
| 1. PROGRAMMED INSPECTIONS (%) | | | | | | | | |
| A. SAFETY | 6212 | 553 | 11892 | 1164 | 21855 | 2400 | 42572 | 4790 |
| | 67.3 | 69.0 | 67.5 | 71.5 | 66.8 | 74.0 | 65.2 | 73.2 |
| | 9230 | 801 | 17617 | 1628 | 32713 | 3245 | 65304 | 6547 |
| B. HEALTH | 508 | 235 | 1004 | 467 | 1963 | 1060 | 3678 | 2015 |
| | 34.5 | 56.0 | 34.1 | 56.1 | 35.3 | 60.8 | 34.0 | 60.1 |
| | 1471 | 420 | 2946 | 833 | 5559 | 1742 | 10829 | 3355 |
| 2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 4645 | 405 | 8997 | 897 | 16745 | 1822 | 32019 | 3591 |
| | 67.7 | 64.9 | 65.9 | 64.1 | 65.8 | 64.8 | 65.9 | 65.4 |
| | 6860 | 624 | 13654 | 1400 | 25453 | 2812 | 48603 | 5495 |
| B. HEALTH | 368 | 186 | 746 | 433 | 1486 | 850 | 2884 | 1634 |
| | 52.2 | 62.0 | 50.8 | 63.6 | 51.7 | 63.6 | 55.6 | 67.0 |
| | 705 | 300 | 1468 | 681 | 2873 | 1336 | 5187 | 2439 |
| 3. SERIOUS VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 15510 | 888 | 29490 | 1779 | 56535 | 3436 | 111717 | 7015 |
| | 81.8 | 47.9 | 81.1 | 46.6 | 80.0 | 44.9 | 79.4 | 45.9 |
| | 18952 | 1854 | 36371 | 3821 | 70692 | 7649 | 140747 | 15267 |
| B. HEALTH | 2802 | 386 | 5343 | 838 | 10035 | 1714 | 19393 | 3240 |
| | 70.1 | 33.4 | 69.9 | 31.4 | 69.7 | 29.6 | 67.7 | 28.6 |
| | 4000 | 1154 | 7645 | 2668 | 14395 | 5797 | 28659 | 11323 |
| 4. ABATEMENT PERIOD FOR VIOLS | | | | | | | | |
| A. SAFETY PERCENT >30 DAYS | 2938 | 88 | 5782 | 173 | 12109 | 326 | 25516 | 639 |
| | 15.9 | 6.4 | 16.2 | 6.1 | 17.6 | 6.0 | 18.7 | 5.9 |

| | | | | | | | | |
|----------------------------|-------|------|-------|------|-------|------|--------|-------|
| | 18492 | 1384 | 35597 | 2825 | 68607 | 5411 | 136812 | 10772 |
| | 256 | 15 | 577 | 40 | 1452 | 80 | 3111 | 163 |
| B. HEALTH PERCENT >60 DAYS | 6.3 | 2.4 | 7.5 | 2.9 | 10.0 | 2.9 | 10.9 | 3.2 |
| | 4078 | 628 | 7720 | 1391 | 14561 | 2772 | 28488 | 5118 |

