

**State of New Jersey
Public Employees Occupational Safety and Health
(PEOSH)**



***Enhanced Federal Annual Monitoring Evaluation (FAME) Baseline Special
Evaluation (BSE) Report
October 1, 2008 - September 30, 2009***

Table of Contents

I. Executive Summary	3
Summary of the Report	3
PEOSH Plan Background	4
Study Methodology	5
Study Findings and Recommendations.....	7
II. State’s Progress Toward Achieving Its Strategic Plan Performance Goals...	15
New Jersey State Plan Profile.....	18
III. Summary of FY 2008 FAME Recommendations and State Actions	20
IV. Major Issues	23
V. Assessment of State Program	24
A. ANNUAL PERFORMANCE GOALS.	24
Inspection Activity	24
Public Sector Consultation Activity.....	26
PEOSH’s Progress Toward Attaining it Strategic Goals	26
B. Assessment of State Performance on Mandated and Other Related Activities.	31
State Activity Mandated Measures	31
Training and Education Program.....	33
Public Sector Consultation.....	34
Summary of FY09 Baseline Special Evaluation.....	35
Special Study Findings.....	40
Case File Review	40
Enforcement	40
Fatalities/Catastrophes.....	42
Targeting/Inspections	44
BLS Rates	47
Employee and Union Involvement	53
Citations and Penalties.....	54
Cases With Potential Missed Violations.....	57
Abatement	58
Informal Conferences / Review Procedures	59
Information Management.....	61
Public Sector Consultation Activities	64
Discrimination Program:.....	66
Furloughs and hiring freezes	69
CSHO Training	69
Appendix A Summary of Findings and Recommendations	
Appendix B Enforcement Activity	
Appendix C 2009 SOAR (available separately)	
Appendix D FY 2009 SAMM	
Appendix E FY 2009 SIR	
Appendix F FY 2009 MARC	

FY09 Enhanced FAME BSE Report for New Jersey

I. EXECUTIVE SUMMARY

Summary of the Report

This report assessed the progress of the Public Safety and Occupational Safety and Health (PSOSH) Division of the New Jersey Department of Labor and Workforce Development (LWD) in partnership with the Occupational Health Service (OHS) of the New Jersey Department of Health and Senior Services (DHSS) towards achieving their performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009. Relevant observations from the first quarter of FY 2010 have also been included.

The report documents a significant lack of attention to detail and procedures, raising concerns about program effectiveness, Staff training and significant improvement in adherence to the operating practices of the New Jersey enforcement and discrimination programs are necessary. Continued close Federal oversight with increased technical assistance and an explicit expectation of improved performance may be necessary to effect changes in the program.

The Special Study also identified program strength's achieved by PEOSH. Three notable areas that PEOSH was experiencing success in were as follows: during calendar year 2008, the occupational injury and illness rate for New Jersey state and local Government employees was reduced by 5.2% when compared to 2007. PEOSH's FY09 lapse time was well below the national average for both safety and health inspections, and their percent Serious Willful Repeat violations issued was higher than the Federal OSHA national average (83% vs. 81%), higher than the State Plan national average (43%), and higher than the Public Sector Only average (56%).

Problems and challenges revealed as a result of the on-site special study include:

- PEOSH does not issue first instance penalties and therefore rarely has contested cases or requests for informal conferences.
- All inspections resulted in follow-up visits, and failure-to-abate citations with penalties are the State's enforcement mechanism. No failure to abate citations were issued in FY 2009, although case file identified a number that were warranted.
- Abatement periods are excessive being routinely set at 60 days no matter the hazard.

- Abatement is not tracked or documented or recorded in IMIS.
- Hazards are not identified; violations are not cited; sampling is not done.
- Case files lack basic documentation including such things as employer knowledge, employee exposure, employee interviews, abatement, informal conferences, etc.
- CSHOs and discrimination investigators have not received training since 2005 as a result of an out-of-state travel ban. (Federal funding and requirements have not been used to overcome.)
- Investigations of fatalities are delayed and are not well documented. Victims' families are not contacted by letter or otherwise.
- Discrimination cases contain no documentation of interviews, no statements, or basis for findings.
- Health Department enforces a public building Indoor Air Quality standard. Stakeholders (WEC) felt the health side of the program does not receive its fair share of the funds and that it fails to adequately enforce the IAQ standard.
- Although no cases were contested in FY 2009, two contested fatality cases remain open from FY 2008.
- IMIS data is not entered or updated. Forms are maintained in draft, rejected forms are not corrected, mandatory forms are not completed, and data is not uploaded to the Host. As a result, IMIS data on the New Jersey program is inaccurate as is individual case information on OSHA's enforcement search page.

New Jersey is unique among the State plans in that its occupational health component is still administered by a different agency, the Department of Health and Senior Services. (The Department of Labor and Workforce Development is the designee.) The programs are not well integrated.

New Jersey, like many other states, is experiencing a budgetary crisis which has had some adverse effect on the program in terms of filling positions. A hiring freeze instituted in December, 2005 continuing through FY 2009 has resulted in reduced staffing levels of compliance safety officers. The State has an allocated staffing level of 13 safety and 7 health staff members with 9 safety and 6 health on-board. Its "benchmark"/staffing goal is 20 safety and 7 health. During FY 2009, PEOSH employees experienced a total of 94 furlough days (46 safety enforcement, 29 health enforcement, 19 training and consultation days).

This report documents a lack of attention to detail and adherence to procedures which raise concerns about program effectiveness. Staff training and significant improvement in adherence to the operating practices of the New Jersey enforcement and discrimination programs are necessary.

PEOSH Plan Background

The New Jersey Public Employees Occupational Safety and Health (PEOSH) Plan is a public sector only plan administered by the Public Safety and Occupational Safety

and Health (PSOSH) Division of the New Jersey Department of Labor and Workforce Development (LWD) in partnership with the Occupational Health Service (OHS) of the New Jersey Department of Health and Senior Services (DHSS). The State Plan has two offices: a Labor (safety) Central Office, and a Health Central Office, both located in Trenton, New Jersey. These offices cover all public sector enforcement and consultation activities in New Jersey. PEOSH has enforcement authority over employers in the public sector.

PEOSH covers both safety and health disciplines. Private sector enforcement is retained under federal jurisdiction, while private sector consultative services are provided by the NJLWD Consultation Services Bureau under section 21(d) of the OSH Act. Private sector consultation services are administered under a separate grant and a review of that program is not included in this report. New Jersey law requires the State to adopt all applicable Federal OSHA safety and health standards, either identically or as alternative standards that are "at least as effective as" the federal standards.

Study Methodology

This Federal Annual Monitoring Evaluation (FAME) report presents the results of a comprehensive special baseline evaluation of the New Jersey Public Employees' Occupational Safety and Health (PEOSH) program.

In addition, this report includes PEOSH progress towards meeting its targeted performance goals (PEOSH enforcement, education and training, outreach, and administrative programs) as outlined in the Program's FY09 Annual Performance Plan, the Mandated Activities Report for Consultation (MARC) and the State Activity Mandated Measures (SAMM) report.

In accordance with Acting Assistant Secretary Jordan Barab's memorandum dated November 24, 2009; this Federal Annual Monitoring and Evaluation (FAME) report incorporates the Baseline Special Evaluation (BSE) of the PEOSH Program. A five person Federal OSHA team conducted the onsite portion of the special study at PEOSH's office in Trenton, NJ starting on January 11, 2010 and ending on January 27, 2010.

Key stakeholders were contacted including representative from the Communications Workers of America (CWA) Locals 1040, 1081 and a representative of New Jersey's Work Environment Council (WEC).

The baseline special evaluation of the PEOSH State Program covered Fiscal Year 2009, the period of October 1, 2008 through September 30, 2009; certain inspections or elements (such as fatality investigations and settlements) of the PEOSH program from FY08 (October 1, 2007 through September 30, 2008) were

reviewed in order to obtain enough information to evaluate specific program elements.

The OSHA team's evaluation consisted of: case file reviews; interviews of PEOSH staff; review of the discrimination investigation program; public sector consultation program; and PEOSH's enforcement statistics relative to Federal performance. In addition, the review focused on areas not recently reviewed such as the operation and outcome of PEOSH contested case review and settlement procedures and areas of interest identified via input from stakeholders were addressed.

The special study of the PEOSH Program focused primarily on FY09 enforcement activities. This report is also an assessment of the State's progress toward achieving their performance goals established in their 2009 Annual Performance Plan and a review of the effectiveness of programmatic areas related to enforcement and consultation activities.

Findings and Recommendations

FINDINGS:

Staffing

Staffing issues were affected in part by furloughs and hiring freezes that PEOSH experienced in FY09. In FY09, PEOSH employees were furloughed for a total of 94 days; 46 safety enforcement, 29 health enforcement, and 19 training and consultation days. The total number of furlough days (94) constitutes approximately one-third of a full-time-equivalent employee (FTE).

In addition to the furloughs, PEOSH has continued to lose personnel due to attrition. As a result, PEOSH's staffing of safety compliance officers is now at less than half of their benchmark (9 vs. 20 FTEs) and staffing of Health compliance officers is short one FTE (6 vs. 7 FTEs).

Mandatory Training for Compliance Officers

The study found that for several years PEOSH has not sent Safety and Health CSHOs or their supervisors to the OSHA Training Institute or any other out of state location for technical training. This is directly attributed to a State policy that prohibits state funds from being used for employee travel outside the state (ostensibly due to budgetary restrictions). Any travel outside the State of New Jersey requires special approval. According to PEOSH managers; requests for funding to be released to allow staff to obtain technical training at out-of-state locations have been denied.

The discrimination investigation staff are subject to the same restrictions for out of state travel.

There are several CSHOs who did not receive mandatory training. For example, 50% of the enforcement staff (both safety and health) did not have Legal Aspects training. This training covers many of the documentation issues noted as deficiencies in this report.

In addition, no CSHOs have had advanced accident investigation training; including those who conducted fatality inspections. It is the opinion of the study team that the lack of technical training, since FY 2005, has negatively affected PEOSH CSHOs' inspection quality, their ability to identify safety and health hazards, and to their ability to adequately document *prima facie* cases per PEOSH's Field Inspection Reference Manual (FIRM).

Documentation & Organization in Enforcement & Consultation case files

The baseline special evaluation revealed PEOSH case file documentation is lacking, especially in safety cases. Case files reviewed lacked evidence of employee exposure, employer knowledge of the cited hazardous conditions, names and contact information for employee(s) interviewed and documentation addressing affirmative defense issues. In addition many files also did not include narratives or OSHA 1B forms or their equivalent (forms in which violations are documented).

In 100% of the cases reviewed in which citations were issued; prima facie information regarding evidence of employer knowledge and employee exposure was either inadequate or missing.

In approximately 50% of the safety and the health files reviewed there was little or no documentation indicating that employees were interviewed regarding their working conditions.

Case file organization was deficient for Safety cases. In many cases, documents were loose in the file or missing and when they did exist they were in no discernable order.

Adequate documentation is required by PEOSH's FIRM and is necessary to defend a case if and when it is contested. Further, sufficient documentation is necessary for the supervisors to conduct adequate case file reviews.

Contact with Next-of-Kin

None of the fatality investigations reviewed had evidence that the next of kin was contacted or notified of the results of the investigation. PEOSH has committed to rectify this issue.

Missed opportunities for Industrial Hygiene (IH) sampling

There were 2 cases reviewed in which it appears that IH sampling for asbestos may have been warranted, but not conducted. The reviewers believe that additional training on hazard recognition would increase the likelihood that all appropriate sampling would be conducted.

Employee Involvement

Employee/employee representative involvement is not documented in the case file notes in both safety and health files. CSHOs did indicate on the OSHA 1 IMIS form when there was employee representative involvement during the opening conference, walk-around, and closing conference however a description of the extent of the involvement was lacking.

Excessive Abatement Periods

In both the health and safety case files reviewed where violation abatement periods were established, the overwhelming majority of violations were given 60 day abatement periods. In many cases, given the nature of the violations, the abatement time period assessed was excessive. Items with 60 day abatement periods included: blocked fire extinguishers, blocked electrical panels, not providing Appendix D of respirator standard, Hazard Communication - missing labels and MSDSs, hazard communication training, missing light bulb covers (electrical hazard), and missing electrical outlet covers.

Petitions For Modification of Abatement Dates, Failure To Abate and Abatement Verification

There were 6 cases reviewed that had Petition for Modification of Abatement (PMA) date. None of the cases contained required documentation (interim protective measures, posting requirements, and reasons why extensions were needed) to be provided by the employer.

No Failure to Abate (FTA) violations were issued by PEOSH during FY09. There are at least four cases where FTAs may have been appropriate.

When abatement was documented during inspections (Corrected During Inspections (CDI)) or during follow up inspections the CSHOs did not document how the violations were abated nor that the abatement was witnessed by the CSHO.

Integrated Management Information System (IMIS)

The baseline special study revealed that IMIS data input and maintenance was not being managed in accordance with PEOSH and OSHA policy. Rejected forms were not being corrected, standard IMIS reports such as draft forms reports were not reviewed, and uplinks and data transfer from the local IMIS to the NCR Host computer was not being ensured. In many instances, data was not transferred from PEOSH to the host resulting in inaccurate data available for evaluation, analysis, and review.

Referral & IMIS

Referrals are being investigated from both internal and external sources (including CSHOs, state and local officials, etc.), however these referrals were not being entered into the OSHA IMIS system via the appropriate form (OSHA 90 Referral form), therefore these referrals are not being accounted for on the IMIS system.

Outreach & IMIS

Outreach activities such as seminars, conferences, and training activities were being performed however PEOSH safety and health officers are not entering appropriate tracking forms for such activities into the IMIS system.

Health Sampling Data & IMIS

CSHOs were not entering sampling data into the IMIS (OSHA FORMS such as OSHA 91A Air Sampling Worksheets, OSHA 92 Noise Survey Report, OSHA 93 Direct Reading Report, OSHA 98 Screening Report). Therefore no records were found in IMIS for FY09. It should be noted that internal records from PEOSH's contracted analytical laboratory were kept and copies were provided during the evaluation however they were not entered into the IMIS (in accordance with PEOSH and OSHA policy).

CSHO Activity Tracking (OSHA 31)

PEOSH is not requiring the OSHA 31 Form for program activity monitoring to be entered into the IMIS, thus making it impossible for Federal OSHA to monitor CSHO resources (time spent on inspections).