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | -----12 MONTHS----- | | -----24 MONTHS----- | |
|---------------------------------|---------------------|--------|---------------------|---------|---------------------|---------|---------------------|---------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| C. ENFORCEMENT (PRIVATE SECTOR) | | | | | | | | |
| 5. AVERAGE PENALTY | | | | | | | | |
| A. SAFETY | | | | | | | | |
| | 280876 | 17776 | 628826 | 26692 | 1303857 | 37235 | 2663433 | 67836 |
| OTHER--THAN--SERIOUS | 923.9 | 935.6 | 998.1 | 667.3 | 1030.7 | 572.8 | 1049.4 | 510.0 |
| | 304 | 19 | 630 | 40 | 1265 | 65 | 2538 | 133 |
| B. HEALTH | | | | | | | | |
| | 83100 | 1300 | 142950 | 3840 | 294225 | 14515 | 654830 | 25333 |
| OTHER--THAN--SERIOUS | 799.0 | 325.0 | 803.1 | 213.3 | 855.3 | 354.0 | 867.3 | 333.3 |
| | 104 | 4 | 178 | 18 | 344 | 41 | 755 | 76 |
| 6. INSPECTIONS PER 100 HOURS | | | | | | | | |
| A. SAFETY | | | | | | | | |
| | 10459 | 922 | 19991 | 1884 | 37160 | 3734 | 73338 | 7551 |
| | 6.1 | 4.7 | 5.7 | 4.8 | 5.5 | 4.8 | 5.3 | 4.9 |
| | 1722 | 196 | 3533 | 396 | 6727 | 778 | 13759 | 1551 |
| B. HEALTH | | | | | | | | |
| | 1764 | 512 | 3581 | 1020 | 6701 | 2077 | 12705 | 3928 |
| | 1.8 | 3.4 | 1.7 | 3.1 | 1.6 | 3.1 | 1.5 | 3.0 |
| | 994 | 150 | 2112 | 327 | 4125 | 680 | 8503 | 1304 |
| 7. VIOLATIONS VACATED % | | | | | | | | |
| | 1278 | 56 | 2561 | 161 | 5139 | 355 | 10097 | 800 |
| | 4.9 | 1.4 | 5.0 | 1.9 | 5.1 | 2.1 | 5.0 | 2.4 |
| | 26336 | 3882 | 51387 | 8357 | 100187 | 16962 | 201495 | 33735 |
| 8. VIOLATIONS RECLASSIFIED % | | | | | | | | |
| | 1130 | 70 | 2440 | 168 | 4798 | 301 | 9539 | 586 |
| | 4.3 | 1.8 | 4.7 | 2.0 | 4.8 | 1.8 | 4.7 | 1.7 |
| | 26336 | 3882 | 51387 | 8357 | 100187 | 16962 | 201495 | 33735 |
| 9. PENALTY RETENTION % | | | | | | | | |
| | 13523966 | 587731 | 27149245 | 1148265 | 54889469 | 2325448 | 111585445 | 4619325 |
| | 63.4 | 72.8 | 62.9 | 72.1 | 63.2 | 71.3 | 62.9 | 68.7 |
| | 21315664 | 807100 | 43130384 | 1591741 | 86796382 | 3260550 | 177346966 | 6720209 |

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | ----- 12 MONTHS----- | | ----- 24 MONTHS----- | |
|--------------------------------|---------------------|--------|---------------------|--------|----------------------|--------|----------------------|--------|
| | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC |
| D. ENFORCEMENT (PUBLIC SECTOR) | | | | | | | | |
| 1. PROGRAMMED INSPECTIONS % | | | | | | | | |
| A. SAFETY | 553 | 11 | 1164 | 16 | 2400 | 35 | 4790 | 151 |
| | 69.0 | 64.7 | 71.5 | 47.1 | 74.0 | 56.5 | 73.2 | 72.9 |
| | 801 | 17 | 1628 | 34 | 3245 | 62 | 6547 | 207 |
| B. HEALTH | 235 | 7 | 467 | 8 | 1060 | 10 | 2015 | 47 |
| | 56.0 | 26.9 | 56.1 | 16.3 | 60.8 | 13.0 | 60.1 | 32.0 |
| | 420 | 26 | 833 | 49 | 1742 | 77 | 3355 | 147 |
| 2. SERIOUS VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 888 | 20 | 1779 | 34 | 3436 | 71 | 7015 | 185 |
| | 47.9 | 40.8 | 46.6 | 47.9 | 44.9 | 53.0 | 45.9 | 31.7 |
| | 1854 | 49 | 3821 | 71 | 7649 | 134 | 15267 | 584 |
| B. HEALTH | 386 | 21 | 838 | 41 | 1714 | 43 | 3240 | 73 |
| | 33.4 | 45.7 | 31.4 | 54.7 | 29.6 | 42.6 | 28.6 | 28.6 |
| | 1154 | 46 | 2668 | 75 | 5797 | 101 | 11323 | 255 |

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | ----- 12 MONTHS----- | | ----- 24 MONTHS----- | |
|------------------------------|----------------------------|------------------------|----------------------------|------------------------|------------------------------|-------------------------|------------------------------|--------------------------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| E. REVIEW PROCEDURES | | | | | | | | |
| 1. VIOLATIONS VACATED % | 446 22.8 1956 | 48 48.0 100 | 875 24.2 3609 | 95 37.4 254 | 1756 23.4 7506 | 146 37.0 395 | 3749 24.1 15528 | 270 34.7 777 |
| 2. VIOLATIONS RECLASSIFIED % | 282 14.4 1956 | 3 3.0 100 | 563 15.6 3609 | 18 7.1 254 | 1133 15.1 7506 | 39 9.9 395 | 2274 14.6 15528 | 89 11.5 777 |
| 3. PENALTY RETENTION % | 2319074 54.1 4286744 | 19610 60.9 32200 | 4080249 51.5 7922126 | 48185 59.8 80625 | 10792902 58.5 18457526 | 99728 49.4 201764 | 20045599 55.9 35865959 | 228121 52.7 433091 |