PEOSH's explanation, in part, for the problems with IMIS data integrity is an on-going problem relating to communication issues between the ORACLE-based CSHO application used by PEOSH Safety CSHOs and the IMIS. According to PEOSH; these problems are partly to blame for some data not transferring to the host computer.

RECOMMENDATIONS:

PEOSH IMIS

Recommendation 1: PEOSH must ensure Compliance Staff and Management complete required IMIS forms and ensure IMIS standard reports are reviewed on a regular basis to ensure proper IMIS database management. Corrective actions should include comprehensive IMIS data entry training. OSHA is prepared to assist PEOSH with IMIS training.

Recommendation 2: PEOSH Public Sector Consultation must ensure that consultants conferring with employees properly enter this data into the IMIS system.

PEOSH Consultation Abatement

Recommendation 3: PEOSH Consultation must improve its performance in verifying the abatement of serious hazards in a timely manner. Delaying abatement verification until follow-up visits delays verification of hazards that can be abated quickly.

PEOSH Enforcement - Casefile documentation

Recommendation 4: Provide training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements set forth in PEOSH's Field Inspection Reference Manual or Field Operations Manual and institutionalize established documentation requirements.

Fatalities / Catastrophes

Recommendation 5: Provide training to CSHOs to reiterate the policies relating to fatality investigations including the following:

- Proper procedures relating to making the appropriate communication to the family of victims (i.e. next of kin letters, inspection findings, etc.) and the requirement of documenting such communication in the file.
- Implement internal controls to ensure that all fatality investigations are opened within a timeframe established by agency policy.
- Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of federal OSHA and the PEOSH FOM or FIRM (i.e. providing detailed narrative documenting the facts that surround the incident, field notes, evidence of employee exposure, evidence of employer knowledge and completion of the appropriate forms (i.e. OSHA 36's and OSHA 170's).

Inspection Targeting

Recommendation 6: OSHA recommends that PEOSH develop a consistent inspection selection criteria for the selection of sites within targeted NAICs codes for inspection and that inspections that are opened as a result of unprogrammed activity (e.g., complaints and referrals, etc.) in targeted NAICs that have not recently received a comprehensive

Recommendation 7: PEOSH should develop a formal policy relating to the industries targeted under its Strategic Plan for FY09-2013 including:

- The identification and selection of sites targeted for inspection
- Guidance for CSHOs on conducting inspections of sites targeted (e.g., common hazards that may be causing the high injury and illness rates, when to expand unprogrammed inspections to comprehensive, etc.)
- Proper coding of targeted inspections.

Employee Union Involvement

Recommendation 8: Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements of a prima facie case - specifically with regards to documenting employee exposure - as set forth by federal OSHA and the State of New Jersey policy (Field Inspection Reference Manual or Field Operations Manual).

Recommendation 9: Provide training to all field staff regarding the agency's policy of Union/Employee Representative involvement during and after inspections and the requirement to properly document compliance with this policy in case file.

Citations and Penalties

Recommendation 10: Provide training to all field staff, including supervisory staff, to ensure that all inspection case files contain all of the documentation required by the State of New Jersey FIRM. Implement internal controls to ensure that all cases are reviewed on a supervisory level to make certain that all violations issued meet the prima facie requirements. Prima Facie documentation includes evidence of employee exposure to a hazard, evidence of employer knowledge, an assessment of the severity of the injury/illness resulting from exposure to the hazard, and the probability of that exposure.

PEOSH Enforcement Abatement

Recommendation 11: Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including:

- Ensure appropriate abatement periods are assigned for unabated violations.

- Ensure that all abatement information accepted satisfies the order to comply prior to closing the case.
- For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.
- Implement internal controls to ensure that all Petitions for Modification of Abatement (PMA) Dates are reviewed on a supervisory level to ensure that all required information is contained in the request prior to granting the PMA.
- Ensure that Failure To Abate Notices are issued where appropriate.

Informal Conferences / Review Procedures

Recommendation 12: Relating to informal conferences, PEOSH representatives must thoroughly document the following in the case file: The fact that notification to the parties was made (employee and/or employee representative notification) and the date such notification was made, time and location the informal conference was held; at the conclusion of the informal conference, all main issues and potential courses of action must be summarized and documented in accordance with PEOSH policy.

Information Management

Recommendation 13: Provide IMIS Administration training for PEOSH IT personnel, Supervisors, CSHO's, Consultants and Compliance Assistance Specialists and ensure appropriate IMIS management is implemented. Federal OSHA Region II is willing to assist in providing retraining for PEOSH personnel who use and manage the IMIS system.

Discrimination Program

Recommendation 14: Supervisors should continue to review IMIS Reports in order to eliminate duplicate discrimination case reporting. (A procedure has already been put in place to address this concern.)

Recommendation 15: State plan administrators should review the number of discrimination investigators that are qualified and assigned to handle discrimination investigations and adjust staffing based on demand throughout the state.

Recommendation 16: State plan administrators should ensure discrimination investigators assigned to the program are properly trained. Means to send investigators to required training should be developed.

Recommendation 17: The discrimination investigation unit should adopt a case file organization system such as the system which is outlined in the discrimination investigators manual.

Recommendation 18: The discrimination investigation unit should use either a statement form or a memorandum to file to document statements made by complainants, witnesses or other interested parties, utilize the Case Activity Log and the Final Investigative Report format.

CSHO Training

Recommendation 19: It is recommended that the PEOSH resolve the budgetary restrictions which prohibit investigators from attending courses at The OSHA Training Institute and the Annual Discrimination Investigator Training Conference as the program receives Federal funding and is required to meet specific staff training requirements.

Recommendation 20: Develop and implement a comprehensive training plan to provide mandatory training to CSHOs and their supervisors to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 "Initial Training Program for OSHA Compliance Personnel" and to providing adequate training for discrimination investigators. PEOSH must also ensure the allocation of necessary funding to accomplish the training plan.

II. State's Progress Toward Achieving Its Strategic Plan Performance Goals

PEOSH's FY09 Annual Performance Plan consisted of three broad-based strategic goals with complementary performance goals; (1) Reduction of injuries, illnesses and fatalities, (2) promote public sector employer and worker awareness of, commitment to, and participation in workplace safety and health, and (3) initiate inspections of fatalities and catastrophes within one (1) day of notification for 95% of occurrences to prevent further injuries or deaths.

PEOSH reported the following results as it relates to PEOSH Goal #1: The reduction of injuries, illnesses and fatalities.

Performance Goals 1.1, 1.2, 1.3, and 1.4: Decrease injuries and illnesses in public employee who work in the Transportation, Nursing and Residential Care, Fire Protection, and Police Protection sectors by 1% per year from FY09 through FY13 totaling 5% for the 5-year Strategic Plan. The goal for FY09 included identifying workplaces within these 4 sectors, contacting them, and collecting baseline NJOSH 300 data. This goal was met for each performance goal. In addition; PEOSH performed inspections and conducted outreach and consultation activities in these 4 sectors

PEOSH reported the following results as it relates to PEOSH Goal #2: Promoting public sector employer and worker awareness of, commitment to, and participation in workplace safety and health.

Performance Goal 2.1: Foster the development of effective safety and health management systems in 100% of State Agencies by offering and delivering training programs on Safety and Health Management Systems and Development of Labor-Management Safety and Health Committees for 20% of the agencies each year for the five year strategic plan. In addition, PEOSH planned to disseminate Guidelines for Joint Labor Management Health safety Committees to all New Jersey State Agencies and encourage the Agencies to develop and improve Joint Labor Management Safety and Health Committees. PEOSH explained that Progress on this goal was limited due to lack of available staff to conduct outreach, training, mailings and to develop alliances. This goal was not met in FY09.

Performance Goal 2.2: The PEOSH Program was to conduct programmed inspections, and/or consultation visits, and/or provide outreach and training to 20% of New Jersey's 566 of NJ municipal departments of public work by the end of FY2013 (4% or 22 per year). PEOSH conducted a total of 14 programmed inspections and 8 consultation visits at municipal departments of public works which met the goal of 22 interventions. This goal was met during FY09.

Performance Goal 2.3: Achieve a customer service rating of “highly effective” (score 7 or higher, on a scale of 1 thru 10) on a customer satisfaction survey from 90% of public employers subject to an intervention. This goal was exceeded in FY09 in that 100% of public employers rated PEOSH as highly effective.

Performance Goal 2.4: Achieve a customer service rating of “highly effective” (score of 4 or higher, on a scale of 1 thru 5) on a customer satisfaction survey which rates the quality of public sector compliance assistance interventions (e.g., outreach, seminars, mass mailings, hazard bulletins, newsletters, etc.) conducted/distributed by PEOSH from 90% of public employers subject to a compliance assistance intervention. This goal was exceeded in FY09 in that 100% of public employers rated PEOSH as highly effective.

Performance Goal 2.5: Achieve employee involvement in 100% of PEOSH interventions (e.g., inspections, consultations, etc.) According to PEOSH reporting there was 100% employee involvement and this goal was met during FY09. Review of a sample of enforcement and consultation case files revealed a lack of documentation of the level of employee involvement.

Performance Goal 2.6: Bring 4 new public sector work sites into the Safety and Health Achievement Recognition Program (SHARP) every year for the 5 year Strategic Plan (20 new sites by 2013). Six new sites were brought into SHARP during FY09. This goal was exceeded.

The delivery of services for all three of Goal #3, are as follows:

Performance Goal 3.1: Initiate inspections of fatalities and catastrophes within one (1) day of notification for 95% of occurrences to prevent further injuries or deaths. Eight out nine (89%) of fatality investigations were initiated within one day during FY09. This goal was not met.

Performance Goal 3.2A: Initiate 95% of safety complaint inspections within five (5) working days of notification. This goal was exceeded as 100% of complaints were initiated within five working days of complaint receipt totaling 96 complaints during FY2009.

Performance Goal 3.2B: Initiate 95% of non-IAQ/non-sanitation health complaint inspections within 5 working days of notification. According to PEOSH IMIS data this goal was exceeded as 100% of inspections in response to these complaints were initiated within 5 working days totaling 40 inspections during FY09. Review of health complaint case files reveals that 1 complaint was miscoded as an IAQ complaint and opened 28 days after receipt was not actually an IAQ complaint, but a complaint regarding asbestos exposure. Additionally there were 3 other health complaints reviewed with documentation that shows that they were non-IAQ/non-sanitation complaints that were not opened within 5 working days.

Inspection Activities

PEOSH conducted a total of 1,805 inspections during FY09. This is 30.8% above the annual goal of 1,380 inspections. Of the 1,805 inspections: 1,517 were safety inspections which was 37.9% above the planned goal of 1,100; and 288 health inspections which was 3% above the planned goal of 280.

PEOSH public-sector consultation conducted a total of 189 public-sector consultation visits in FY09. This is 72% above the goal of 110 consultation visits. Of the 189 consultation visits: 42 were safety visits which was 5% above the goal of 40; and 147 health visits which was 110% above the goal of 70 visits.

Mandated Activities

State Activity Mandated Measures (SAMM): PEOSH performed satisfactorily relating to the majority of the fifteen established mandated enforcement measures discussed in this report.

Mandated Activities Report for Consultation (MARC): PEOSH performed satisfactorily relating to three of the five established mandated consultation measures. The only two outliers were the low percent (69% vs. 90% goal) of initial visits in high hazard establishments and the low rate (12.8% vs. 65% goal) of ensuring timely abatement of serious hazards.

PEOSH management has indicated that the public sector consultation program is request driven which resulted in a disproportionate number of IAQ consultations relative to other types. OSHA expects this percentage will improve if staffing is restored once the hiring freeze is lifted.

New Jersey State Plan Profile

State Plan: Approved – January 11, 2001 – developmental plan
Designee - Harold J. Wirths, Acting Commissioner State of New Jersey Department
of Labor and Workforce Development

Excluded Coverage

- Occupational Safety and Health enforcement in the private sector
- Occupational Safety and Health consultative services in the private sector

Employee Coverage

Public Coverage Only

- 141,217 State Government
- 412,954 Local Government
- 554,171 Total State, County and Local employees

Operational Grant

- FY09 Federal Share: \$1,862,700
- FY09 State Share: \$1,862,700
- FY09 100% State Funds: \$1,409,779
- FY09 Total Grant: \$5,135,179
- For FY09, PEOSH's initial total 23(g) grant amount was \$5,135,179, which included federal/state base award matching funds of \$3,725,400 and state overmatch funds of \$1,409,779. Forty-five percent of these funds were committed to the NJDHSS for health enforcement and 55% were committed to the NJDLWD for safety enforcement and overall administrative responsibilities.

Plan Benchmark Enforcement Staffing

- Safety Enforcement: 20
- Health Enforcement: 7

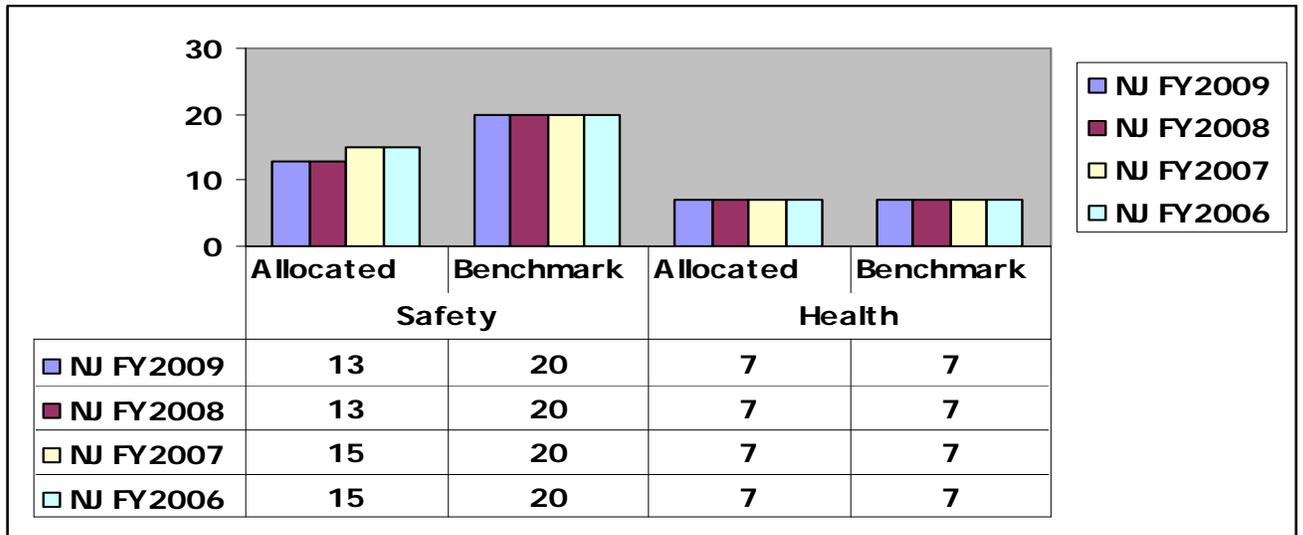
Allocated Staff

- Total Full Time: 25
- Total Part Time: 22
- Safety Enforcement: 13
- Health Enforcement: 7
- Consultation: 7

Actual Staffing in FY09

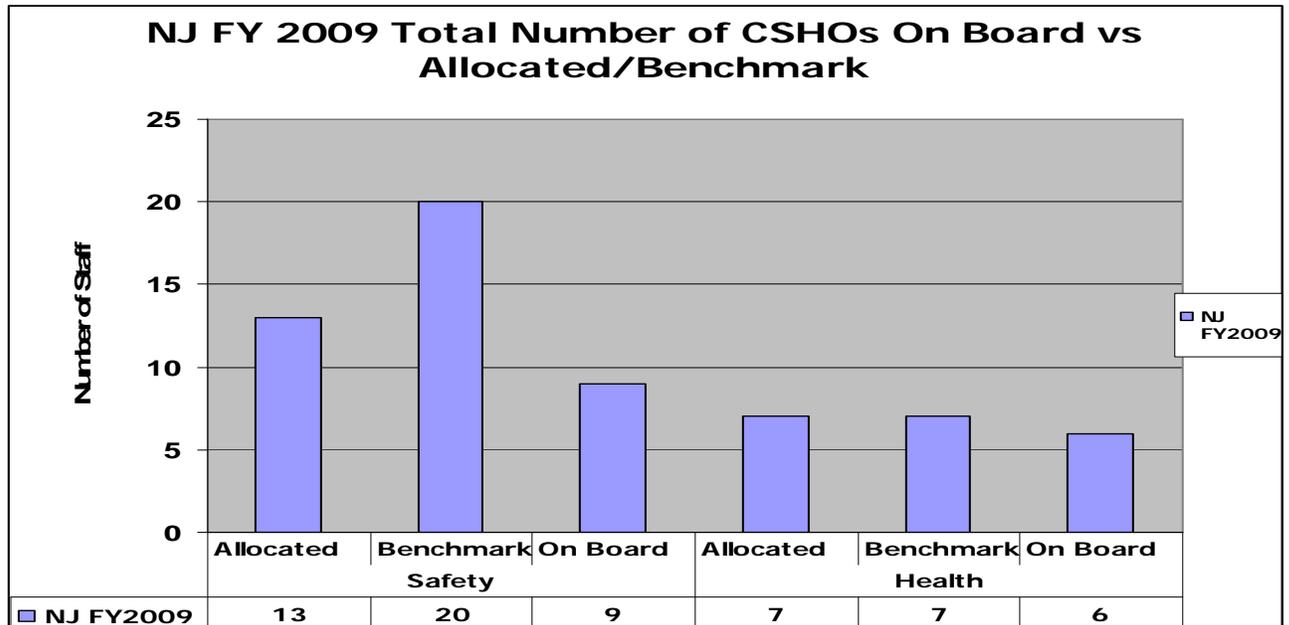
- Total Full Time: 18
- Total Part Time: 15
- Safety Enforcement: 9
- Health Enforcement: 6
- Health Consultation/Training: 3

Chart #1 - Allocated Staff vs. Benchmark FY 2006- 2009



Source: PEOSH FY09 Grant Application Appendix B – Exhibit IX 23(g) Supportive Cost breakout Worksheet FY09

Chart # 2 - TOTAL NUMBER of CSHOs on BOARD – FY09



Source: PEOSH FY09 Grant Application Appendix B – Exhibit IX 23(g) Supportive Cost breakout Worksheet FY09

III. Summary of FY 2008 FAME Recommendations and State Actions

OSHA Recommendation #1[enforcement]: PEOSH needs to implement necessary systems to ensure timely abatement verification for all serious, willful and repeat violations. PEOSH should make a concerted effort to obtain and document abatement based on certifications and documentation submitted by employers rather than waiting to verify abatement via a follow up inspection on or after the last abatement date. This change in procedure will result in significant improvements in abatement verification timeliness.

State Action/Response:

As per New Jersey PEOSH's procedures virtually all inspections with violations receive follow up inspections. Verifications of abatement are documented in each case file. New Jersey PEOSH also maintains an in house database that tracks all abatements and is used for follow up on each case file close out.

Once all abatements have been verified the case is closed on the NCR and sent to the State's server. IT staff then finalize the reports and send them to the host. Often times these reports remain open even after all of these steps are taken. This has been an ongoing issue and the fact that these cases appear to be open on the NCR has no bearing on the fact that violation abatement has been completed. New Jersey PEOSH welcomes OSHA's input into correcting this problem.

OSHA's Findings:

A number of significant challenge areas were identified during the special study that affect timely abatement verification that need to be addressed including: inadequate abatement documentation in follow up case files; abatement dates assigned to citations were excessive as in many cases 60 days was allowed to abate various citations (including those that Federal OSHA would assign short abatement periods such as guarding of live electrical parts and missing outlet covers) that could be abated in a much shorter time frame; Petition to Modify Abatement (PMA) Dates were, at times, granted late and accepted without the required documentation.

The improper management of the Integrated Managing Information System (IMIS) was found to have contributed to PEOSH's problems getting abatement information transmitted to OSHA's host computer. These issues included: rejected forms (where data entry errors were made) that were not addressed; draft forms were not reviewed and either deleted or finalized; and on-going problems with communication between PEOSH's ORACLE® based system and OSHA's IMIS system.

OSHA Recommendation #2: PEOSH must continue to focus its public sector consultation resources towards high hazard worksites in order to meet the required 90% reference standard. (Note: PEOSH adopted 29 CFR 1908 and the Consultation Policies and Procedures Manual for Public Employees only).

State Action Response:

NJLWD PEOSH Safety Consultation Program exceeded the goal of 90% of visits to high hazard worksites.

NJDHSS PEOSH Health Consultation Program receives consultation requests from employers that would not be considered high hazard worksites (for example schools/indoor air quality). The NJDHSS PEOSH Program feels it is important to respond to such requests because the largest number of complaints received by the NJDHSS PEOSH Program is indoor air quality complaints. By providing consultation services for indoor air quality it is hoped that over time, public employers will be able to recognize, evaluate and remedy indoor air quality problems at the work site. PEOSH has also undertaken education and outreach to educate employers and employees on IAQ issues.

The NJDHSS PEOSH Program will continue to reach out to public employers that have high hazard work sites and encourage them to take advantage of NJDHSS PEOSH consultation services. Currently consultation staff is meeting with representatives from the New Jersey Department of Human Services (NJ DHS). The goal is to have NJ DHS facilities request NJDHSS PEOSH consultation services for safe patient handling and workplace violence. Evaluation of NJOSH 300 data shows that NJ DHS facilities have high injury and illness rates and that workplace violence appears to be a major cause. The NJDHSS PEOSH Program will meet with representatives from the New Jersey Department of Military and Veterans Affairs (NJDMVA). NJDMVA operates long term care facilities which have high injury and illness rates.

The PEOSH Program is also working with the Local Information Network and Communication System (LINCS) agencies (22 local Health Departments). Through the LINCS agencies it is hoped that the NJDHSS PEOSH Program can attract local police, EMS, and health departments to request training and consultations.

OSHA Findings:

OSHA accepts PEOSH's plan to improve their health consultation marketing and also agrees that PEOSH needs to service other requests from lower hazard worksites to provide consultative services.

During FY09, PEOSH conducted 69.16% of its initial visits in high hazard establishments, an increase from FY 2008's indicator of 62.50%. OSHA anticipates this percentage to improve as safety consultant staffing is restored to former levels.

OSHA Recommendation #3[consultation]: PEOSH must ensure timely hazard correction by evaluating the abatement certification received from the employer and entering the data into IMIS. PEOSH should not wait for follow up inspections to take place in order to observe abatement. This recommendation should be followed in order for all abatement of serious hazards to meet the reference standard.

State Action Response:

NJLWD PEOSH Safety Consultation Program did not meet the goal of 100% of serious hazards verified corrected in a timely manner (less than or equal to 14 days of latest correction due date). To ensure timely abatement of hazards NJLWD PEOSH Safety Consultation Program will emphasize timely correction of hazards at the opening and closing conference, in the written report to the employer and by conducting follow up visits. The weekly uncorrected hazard report will be reviewed by the Assistant Chief for Safety to identify any past due abatements.

OSHA's Findings:

PEOSH is sending consultants to perform onsite abatement verification inspections 100% of the time; even when apparently satisfactory abatement information has been submitted by the employer. This could be considered an inefficient use of resources.

OSHA Recommendation #4: PEOSH must conduct a thorough study of all OSHA standards that have been adopted since the inception of the State Plan and ensure all OSHA standards (or more restrictive standards) applicable to public sector employers in the State of New Jersey have been adopted.

State Response Action:

During Federal FY09 New Jersey PEOSH adopted 29 CFR 1915 (Shipyard employment) 29 CFR 1917 (Marine Terminals), 29 CFR 1918 (Long shoring), 29 CFR 1919 (Gear Certification), and 29 CFR 1924 (Rehabilitation facilities assisted by grants).

OSHA's Findings:

As a result of the post contest discovery process in 2008 PEOSH discovered it had never adopted OSHA's Long Shoring and Maritime standards as it had not previously identified that public employees were engaged in this activity. PEOSH has since conducted its study and has adopted OSHA's Shipyard (29 CFR 1915), Marine

Terminals (29CFR 1917), Long shoring (29 CFR 1918), Gear Certification (29CFR 1919) and Rehabilitation Facilities Assisted by Grants standards (29CFR 1924)

PEOSH continues to adopt all applicable Federal standards when they have become final rules.

IV. Major Issues

During FY09, State Mandated furloughs resulted in PEOSH personnel having to take a total of 94 furlough days including: 46 total days for safety enforcement; 29 total days for health enforcement, and 19 total days for consultation/training personnel. The furloughs have the impact of reducing the program's staffing by approximately one-third of a full time equivalent (FTE) employee.

An on-going hiring freeze has continued through FY09 serving to further erode PEOSH's enforcement staff. Since the hiring freeze was instituted in December 2005 the program reported that it has lost four enforcement personnel and one consultant. This has left the program with only 45% of their benchmark for safety compliance officers. The NJDHSS has fared better maintaining approximately 86% of their benchmark.

In an effort to increase enforcement personnel, two of PEOSH public sector consultation personnel were reassigned temporarily to the PEOSH enforcement unit on an as-needed basis. This reassignment of personnel will continue to ensure, as far as possible, the continuation of an effective enforcement program.

Federal OSHA has been closely monitoring this stop-gap measure and its impact on the performance of the public sector consultation program. During FY09 PEOSH has worked diligently to meet their strategic goals and continue to provide adequate consultation service to public sector employers. The LWD has assured that its public sector consultation program will continue to be effective and that it will not be eliminated.

Since 2005, the State of New Jersey has significantly restricted out of state travel for State employees. This has, in effect, prohibited New Jersey's compliance officers, public sector consultants, and discrimination investigators from attending the OSHA Training Institute (OTI) or other mandatory training, the vast majority of which are located out of state. This has served to prohibit PEOSH from fulfilling mandatory training requirements. PEOSH managers stated that they requested to send their compliance staff to mandatory training that was held out of state. These requests were denied by the Controller. Lack of training may negatively impact the staff's overall ability to recognize all hazards and properly document case files.

PEOSH has also been unable to replace a discrimination investigator who was promoted leaving only one discrimination investigator for the entire State of New

Jersey.

IMIS

PEOSH has been experiencing significant problems with the Integrated Management Information System (IMIS). PEOSH has had difficulty in managing and maintaining the integrity of the IMIS system. Issues uncovered during the special study included; excessive numbers of rejected forms - these are forms that are rejected by the host computer due to data entry errors and not resolving issues relating to draft forms (OSHA 1Bs) left in the system for extended periods including after cases are closed. It was determined that PEOSH staff have not been completing mandatory forms including health air and noise sampling forms (OSHA 91A, 91B, 92, 93, & 98 IMIS forms) referral forms (OSHA 90), and timekeeping forms (OSHA 31).

The result of the above problems led to IMIS data inaccuracies. Examples of this include violations not appearing on IMIS establishment searches. In some cases it appears that certain inspections are in compliance when in reality Orders To Comply were issued. In addition, health sampling data is not transmitted to OSHA's host computer resulting in this data not being included in the IMIS database. Lastly, not completing timekeeping form 31 renders OSHA unable to assess efficiency measures based on this data.

Recommendation 1: PEOSH must ensure Compliance Staff and Management complete required IMIS forms and ensure IMIS standard reports are reviewed on a regular basis to ensure proper IMIS database management. Corrective actions should include comprehensive IMIS data entry training. OSHA is prepared to assist PEOSH with IMIS training.

V. ASSESSMENT OF STATE PROGRAM

A. ANNUAL PERFORMANCE GOALS.

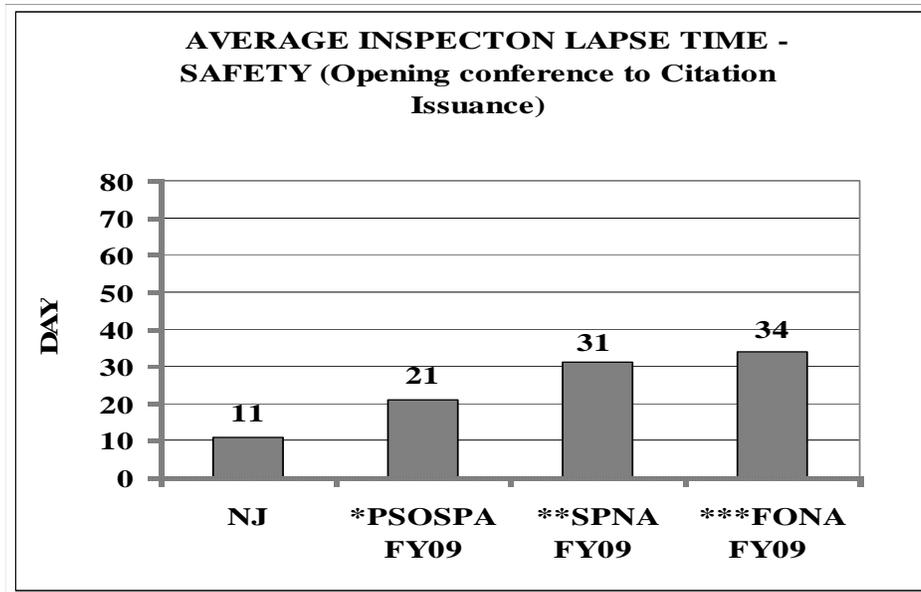
Inspection Activity

PEOSH conducted a total of 1,805 inspections during FY09¹. This is 30.79% above their FY09 annual goal of 1,380 inspections. Of the 1,805 inspections: 1,517 were safety inspections which was 37.90% above the planned goal of 1,100; and 288 were health inspections which were 3% above the planned goal of 280.

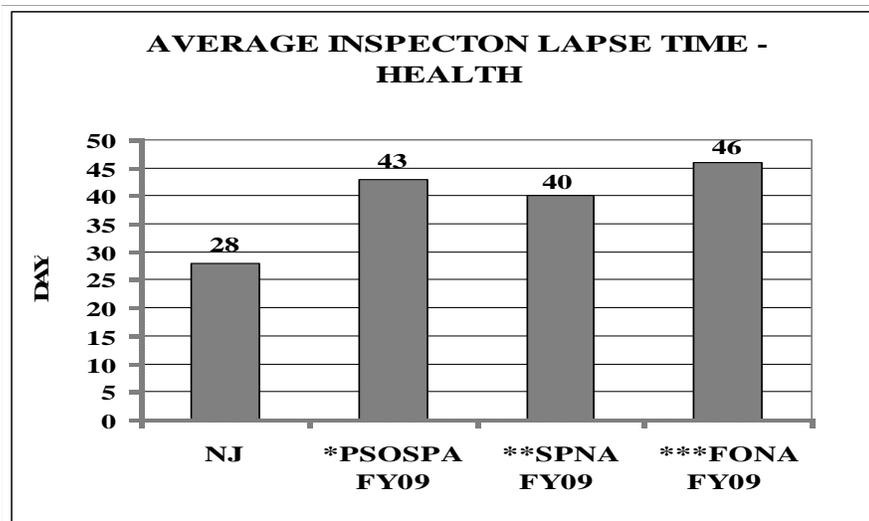
Of the 1,805 inspections, the program conducted 984 unprogrammed inspections of which: 9 were accidents; 217 were complaints; 6 were referrals; 2 were monitoring visits; 748 were follow-up inspections; and 2 were unprogrammed-related

¹ Source: Inspection 8 Report 04/11/10.

inspections. There were 821 programmed inspections of which: 726 were planned; 2 were programmed-related; and 93 were other. Inspections conducted by industry are as follows: 31 in construction; 1 maritime; 2 manufacturing and 1,771 in other. The total number of employees employed by establishments inspected was 884,049, and the number covered by inspection activities was 859,575. A total of 3,220 violations were issued including, 2,657 Serious and 563 Other-Than-Serious violations. No willful citations, repeat citations or failure-to-abate Notices were issued during FY09. PEOSH did not have any inspections opened in FY09 that were contested. The number of average days from opening conference to citation issuance (Lapse days) was 11.0 days for safety inspections, and 28 days for health inspections (see tables below), and 10 for the entire program. During FY09 PEOSH violations per inspection averaged 4.0 as compared to the Public Sector Only State Plan average of 4.9, State Plan National average of 3.3 and Federal average of 3.1.



Average safety case lapse time for public sector only state plans vs. Public sector only state plan average, total state plan average, and Federal Average.



Average health case lapse time for public sector only state plans vs. Public sector only state plan average, total state plan average, and Federal Average.

Public Sector Consultation Activity

PEOSH public-sector consultation program conducted a total of 189 public-sector consultation visits in FY09. This number is 72% above their projected goal of 110 visits. This total number included 42 safety visits which is 5% above their projected goal of 40 visits, and 147 health visits which was 110% above their projected goal of 70 visits.

PEOSH's Progress Toward Attaining it Strategic Goals

PEOSH's FY09 Annual Performance Plan consisted of three broad-based strategic goals with complementary performance goals. During FY09, PEOSH reports the following results as they relate to Goal #1 – The reduction of injuries, illnesses and fatalities.

Performance Goal 1.1: Decrease injuries and illnesses in state, county and/or local agencies for the New Jersey Support Activities for Transportation by 1% per year during the period FY09 through FY13 totaling 5% for the 5-year Strategic Plan. The goal for FY09 included identifying workplaces within NAICS 488, contacting them via letter and collecting baseline NJOSH 300 data. This goal was met as PEOSH identified and collected and verified the NJOSH 300 data for all worksites in NAICS 488 and developed an injury and illness rate baseline using 2008 BLS data (11.5 total recordable case rate).

SUPPORT ACTIVITIES FOR TRANSPORTATION

Year	Total Recordable Cases	% Change for TRANSPORT
2008	Baseline	11.5
2009		Baseline
2010		
2011		
2012		
2013		

In FY09, PEOSH identified and verified targeted worksites by sending a letter to the Turnpike Authority, South Jersey Transportation Authority and the South Jersey Port Corporation requiring them to submit NJOSH 300 data for every facility for the years 2004-2008. Once data was collected and verified PEOSH conducted 15 inspections where 112 serious citations were issued. In addition, 7 training/educational seminars were conducted where 310 employees were trained, and a total of 123 outreach materials were distributed within the targeted workplaces. Progress on this goal relating to outreach and consultation has been hampered by the lack of available staff to conduct these activities as staff have been temporarily transferred to enforcement to support the Plan's enforcement program. This goal was met.

Performance Goal 1.2: Decrease injuries and illnesses in state, county and/or local agencies for New Jersey Nursing and Residential Care Facilities specific (NAICS 623) by 1% per year during the period FY09 through FY13 totaling 5% for the 5-year Strategic Plan. The goal for FY09 included identifying workplaces within NAICS 623, contacting them via letter and collecting baseline NJOSH 300 data. This goal was met as PEOSH identified, collected, and verified the NJOSH 300 data for all worksites in NAICS 623 and developed an injury and illness rate baseline using 2008 BLS data (15.5 total recordable case rate).

NURSING AND RESIDENTIAL CARE FACILITY

Year	Total Recordable Cases	% Change for NURSING/RESID
2008	Baseline	15.5
2009		Baseline
2010		
2011		
2012		
2013		

During FY09, PEOSH identified and verified targeted worksites by sending a letter to the New Jersey Nursing and Residential Care Facilities requiring them to submit NJOSH 300 data for every facility for the years 2004-2008. Once data was collected

and verified PEOSH conducted 27 inspections and held 1 training/educational seminar where 8 employees were trained, and a total of 318 outreach materials were distributed within the targeted workplaces. This goal was met.

Performance Goal 1.3: Decrease injuries and illnesses in state, county and/or local agencies for New Jersey Local Fire Protection specific (NAICS 92216) by 1% per year during FY09 through FY13 totaling 5% for the 5-year Strategic Plan. The goal for FY09 included identifying workplaces within NAICS 92216 by using NJOSH 300 collected data and developing an injury and illness rate baseline using 2008 BLS data for the incidence rate of non fatal occupational injuries and illnesses. (11.7 total recordable case rate).

LOCAL FIRE PROTECTION

Year	Total Recordable Cases	% Change for LOCAL FIRE
2008 Baseline	11.7	Baseline
2009		
2010		
2011		
2012		
2013		

During FY09, this goal was met as PEOSH identified and verified targeted worksites by sending a letter to the New Jersey Local Fire Protection entities requiring them to submit NJOSH 300 data for every facility for the years 2004-2008. Once data was collected and verified PEOSH conducted 103 inspections where 1,076 serious violations were identified. PEOSH consultation conducted 31 consultation visits where 55 hazards were identified. In addition PEOSH conducted 2 training/educational seminars where 41 employees were trained, and a total of 637 outreach materials were distributed within the targeted workplaces. This goal was met.

Performance Goal 1.4: Decrease injuries and illnesses in state, county and/or Local Police Protection agencies specific (NAICS 92212) 1% during FY09 totaling 5% for the 5-year Strategic Plan. This goal was met as PEOSH identified and verified all workplaces within NAICS 92212 by using NJOSH 300 collected data and established a baseline injury and illness rate using 2008 BLS data (11.4 total recordable case rate)

LOCAL POLICE PROTECTION

Year	Total Recordable Cases	% Change for LOCAL POLICE
2008	11.4	Baseline
2009		
2010		
2011		
2012		
2013		

During FY09, PEOSH identified and verified targeted worksites by sending a letter to the Local Police Protection agencies requiring them to submit NJOSH 300 data for every facility for the years 2004-2008. Once data was collected and verified, PEOSH conducted 225 inspections where 2,472 serious violations were identified. In addition, 6 consultation visits were conducted where 7 hazards were identified and 5 training/educational seminars were conducted where 136 employees were trained, and a total of 563 outreach materials were distributed within the targeted workplaces. This goal was met during FY09.

Goal #2 - Promote public sector employer and worker awareness of, commitment to, and participation in workplace safety and health.

Performance Goal 2.1: Foster the development of effective health and safety management systems in 100% of the 22 State Agencies by offering and delivering training programs on Safety and Health Management Systems and the development of Labor-Management Safety and Health Committees to 20% of the agencies each year during the 5-year strategic management plan. In addition PEOSH plans to disseminate Guidelines for Joint Labor Management Health and Safety Committees to all New Jersey State Agencies and encourage these Agencies to develop and improve Joint Labor Management Safety and Health Committees by identifying and distributing other appropriate outreach materials.

PEOSH explained that Progress on this goal was limited due to lack of available staff to conduct outreach, training, mailings and to develop alliances. This goal was not met in FY09.

Performance Goal 2.2: The NJDHSS PEOSH Program was to conduct programmed inspections, and/or consultation visits, and /or provide outreach and training to 20% of New Jersey's 566 of NJ municipal departments of public work by the end of FY2013 (4% or 22 per year).

PEOSH conducted a total of 14 programmed inspections of municipal departments of public works during FY09. In addition, PEOSH conducted 8 consultation visits and

35 training seminars for municipal departments of public works during FY09. This goal was met during FY09.

Performance Goal 2.3: Achieve a customer service rating of “highly effective” (score 7 or higher, on a scale of 1 thru 10) on a customer satisfaction survey from 90% of public employers subject to an intervention. This goal was exceeded in FY09 in that 100% of public employers rated PEOSH as highly effective.

100% of public employers responding to PEOSH Consultation surveys rated the interventions as highly effective. A total of 36 surveys were received as a result of 101 consultation visits conducted. All 36 employers had rated the intervention as highly effective. This goal was exceeded during FY09.

Performance Goal 2.4: Achieve a customer service rating of “highly effective” (score of 4 or higher, on a scale of 1 thru 5) on a customer satisfaction survey which rates the quality of public sector compliance assistance interventions (e.g., outreach, seminars, mass mailings, hazard bulletins, newsletters, etc.) conducted/distributed by PEOSH from 90% of public employers subject to a compliance assistance intervention. This goal was exceeded in FY09 in that 100% of public employers rated PEOSH as highly effective.

A total of 350 training seminars were conducted, and 4 compliance assistance activities were provided. A total of 55 surveys were received and all 55 surveys rated the intervention as highly effective. This goal was exceeded during FY09.

Performance Goal 2.5: Achieve employee involvement in 100% of PEOSH interventions (e.g., inspections, consultations, etc.) According to PEOSH reporting there was 100% employee involvement and this goal was met during FY09.

PEOSH conducted 1805 inspections, 189 consultation visits, and 350 training seminars. All of these interventions included a component where employees were conferred with.² This goal was met during FY09.

*It should be noted, however, that employee involvement is entered into IMIS, however review of a sample of enforcement and consultation case files revealed a lack of documentation of the level of employee involvement.

Performance Goal 2.6: Bring 4 new work sites into the Safety and Health Achievement Recognition Program (SHARP) every year for the 5 year Strategic Plan. There were 6 facilities who were awarded SHARP during FY09. This goal was exceeded.

² Source: PEOSH FY09 SOAR

Performance Goal 3.1: Initiate inspections of fatalities and catastrophes within one (1) day of notification for 95% of occurrences to prevent further injuries or deaths. Eight out of the nine (or 89%) fatality investigations were initiated within one day. This goal was not met.

Performance Goal 3.2A: Initiate 95% of safety complaint inspections within five (5) working days of notification. This goal was exceeded as 100% of complaint inspections were initiated within five working days of receipt totaling 96 complaints during FY2009.

Performance Goal 3.2B: Initiate 95% of non-IAQ/non-sanitation health complaint inspections within five (5) working days of notification.

According to PEOSH IMIS data; a total of 152 health complaints were received, of which 40 were non-IAQ/non-sanitation complaints. Using PEOSH IMIS data this goal was met as 100% of inspections in response to these complaints were initiated within five working days during FY09.

Review of health complaint case files reveals that 1 complaint was miscoded as an IAQ complaint and opened 28 days after receipt was not actually an IAQ complaint, but a complaint regarding asbestos exposure. Additionally there were 3 other health complaints reviewed with documentation that shows that they were non-IAQ/non-sanitation complaints that were not opened within 5 working days.

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

State Activity Mandated Measures³

SAMM 1: Average number of days to initiate Complaint Inspections.

During this evaluation period, PEOSH safety responded to 75 complaints with an average response time of 4 days. Health responded to 152 complaints with an average response time of 20 days.⁴ Reference point is 5 days for non-IAQ/non-sanitation complaints.

SAMM 2: Average number of days to initiate Complaint Investigations (Phone & Fax).

This measure does not apply to PEOSH as all complaints, whether formal or non-formal, are handled by inspections.

³ Source: State Activity Mandated Measures Report – 04/11/10

⁴ Note: Figure includes Indoor Air Quality (IAQ) complaints which, by PEOSH policy, must be responded to within 30 days. All non-IAQ health complaint inspections were initiated within 5 workdays.

SAMM 3: Percent of Complaints where Complainants were notified on time.

All safety complainants were notified of the inspection results on time in 100% (74 out of 74 for safety complaints and 152 of 152 of health complaints) of all complaints received where the complainant provided their names and contact information during FY09. Reference point is 100%.

Note: Review of the case files during the special study revealed that in 13 of 13 safety complaint files and 4 of 7 health complaint files reviewed that there is no evidence in the file that the complainant was notified of the results of the inspection. It is apparent the only documentation of complainant notification is an entry into the IMIS system. See recommendation regarding this issue.

SAMM 4: Percent of Complaints and Referrals responded to within one day – Imminent Danger.

PEOSH Safety and Health had no imminent danger complaint/referrals during FY09. Reference point is 100%.

SAMM 5: Number of denials where entry not obtained.

PEOSH Safety and Health had no denials of entry during the evaluation period.

SAMM 6: Percent of S/W/R Violations verified.

During FY09, program-wide, the percentage of serious, willful, repeat violations verified as abated within the abatement date plus 30 days was 96.3% (2761 out of 2875). The percentage for safety inspections was 95.54% (2443 SWR out of 2557) and the percentage for health was 100% (272 out of 272). This figure compares favorably to previous years performance which was 89.51% for FY 2008 and 70.16% for FY2007. Reference point is 100%.

SAMM 7: Average number of calendar days from opening conference to Citation Issued.

PEOSH citation lapse time for FY09 was calculated at 9.33 days for safety and 28.33 days for health. PEOSH is well below the national averages of 43.7 days for safety and 57.3 days for health.

SAMM 8: Percent of Programmed Inspections with S/W/R Violations.

The percent of programmed inspections with S/W/R violations national averages are 58.5% for safety and 51.1% for health. PEOSH Safety S/W/R is 52.30%, slightly below the national average while Health S/W/R is 59.26% slightly above the national average.

SAMM 9: Average Violations per Inspection with Violations.

The average violations per inspection with violations, performance indicators for FY09 showed an average of 5.59 S/W/R and 0.81 "other" for safety and 2.08 S/W/R

and 1.84 "other" for health and for the whole program 4.83 S/W/R and 1.02 "other". PEOSHs whole program for S/W/R average is well above the national average of 2.1 for S/W/R and slightly below the national average of 1.2 for "other".

SAMM 10: Average Initial Penalty per Serious Violation (Private Sector Only). The average initial penalty per serious violation in the private sector is not applicable to PEOSH.

SAMM 11: Percent of Total Inspections per Violations (Public Sector Only). All inspections conducted by PEOSH are in the public sector (1,460 out of 1,460) for safety, (286 out 286) for health and for the whole program (1,805 out 1,805) at 100%.

SAMM 12: Percent Lapse Time from receipt of Contest to first level decision. No data is reflected in the report since PEOSH has been successful in settling all cases at the informal level.

SAMMs 13, 14, 15: **13)** Percent of 11c Investigations completed within 90 days. **14)** Percent 11c Complaints that are meritorious. **15)** Percent of meritorious 11c complaints that are settled.

PEOSH conducted 17 discrimination complaint cases during FY09; 14 of which (82.35%) were completed within 90 days. Reference point is 100%.

Three out of the 17 cases (20%) were determined to be meritorious. The National Average for such cases is 20.7%.

Two of these three cases, or 66.67% were settled meritorious. The national average is 86%.

Training and Education Program

PEOSH has a very active training and education program with many of them relating to Preparing the Workplace for H1N1 and emergency preparedness issues. During FY09, PEOSH conducted a total of 339 presentations to agencies state-wide on a myriad of safety and health issues. They also used this opportunity to promote the training, education and consultation services of the State Plan. The NJDHSS conducted 90 presentations to various organizations across the State. The NJDLWD Training unit conducted a total of 249 presentations to agencies statewide.

Public Sector Consultation⁵

PEOSH public-sector consultation conducted a total of 189 public-sector consultation visits in FY09 which is 72% greater than their projected goal of 110 visits. There were a total of 42 safety visits conducted which is or 5% above their projected goal of 40 visits and 147 health visits conducted which is 110% above their projected goal of 70 visits.

The public sector consultation program was evaluated during the special study. Please refer to the special study section of this report for the findings relative to this program.

MARC 1: *Percent of Initial Visits in High Hazard Establishments - Goal Not less than 90%:*

– PEOSH conducted 69.16% of its initial visits in high hazard establishments, an increase from FY 2008's indicator of 62.50%.

PEOSH management has indicated that the public sector consultation program is request driven which resulted in a disproportionate number of IAQ consultations relative to other types. OSHA understands how this can affect the percentage of initial visits that are in High Hazard establishments and it anticipates this percentage to improve as staffing is restored.

MARC 2: *Percent of Initial Visits in Smaller Businesses - Goal Not less than 90%:*

98.13% of initial visits were conducted in establishments with less than or equal to 250 employees; 90.65% in establishments with less than or equal to 500 employees.

MARC 3: *Percent of Visits where Consultant Conferred with Employees - Goal 100%:*

In 100% of initial visits conducted by PEOSH as well as 96.43% of follow-up and 47.37%⁶ of T&A (training and compliance assistance) visits, consultants conferred with employees.

*PEOSH consultants and management indicated employees are conferred with in all interventions and that they are having problems entering this data into the IMIS. In addition, the PEOSH Special Study revealed employees were conferred with in all files reviewed.

⁵ Source: MARC Report 11/30/09

⁶ PEOSH indicated actual percentage is 100% for training and assistance visits and that the low percentage was due to problems with the IMIS system / data entry. This assertion was supported during the special study of public sector consultation file reviews.

Recommendation 2: PEOSH Public Sector Consultation must ensure that consultants conferring with employees properly enter this data into the IMIS system.

MARC 4a: Percent of Serious Hazards Verified Corrected in a Timely Manner – Goal 100%.

167 out of 329 or 50.76% of serious hazards were verified abated in a timely manner compared to 85.94% for FY 2008 and 78.17% in FY 2007.

MARC 4b: Percent of Serious Hazards not verified corrected in a timely manner

162 out of 329 or 49.24% of serious hazards were not verified corrected in a timely manner.

MARC 4c: Percent of Serious Hazards referred to enforcement.

No serious hazards were referred to enforcement during FY09.

MARC 4d: Percent of Serious Hazards verified corrected (in original time or on site)

The percent of serious hazards verified corrected in original time or on site is 12.77%. Out of the 329 total serious hazards identified, 42 were verified corrected on site and 37 were verified within the original time frame. The reference standard is 65%.

Recommendation 3: PEOSH Consultation must improve its performance in verifying the abatement of serious hazards in a timely manner. Delaying abatement verification until follow-up visits delays verification of hazards that can be abated quickly.

MARC 5: Number of uncorrected serious hazards past 90 days – PEOSH Consultation ensured the correction of all serious hazards within 90 days.

Summary of FY09 Baseline Special Evaluation

The purpose of the Special Evaluation Study is to assess the current performance of New Jersey's program and identify any structural or performance issues of concern. The study focused primarily on enforcement effectiveness, however a review of the PEOSH's public sector consultation and discrimination programs were also reviewed. The findings of this study are detailed below.

Stakeholder Contact

As part of the study key stakeholders were contacted and their views on State Plan performance were solicited. Stakeholder input was considered during the study and OSHA's findings are presented below.

Stakeholders included: Representative from the Communications Workers of America (CWA) Locals 1040, 1081 and a representative of New Jersey's Work Environment Council (WEC).

Representatives from the Communications Workers of America Locals 1040 and 1081 were contacted for input. Both representatives provided positive feedback. One indicated PEOSH response time had improved and that the staff was very helpful.

The representative from WEC provided the following input via email:

Input: There is inequitable division of resources between LWD and DHSS compared to their complaint load. DHSS gets many more complaints but much less money.

Finding: Although LWD received less complaints during FY09, (75 vs. 152 for DHSS) the overall inspection workload was significantly greater (1470 inspections for LWD vs. 280 inspections for DHSS) for LWD. In addition, the LWD has a greater overall administrative responsibility within the overall PEOSH Program. Given DHSS receives 45% of the grant funding it does not appear that the division of resources is unreasonable or inequitable.

Input: Too much money is going to LWD Onsite Consultation.

Finding: PEOSH's 23(g) consultation program does not have separate line item budgeting within LWD. Consultations are conducted on an as-needed basis as requests are received. During FY09 safety consultation resources were shunted to enforcement to support the enforcement program. LWD's 21(d) consultation program for private sector employers is funded under a separate grant and is not within the scope of this study. It does not appear a disproportionate amount of resources is currently being diverted to consultation activity.

Input: Limitations are being put on employee participation in onsite consultation.

Findings: A review of public sector consultation files was conducted as part of the NJ PEOSH special study. Other than an entry in the IMIS that employees participated in the consultation process in each case, none of the files contained detailed documentation of employee interviews or other evidence of employee participation. Notwithstanding the above, PEOSH strongly asserts there are no limitations placed on employee participation during onsite consultations.

Input: Lax efforts to ensure participation of employee walk around representative in inspections.

Findings: During the special study case file reviews found that employee participation in the walkaround process was poorly documented. Compliance officers and managers interviewed stated that employee representatives are always invited to participate in the opening conference, walkaround, and closing conference. In the cases reviewed the only documentation indicating this were entries on the OSHA 1 IMIS forms and an employee representative signature in the opening conference attendance sheets used by some of the Health CSHOs. PEOSH is being asked to better document employee involvement in their case files.

Input: Lax efforts to ensure employee representatives are copied on inspection findings:

Findings: The study found that employee representatives are not being notified of the inspection results. No documentation of this exists in the case files and management has indicated they had not been doing this and that they will begin to inform employee representatives of the results of inspections.

Input: Lax and inconsistent PEOSH enforcement of the Indoor Air Quality Standard including the following:

- 1) Zero planned inspections
- 2) Only five of 35 potential violations of IAQ Standard are ever cited.
- 3) No written protocol for how to conduct inspections, for example, when to measure temperature, humidity, carbon dioxide.
- 4) CSHOs only look at complaint areas

Findings:

- 1) PEOSH inspection activity relating to IAQ is complaint driven. Out of NJDHSS total of 280 inspections during FY09 a significant percent of them (112 or 40%) were IAQ related. Given the already heavy IAQ workload PEOSH has not conducted planned inspections.
- 2) During the review of the IAQ case files during the special study it was unclear given the sparse documentation in the case files, whether additional violations of the IAQ standard may have been appropriate. PEOSH management has indicated they rely on CSHO professional judgment to determine which IAQ standards should be cited. OSHA recommended PEOSH increase their managerial oversight to ensure CSHOs effectively and thoroughly enforce all PEOSH standards, including IAQ. Since July 1, 2007 (when PEOSH began enforcing the revised IAQ standard), PEOSH has issued

- 3) A written protocol is in place for conducting IAQ inspections. IAQ Standard Inspection Guidance Document SOP #5 Dated May 23, 2007 was provided to the study team.
- 4) During the study it was documented that CSHOs may expand inspections if, in their professional judgment, hazards may exist elsewhere in facilities.

Input: Failure to aggressively enforce other standards:

- 1) Only three of dozens of potential violations of the Hazard Communication Standard are ever cited. All violations were of the provisions that are easiest to check.
- 2) Errors in when Hazard Communication is applicable, for example, large photocopy rooms not included.
- 3) Low numbers of violations per inspection.
- 4) Short amount of time spent on each inspection
- 5) Failure to cite many standards expected to be commonly violated, such as asbestos, lead, emergency eyewash fountains, hazardous chemicals in labs, respiratory protection, personal protective equipment, bloodborne pathogens.

Findings: During the study it was documented that possible violations were missed in approximately 40% of the safety enforcement inspection files (including two fatality files) reviewed during the study. Lack of documentation in the case files made it difficult to determine definitively that violations were missed. Based on information contained in the files, it appears that violations of Lockout / Tagout Standard, Personal Protective Equipment Standard, and Powered Industrial Truck Training were missed.

It is also possible that violations were missed in approximately 20% of the Health enforcement inspection files reviewed. Based on information contained in the files it appears that violations of the Hazard Communication, Asbestos, Electrical, and Respiratory Protection standards were missed.

OSHA recommended that PEOSH increase its management oversight of cases to ensure proper and thorough enforcement of PEOSH standards.

It was noted that PEOSH's citation lapse time (time between the opening conference and citation issuance) was significantly lower than all of the other public sector only state plans as well as the State Plan and Federal OSHA national averages. PEOSH's average violations per initial inspection is from 13% to 35% lower than the other three public sector only state plans for which data exists for FY09, however, they compare favorably to the State Plan and Federal National averages. It is possible there is a correlation between the very short lapse time and number of average violations per inspection.

Special Study Findings

Case File Review

The Region II Baseline Special Evaluation study team conducted an on-site review of the 23(g) Public Employee Only State Plan from January 11, 2010 through January 22, 2010. The evaluation included a review of closed case files for FY09, covering the period from October 1, 2008 through September 30, 2009. This review included both PEOSH enforcement cases and 23(g) public sector consultation visits. The review included an examination of the entire state plan administration including a comprehensive case file review. A total of 88 case files were reviewed which included 68 enforcement and 20 consultation files.

Enforcement

Findings relating to complaints

Federal Policy vs State Policy Reference: Neither the Federal or NJ State FIRMS specify the time frame within which a complaint must be opened. OSHA CPL 02-00-140 Section XII D, effective 6/23/2006, states: "If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days."

A total of 10 health complaint case files were reviewed. 5 non-IAQ complaints out of the 10 were opened within the 5 working days all in a timely manner; the remaining 5 were documented as Indoor Air Quality (IAQ) complaints and as per PEOSH policy were opened timely. All of the 13 safety complaint case files reviewed were opened within the 5 working days all in a timely manner.

Federal Policy vs State Policy Reference: NJ PEOSH FIRM Chapter 1 Section C - 8. Results of Inspection to Complainant "After an inspection, the complainant shall be sent a letter addressing each complaint item, with reference to the citations and/or with a sufficiently detailed description of the findings and why they did not result in a violation. The complainant shall also be informed of the appeal rights under N.J.S.A. 34:6A-45"

In addition OSHA CPL 02-00-140 Section XII C, effective 6/23/2006, states:

1. If appropriate, the Area Office will inform the individual providing the information that an inspection will be scheduled and that he or she will be advised of the results.

2. After the inspection, the Area Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued.

In 4 out of 10 health complaint inspections, evidence was not provided indicating that the complainant was notified of the inspection results. This notification may have occurred, however there was no documentation in the case files (e.g., no copy of notification of inspection results letter or diary sheet notation) was found in the case files.

In addition, none of the safety complaint inspection files contained complainant notification documentation, although it is believed complainants are notified of inspection results. A common theme is the lack of documentation in the case files. The forms have been completed in IMIS however they are not printed and inserted in the file. All CSHOs and management interviewed indicated complainants are notified of inspection results. See recommendations relating to required documentation.

Federal Policy vs State Policy Reference: The Federal and State FIRMs are identical in their casefile documentation requirements.

With regard to the documentation required to establish prima facie evidence that a citation is warranted to address the existence of a hazard, the FIRM Chapter III in its entirety is applicable.

The lack of documentation in the case files made it difficult to assess whether complaint items were addressed, what the results of the inspection were, whether any of the items cited were related to the complaint, and whether the complaint items were adequately investigated.

Specific findings relating to complaint file reviews:

Safety:

Of 13 complaint cases reviewed:

- In 2 safety cases the response time could not be determined as the case file did not contain documentation as to when the original complaint was filed.
- 8 safety cases were missing a hard copy of the complaint (OSHA 7).
- 9 cases either lacked a description of how the complaint items were addressed or in the case of health complaint/referral items found by a safety - that a health referral was submitted.
- Other issues that are not specific to complaint inspections (such as lack of adequate documentation needed to document a *prima facie* case) are covered later in this document.

Health:

Of 10 complaint cases reviewed:

- In 2 cases it appears that there was either an inadequate or no investigation of all the complaint items.
- Other issues that are not specific to complaint inspections (such as lack of prima facie info) are covered later in this document.

Recommendation 4: Provide training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements set forth in PEOSH's Field Inspection Reference Manual or Field Operations Manual and institutionalize established documentation requirements.

Fatalities/Catastrophes

A total of 9 fatality case files were reviewed by Region II Team members. A common theme with regard to these inspections is the lack of documentation in the case files. None of the fatality inspections had hard copies of OSHA 36 (Accident Report), or OSHA 170 (Findings of the Accident Investigation) forms.

State Program Managers asserted that all appropriate forms were completed; however the forms were not printed and inserted in the file. An IMIS search verified these forms had been completed. The 2 contested fatality cases contained more documentation in the file than the other 7. There was no evidence of next of kin letters, or other contact with the families, including notification of enforcement action in any of the fatality files. Management and compliance staff indicated they did not send next of kin letters to family members of victims. Management indicated they were developing next of kin letters by the end of the study on-site activity.

Due to lack of documentation, such as descriptive narratives explaining the CSHOs inspection and investigations into the causes of specific accidents/fatalities and explanations of actions, such as; "putting a case on hold" make it impossible to determine whether some cases marked "no inspection" (i.e., documenting why fatalities were not work related) was justified. Further, cases that were determined to be work-related were also inadequately documented. One of the inspections did not meet the time frame from notification to the opening conference, in that the opening conference was conducted three weeks after the incident occurred. NOTE this was coded as a catastrophe, but in fact did not meet the catastrophe criteria.

There were cases in which it appears that violations may have been missed.

Specific findings relating to fatality case file reviews:

- All fatality files reviewed - there is no evidence in the files of next of kin letters, or other contact with the families, including notification of enforcement action. Interviews with management and Compliance Officers confirmed this practice was not occurring. Management was in the process of developing contact letters, etc., at the completion of the study.
- 4 inspections in which it was possible that the cause of death was not work related do not clearly document whether PEOSH had jurisdiction to conduct an inspection.
- 1 case had inadequate documentation as to why citations were not issued for a seemingly violative condition. In this case citations were not issued because - as stated in the file; the employer provided training and equipment to employees and had a disciplinary procedure. However - there are no interview notes or other information to establish whether the employer enforced their S&H program, or enforced their disciplinary procedures to support the affirmative defense.
- There were 2 fatalities in which there were potentially missed violations that directly related to the respective accidents.
 - One fatality was of a worker who crashed golf cart while using it to transport himself and signage that he was posting around a golf course. The employer admitted that the employee received only verbal training on the use of the cart. There were possible missed violations – for lack of training, or lack of documentation of training under 1910.178 in this case.
 - The other fatality case was an accident that occurred when a worker positioned himself under a tractor-style riding lawn mower that rolled over him, crushing him. The mower was on an incline, not chocked, and the brakes were not set. Possible Missed Violation included lack of training under 1910.178 – or a General duty Clause violation if 178 was not applicable. In this case one violation for LoTo 1910.147(c)(1) was appropriately issued for the employer not having a lockout/tagout program. In addition to to the program violation additional citations for not having procedures, training, or hardware would have been appropriate.

Recommendation 5: Provide training to CSHOs to reiterate the policies relating to fatality investigations including the following:

- **Proper procedures relating to making the appropriate communication to the family of victims (i.e. next of kin letters, inspection findings, etc.) and the requirement of documenting such communication in the file.**
- **Implement internal controls to ensure that all fatality investigations are opened within a timeframe established by agency policy.**
- **Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of federal OSHA and the PEOSH FOM or FIRM (i.e. providing detailed narrative documenting the facts that surround the incident, field notes, evidence of employee exposure, evidence of employer knowledge and completion of the appropriate forms (i.e. OSHA 36's and OSHA 170's).**

Targeting/Inspections

The state developed a new Strategic Plan that focused on four high hazard areas within the public sector. These focus areas include establishments within the SIC/NAICS Codes covering Local Police Protection, Local Fire Protection, State Support Activities for Transportation, and Nursing and Residential Care Facilities.

There were numerous inspections conducted in those specific SIC codes, but there is no formal policy relating to targeting methodologies (e.g., Local Emphasis Programs or other policy or guidance documents) that provide guidance to CSHOs relating to conducting inspections in the targeted NAICS codes, coding of targeted inspections, expanding unprogrammed inspections, etc. In addition, un-programmed (e.g., complaints, referrals, etc.) inspections of those types of facilities were reviewed and the review indicates that these inspections were not expanded to be comprehensive. PEOSH selection criteria for inspections that are conducted within these NAICS does not appear to be consistent.

According to employee and management interviews, sites are selected by the Compliance Officers from a complete listing of sites within each targeted NAICS codes.

Overall, targeting of the high hazard industries (agencies) appears to be effective as the four targeted areas do have high injury and illness rates compared to other segments of the public sector in New Jersey (see table below). In addition, the

effectiveness of targeting is reflected in the number of violations per inspection and percent serious/willful/repeat violations being higher than the national averages for both the State and Federal OSHA (see charts below).

Top 10 standards cited

The following charts compare PEOSH's top 10 standards cited with the top 10 standards cited by all states with State Plan Public Sector Only programs (VI, NJ, NY, CT).

**All State Plans Most Frequently Cited Standards – All Industries
October 1, 2008 to September 30, 2009**

	<i>Standard</i>	<i>Description</i>	<i>Total</i>
1	1910.303 b	Examination, installation and use of electrical equipment	575
2	1910.37 b	Exit Routes - Lighting and marking must be adequate and appropriate.	451
3	1910.305 b	Wiring methods, cabinets entering boxes, cabinets or fittings	416
4	1910.147 c	Control of Hazardous Energy	395
5	1910.303 g	Guarding of live parts	362
6	1910.1200 e	Written Hazard Communication Program	342
7	1910.157 e	Inspection, maintenance and testing	319
8	1910.132 d	Hazard Assessment and Personal Protective Equipment selection	296
9	1910.37 a	Exit Routes - The danger to employees must be minimized.	292
10	1910.303 f	Disconnecting means and surface	279

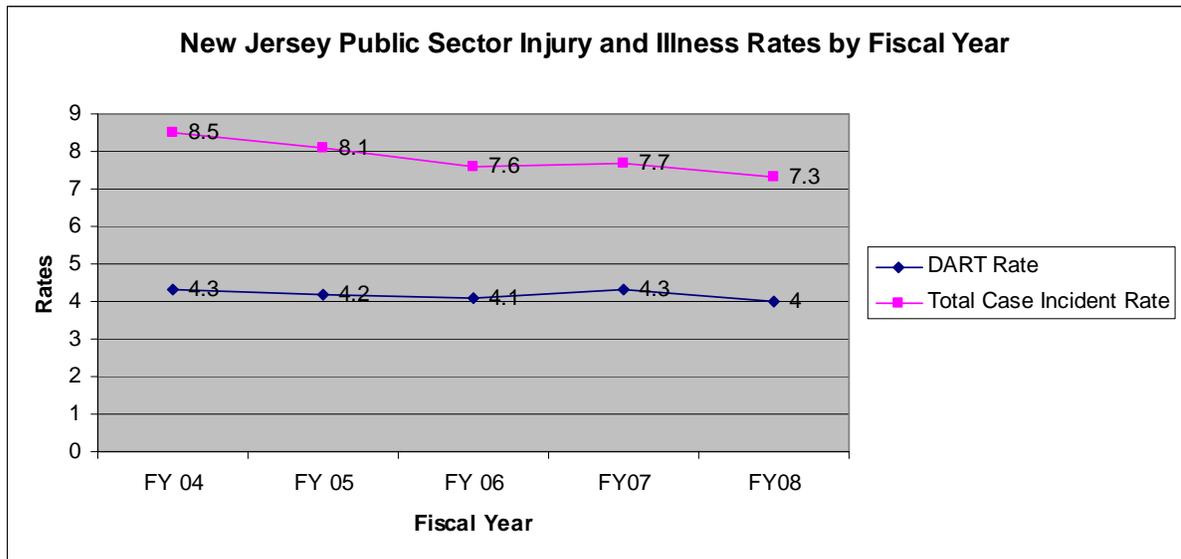
**New Jersey PEOSH - Most Frequently Cited Standards – All Industries
October 1, 2008 to September 30, 2009**

	<i>Standard</i>	<i>Description</i>	<i>Total</i>
1	1910.303 b	<i>Examination, installation and use of electrical equipment</i>	303
2	1910.303 g	<i>Examination, installation and use of electrical equipment</i>	230
3	N.J.S.A. 34:6A.033 a	<i>General Duty Clause</i>	217
4	1910.305 a	<i>Wiring methods, components, and equipment for general use</i>	206
5	1910.305 b	<i>Wiring methods, cabinets entering boxes, cabinets or fittings</i>	171
6	1910.157 e	<i>Portable fire extinguishers inspection, maintenance and testing</i>	169
7	1910.37 b	<i>Exit Routes - Lighting and marking must be adequate and appropriate.</i>	167
8	1910.37 a	<i>Exit Routes - The danger to employees must be minimized.</i>	157
9	N.J.S.A. 12:100-7.5 A	<i>Written Hazard Communication Program</i>	153
10	1910.176 b	<i>Handling Materials Secure storage</i>	143

Comparing PEOSH to State Plan Public Sector Only States (VI, NJ, NY, CT) the most frequently cited standard for all industries was 1910.303 - for both PEOSH and the combined total for all state plans. PEOSH issued 303 violations for inadequate examination and use of electrical equipment. Violations of electrical hazards comprise 4 of the top 10 most frequently cited standards for both PEOSH and the group as a whole. Additionally 2 of the top 10 for both PEOSH and the group are 1910.37(a) and (b) - Exit lighting & marking and minimizing danger to employees exiting. Finally, HazCom violations are in the top 10 for both PEOSH and the group. In comparison, PEOSH and Public Sector Only State Plans are issuing citations for the top ten most frequently cited standards in all industries similarly.

BLS Rates

The CY 2008 occupational injury and illness rate (DART) for State and Local Government was 7.3, a 5.2% reduction from CY 2007 and a 16% reduction from CY 2004. The Total Case Injury and Illness Rate (TCIR) rate declined from 4.3 in 2004 to 4.0 in 2008, a 7.5% decrease. PEOSH's overall goal is to reduce injuries and illnesses by 1% per year. The reductions in injury and illness rates for the public sector have been reduced an average of 1.3% per year since 2005 meeting its goal.



New Jersey Injury and Illness Rates (Total Case Incidence Rate TCIR AND Days Away Restricted or Transferred (DART) rates Fiscal Years 2004-2008.

New Jersey

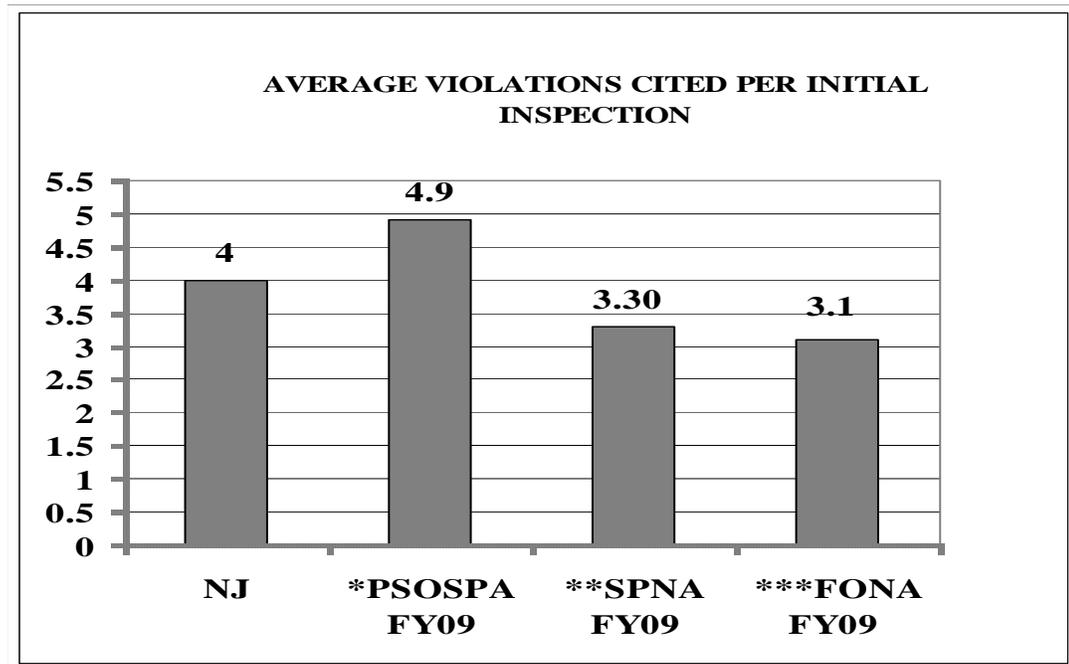
Industry	NAICS code	2008 total recordable cases	2007 total recordable cases	2006 total recordable cases	2005 total recordable cases
All industries including state and local government		3.7	4.0	4.1	4.4
Private industry		3.2	3.5	3.6	3.8
State and Local Government		7.3	7.7	7.6	8.1
State Government		6.5	6.6	6.9	7.5
Support Activities for Transportation	488	11.5	17.4	20.9	19.5
Correctional Institutions	92214	10.0	9.8	10.6	13.3
Local Government		7.7	8.2	7.8	8.4
Public Administration	92	9.6	10.3	10.2	10.6
Police Protection	92212	11.4	12.5	11.8	12.3
Correctional Institutions	92214	14.6	13.5	13.9	12.0
Fire Protection	92216	11.7	14.0	11.8	13.8
Nursing Homes/Residential Care	623	15.5	16.7	17.6	15.1

Incidence rates ¹ of nonfatal occupational injuries and illnesses by selected industries, 2005 - 2008

Recommendation 6: OSHA recommends that PEOSH develop a consistent inspection selection criteria for the selection of sites within targeted NAICs codes for inspection and that inspections that are opened as a result of unprogrammed activity (e.g., complaints and referrals, etc.) in targeted NAICs that have not recently received a comprehensive inspection are expanded to comprehensive inspections under the program.

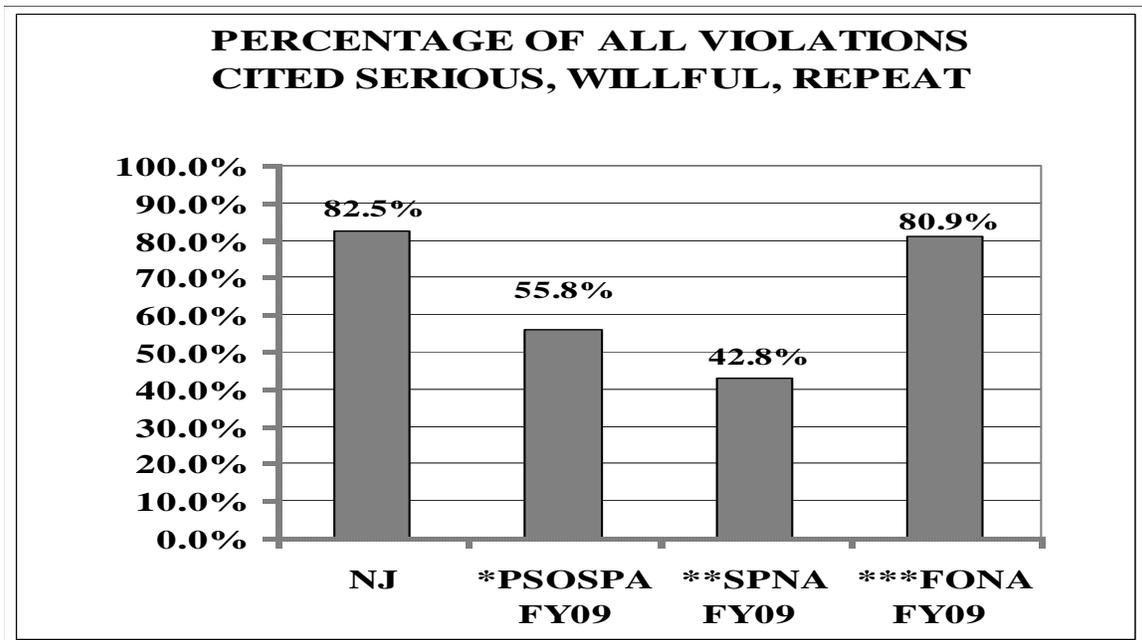
Violations per Inspection

For FY2009 PEOSH had a total of 4.0 violations per initial inspection which is 15% greater than the State Plan National average of 3.3 and 23% greater than the Federal national average of 3.1. PEOSH's average is approximately 18% lower than the Public Sector Only State Plan Average.

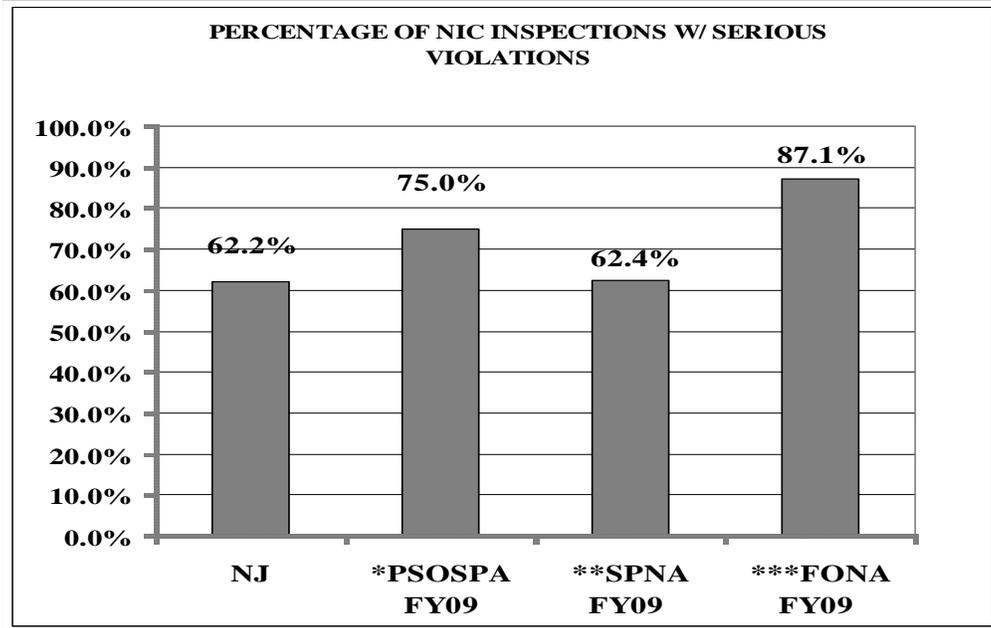


Percent Serious/Willful/Repeat Violations

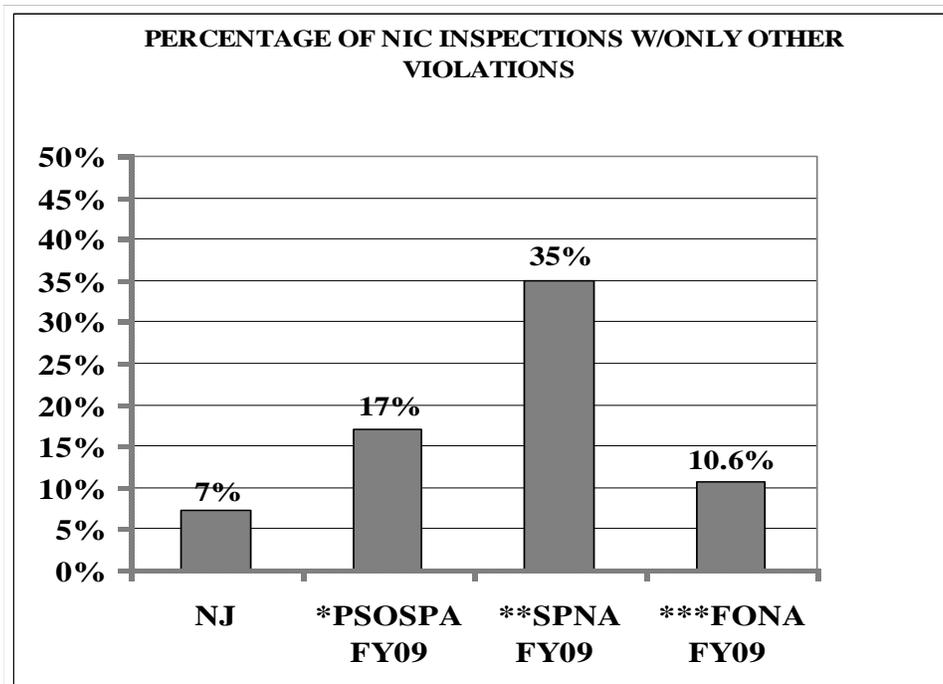
For FY2009 PEOSH cited 82.5% of its violations as Serious/Willful/Repeat violations. This figure indicates the PEOSH's program is more aggressive compared to its Public Sector Only State Plan counterparts (56% cited S/W/R) and is in alignment with Federal OSHA's (81% S/W/R) enforcement experience.



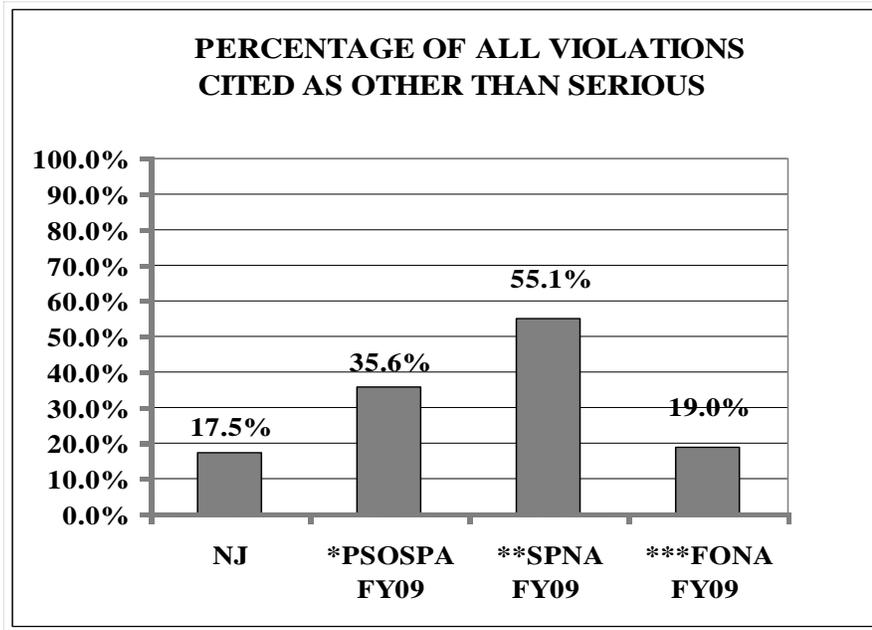
PEOSH's Percentage of non-in compliance inspections with serous violations is slightly lower than the average of all Public Sector Only State Plans and significantly lower than the Federal program.



PEOSH's percentage of non-in compliance inspections with only Other-Than-Serious violations is the lowest among Public Sector Only State Plans and lower than the Federal Program.

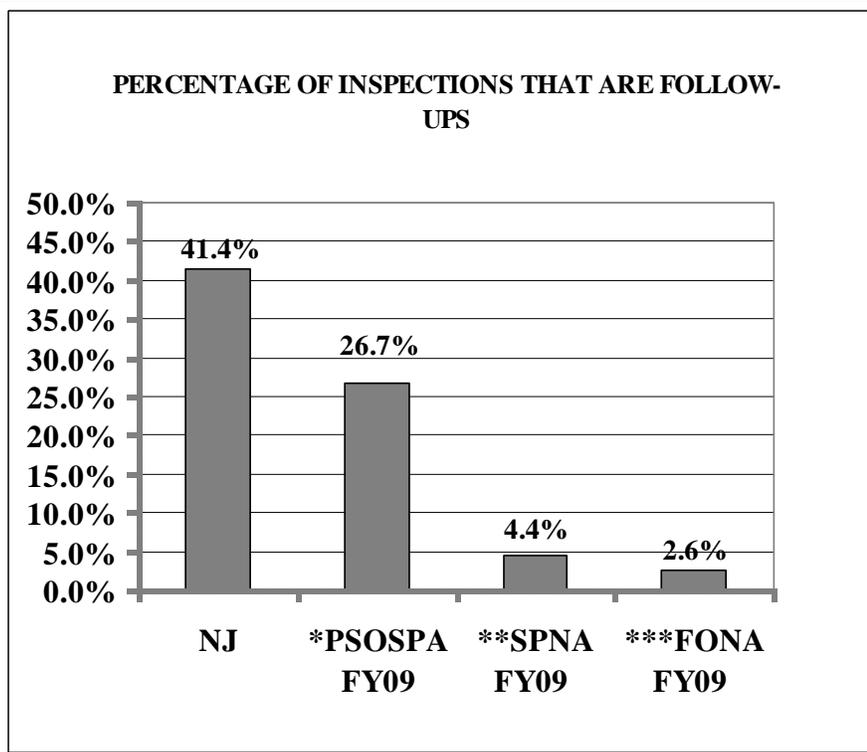


PEOSH's percentage of all violations cited as other than serious is lower than most of its Public Sector Only counterparts and slightly lower than the Federal Program.



PEOSH has not cited Failure to Abate in any cases during FY 2009.

Forty one percent of PEOSH's inspections are follow up inspections. This appears to be an effective tool to ensure abatement in a State which does not have first instance sanctions.



Recommendation 7: PEOSH should develop a formal policy relating to the industries targeted under its Strategic Plan for FY09-2013 including:

- **The identification and selection of sites targeted for inspection**
- **Guidance for CSHOs on conducting inspections of sites targeted (e.g., common hazards that may be causing the high injury and illness rates, when to expand unprogrammed inspections to comprehensive, etc.)**
- **Proper coding of targeted inspections.**

Employee and Union Involvement

Below are the findings of the special study relating to Employee and Union Involvement:

Case File Reviews

- The health cases reviewed had limited or no narrative description.
- None of the health files had documentation of employee interviews.
- In all of the health cases the level of involvement by Union/Employee representatives could not be determined, as the files included no documentation on the issue. In the cases reviewed the only evidence of Union/Employee representative involvement was a signature of the Union/Employee Representative on the attendance sheet that was filled out at the beginning of the inspection or a check box on the OSHA 1/1A. In all of the safety case files, other than the checklist ("Inspection Information" sheet), and check boxes on the OSHA 1 Form, there was no documentation of Union/Employee representative involvement in the inspection process. There were 2 safety files in which there were informal conference/contest settlement talks, neither of which had documentation indicating whether a Union/Employee representative was involved. CSHO and management interviews indicate that unions/employee representatives are always invited to be involved in the inspection process including opening conference, Walkaround, closing conference, and informal conferences.
- Similarly in the safety cases, with the exception of 1 fatality, there was virtually no documentation of employee interviews. In 2 other fatality files there were sparsely documented employee interviews, but the notes were limited to brief descriptions of the interviewees' actions related to the accident. Comprehensive interviews were not conducted in the fatality cases.

- Although employee/employee representative involvement is not documented in the case file notes both safety and health CSHOs did indicate in the OSHA 1 Form that there was employee and employee representative involvement during the opening conference, walkaround and closing conference.

Federal Policy vs State Policy Reference: Both the Federal (Chapter II Section 2.A.2.h) and NJ State FIRM (Chapter II Section 2.A.2.g) stipulate that "... The CSHO shall advise the employer that (the law) require that an employee representative be given an opportunity to participate in the inspection.

(1) CSHOs shall determine as soon as possible after arrival whether the employees at the worksite to be inspected are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection.

Both the Federal and State FIRMs Chapter III Section B.1 specify that the Names and Addresses of all Organized Employee Groups must be documented.

Recommendation 8: Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements of a prima facie case - specifically with regards do documenting employee exposure - as set forth by federal OSHA and the State of New Jersey policy (Field Inspection Reference Manual or Field Operations Manual).

Recommendation 9: Provide training to all field staff regarding the agency's policy of Union/Employee Representative involvement during and after inspections and the requirement to properly document compliance with this policy in case file.

Citations and Penalties

In the majority of the files reviewed (safety and health) there was not sufficient *prima facie* evidence present to support a legally defensible case.

Without documentation of employee exposure or employer knowledge of the hazardous condition or employee exposure to such condition it can not be determined whether, for example, an other-than-serious violation should have been classified serious and/or whether a violation should be classified as willful. The documentation in all the case files with regard to resulting injuries/illnesses is lacking. The Safety files included a generic form which was completed with no determination as to specific potential injury (i.e. death from falls, amputations, fractures, etc.) and the Health files did not include documentation of the severity of the potential injury/illness or the frequency of the exposure to the cited hazards.

Specific examples from the special study:

Safety cases:

- In one case all violations were classified as potentially causing an injury that is considered medium severity with a greater probability of the injury occurring (medium/greater). A medium injury severity was not appropriate for the cited hazards, which included: Uncapped compressed gas cylinders which should be high severity due to the potential for an explosion or the cylinder becoming a missile if the valve is broken off; unprotected light bulb, outlet wired with reverse polarity, and light switches with no covers should be all be noted as high severity due to the possibility of electrocution due to the electrical hazard.
- Another case in which a serious order to comply was issued for an electrical violation, with a "medium" severity. It is reasonable to assume that an electrical violation could potentially result in electrocution which would result in death and should be cited as high severity.
- A case in which a serious Order to Comply was issued for a locked exit. The CSHO also assessed a "low" severity for the potential resultant injury. The resulting injury for a locked exit is death as a result of not being able to exit the building in the event of a fire and therefore should have been assigned a "high" severity. There was no documentation in the case file to justify the Low severity and Lesser probability given for this violation.
- A case with all citations assessed as High Severity-Greater Probability which seems unlikely (including unmounted - Fire Extinguisher, Tripping Hazard, Lack of an Emergency Action Plan, Lack of Fire Prevention Plan, Lack of Work Place Assessment (the CSHO does not describe what hazards employees were exposed to in the Alleged Violation Description), and Lack of Evaluation of Confined Spaces (no mention as to whether there is a confined space at the site.)
- A case with a serious Hazard Communication violation cited as High Severity and Greater Probability with no discussion of what chemicals employees are exposed to.

All of the cases reviewed lacked employee interview notes, documentation of employee exposure, and employer knowledge. The frequency and the severity of the exposure to the employee was not documented making it impossible to determine the correct classification of the violation and the appropriateness of the

severity and probability determinations in the event that failure-to-abate notice were to be issued as the result of a subsequent inspection.

The lack of adequate documentation in the case files often made it impossible to determine if violations were missed during the investigations. CSHOs are permitted to use a narrative equivalent to the OSHA 1A (narrative) form which allows the CSHO to mark "Y" or "N" when reviewing safety and health programs (such as Hazard Communication or Lockout Tagout programs). This form does not give the reviewer, including the CSHOs' supervisors, information as to whether any requirements with regard to the programs were in compliance or lacking and therefore warranting a citation nor can the reviewer assess the quality of the CSHOs review of the programs. For example: a "Y" is next to written lockout/tagout but due to lack of documentation there is no context as to what he status of the lockout/tagout program was. There was no information as to whether lock hardware is provided; lockout/tagout training is complete/certified, etc. These could be potential violations that were missed.

There were 4 health and 10 safety files reviewed in which violations were potentially missed and the narrative was insufficient to explain why citations were not issued.

The PEOSH Policy for determining Severity Assessment is identical to the Federal Requirement as follows:

PEOSH CPL 02-00-140 Field Inspection Reference Manual Chapter IV C.2.d.

d. Severity Assessment. The classification of the alleged violations as serious or other-than serious, in accordance with the instructions in Chapter III, C.2., is based on the severity of the injury or illness that could result from the violation. This classification constitutes the first step in determining the gravity of the violation. A severity assessment shall be assigned to a hazard to be cited according to the most serious injury or illness which could reasonably be expected to result from an employee's exposure as follows:

- (1) High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
- (2) Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.
- (3) Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.
- (4) Minimal Severity: Other-than-serious violations. Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness most likely to result would probably not cause death or serious physical harm.

PEOSH requirements for case file documentation is equivalent to the Federal requirement for Stage III case files.

PEOSH Directive CPL 02-00-140 Field Inspection Reference Manual Chapter III.

In many cases the following documentation which is required to be included in case files was missing from PEOSH files: OSHA 1A narratives, or their equivalent; injury severity rating and brief justification for that rating; probability of injury rating and brief justification for that rating; and OSHA -1Bs or their equivalent.

Cases With Potential Missed Violations

There was an inspection of a wood shop and there is no documentation as to what saws or other types of woodworking machinery were observed. There is no documentation on the condition of the saws and whether they were guarded. The possibility exists that violations of the machine guarding standard were missed.

There was a case in which the CSHO cited that there was no Lockout/Tagout Program, but did not cite lack of training or lack of hardware. In addition there lack of a HazCom program was cited, yet the CSHO did not cite lack of training or MSDSs.

In another case CSHO cited LoTo for lack of periodic inspection. The employer submitted their LoTo program which was incomplete – the LoTo program was essentially a generic program. Authorized and effected employees were not noted, disciplinary procedures were not specific, it was missing specific procedures for shutdown of specific equipment. There was no discussion of the lockout hardware (if there was any the file is silent on the issue) At the minimum a missed violation of 147(d)(4)(ii) for lack of specific procedures.

Several of the files contained the NJOSH 300 A (summary) for only a single calendar year. There was no narrative discussing the missing logs, or whether they had been reviewed by the CSHO. In cases with a single year of logs some of the DART rates were high and there was no documentation as to why they were high. Potential violations could have been missed due to the lack of review of the recordable injuries on the OSHA logs. The lack of interviews and OSHA 1B worksheets also prevented reviewer from determining if violations were missed.

The penalty calculations are on a generic form to designate severity vs. probability.

No specific injuries are associated with any of the violations. Also since there are no OSHA 1B worksheets or field notes to show the number of employees exposed, proximity to the exposure, and length of exposure a true assessment cannot be made. Typically, size and history reductions were explained on the generic form.

There were no willful or repeat violations issued during FY2009.

Average Serious Penalties

Being a public sector only State Plan PEOSH does not issue first instance sanctions.

Recommendation 10: Provide training to all field staff, including supervisory staff, to ensure that all inspection case files contain all of the documentation required by the State of New Jersey FIRM. Implement internal controls to ensure that all cases are reviewed on a supervisory level to make certain that all violations issued meet the prima facie requirements. Prima Facie documentation includes evidence of employee exposure to a hazard, evidence of employer knowledge, an assessment of the severity of the injury/illness resulting from exposure to the hazard, and the probability of that exposure.

Abatement

In both the health and safety cases reviewed; all citations noted as "Corrected-During-Inspection" (CDI) lacked documentation on the method of abatement and that the CSHO observed the abatement.

In both the health and safety cases reviewed; the overwhelming majority of violations in which abatement periods granted were given 60 day abatement periods. In nearly all of these cases this is an inappropriately long abatement period. Unacceptably long abatement periods were applied to violations including, but not limited to; blocked exits, blocked fire extinguishers, blocked electrical panels, not providing Appendix D of respirator standard, Hazard Communication missing labels and MSDSs', providing hazard communication training, missing light bulb covers, missing electrical outlet covers.

There were 3 health cases and 1 safety case reviewed in which the employers did not provide sufficient abatement information and the cases were still closed.

All cases with citations had follow-up inspections to verify abatement, regardless of whether the employer submitted adequate abatement information. There were several health cases which generated follow up inspections each time a CSHO returned to the site, whether it was for conducting industrial hygiene sampling or gathering more information related to the original inspection. These subsequent inspections should have been part of the original inspection and should not have been counted as a new (follow-up) inspection.

In two health cases, a follow up inspection was conducted where abatement was weeks overdue. When the CSHO arrived on site, the condition was not abated. There was no Failure to Abate (FTA) notice issued and a Petition for Modification of Abatement Date (PMA) for an additional 60 days was granted, apparently after the fact. In addition, there were three health cases with improper PMA's accepted. The PMA documents in these three cases did not contain the required information such as, notification of employees that the employer requested an extension, certification that the PMA request was posted, and interim protection measures taken by the employer.

Recommendation 11: Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including:

- **Ensure appropriate abatement periods are assigned for unabated violations.**
- **Ensure that all abatement information accepted satisfies the order to comply prior to closing the case.**
- **For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.**
- **Implement internal controls to ensure that all Petitions for Modification of Abatement (PMA) Dates are reviewed on a supervisory level to ensure that all required information is contained in the request prior to granting the PMA.**
- **Ensure that Failure To Abate Notices are issued where appropriate.**

Informal Conferences / Review Procedures

Informal Conferences: Given no first instance penalties are issued PEOSH rarely has contested cases or requests for informal conferences. Given no such files were available for FY09 cases, the study team reviewed two cases from FY 2008, both which were fatality cases. Based on case file reviews it was determined that appropriate informal conference notes were not maintained in the files thus it was not possible to determine whether correct procedures were followed. In both cases no settlement was reached and they were referred to the AG's office where they are awaiting a hearing at the time of this writing. No documentation was included in the file indicating who was present or what was discussed.

PEOSH Policy outlined in the PEOSH FIRM Chapter IV Section D.1 Entitled **Informal Conferences** is identical to the Federal policy and requires:

Under section D.1.(b) Procedures: *Whenever an informal conference is requested by the employer, an affected employee or the employee*

representative, both parties shall be afforded the opportunity to participate fully. If either party chooses not to participate in the informal conference, a reasonable attempt shall be made to contact that party to solicit their input prior to signing an informal settlement agreement if the adjustments involves more than the penalty. If the requesting party objects to the attendance of the other party, separate informal conferences may be held. During the conduct of a joint informal conference, separate or private discussions shall be permitted if either party so requests. Informal conferences may be held by any means practical.

PEOSH FIRM section D.1.d.(2) requires that *at the conclusion of the discussion the main issues and potential courses of action shall be summarized. A copy of the summary, together with any other relevant notes or tapes of the discussion made by the Assistant Director, shall be placed in the case file.*

Recommendation 12: Relating to informal conferences, PEOSH representatives must thoroughly document the following in the case file: The fact that notification to the parties was made (employee and/or employee representative notification) and the date such notification was made, time and location the informal conference was held; at the conclusion of the informal conference, all main issues and potential courses of action must be summarized and documented in accordance with PEOSH policy.

PEOSH Review Procedures are similar to the Federal Procedures.

Under the New Jersey Occupational Safety and Health Act (N.J.S.A. 34:6A-42 Occupational Safety and Health Review Commission) New Jersey has established an Occupational Safety and Health Review Commission within the Department of Labor to hear appeals regarding orders to comply and penalties issued under the PEOSH Act. The commission consists of three members appointed by the Governor from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission. The Governor designates one of the members of the commission to serve as chairman.

Members of the review commission serve terms of four years and until their successors are appointed. The salaries, compensation and wages of the members of the commission are established by the commissioner. The Department of Labor and Workforce Development provides the review commission with the support staff necessary for the review commission to perform its duties. The members and the support staff are reimbursed for necessary expenses incurred in the performance of their duties.

The review commission meets as often as is necessary to hear and rule on appeals regarding orders to comply and penalties issued under the Act. The review commission adopts rules with respect to the procedural aspects of its hearings. An employee or employee representative may participate as a party to any proceeding regarding the employees' employer before the review commission. The review commission hears and makes determinations upon any proceeding instituted before it, and makes reports of the determination which constitute its final disposition of the proceedings. The report then becomes the final order of the commission 45 days after the issuance of the report.

In the conduct of hearings the review commission may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions. After hearing an appeal, the review commission may sustain, modify or dismiss a citation or penalty. Review Commission decisions may be appealed to the Appellate Division of the Superior Court of New Jersey.

Information Management

PEOSH performs start of day/end of day, and data backup is performed daily.

PEOSH tracks most of their activities via internal Access® databases as they continue to experience communication problems between the Oracle® based system that their compliance officers use and the IMIS. PEOSH's systems administrator as well as PEOSH management indicated CSHO's use the ORACLE® based laptop system to enter inspection information when they are in the field. They then transfer the information via wire connection to the IMIS through their NCR IMIS server. PEOSH reports that frequently, there are data corruption issues with this process which results in incomplete uploads of data to the IMIS which is over 20 years old. PEOSH states they suspect this is the reason why many OSHA forms are not found in the case files, citations may be duplicated and/or stay in draft form on the IMIS

Notwithstanding the above, there are problems with IMIS management that must be addressed. Many of the problems that are occurring can be easily identified through review of the IMIS reject reports that identify forms that have been rejected by the host computer for various reasons. It was apparent during the study that PEOSH IT personnel do not address rejected forms on a regular basis. The reject report that was run during the study revealed numerous data entry errors such as:

- Both grouped and ungrouped violations existing for same item
- Site and city invalid
- Amendment date is earlier than issuance date or greater than the OSHA 38 date + 6 days
- Establishment name and address don't match host information-transaction rejected in run

- Form number validation and form number outside of assigned ranges for site
- Master record does exist modify-delete or replace information inspection missing
- Related activity number must not = the inspection number
- For all cases in abatement date specified date must be > 7/1/1972 and < today's date + 5 years
- Entry in the rejects report related to standard violations data digit 18 should be alpha numeric.

In addition, it was found that many case files, although being closed, had forms left in draft on the IMIS system. This resulted in citation information not being transmitted to the host computer resulting in the data not appearing on standard scan reports and establishment searches. PEOSH must review the forms in draft report on a regular basis to identify these issues in order to ensure data integrity.

In addition, required forms have not been entered into the IMIS system including health sampling forms such as OSHA 91A Air Sampling Worksheet, OSHA 91B Air Sampling Report, OSHA 93 Direct Reading Report, OSHA 98, Screening Report, OSHA 92, Noise Survey are not being entered in IMIS. Other forms not entered into IMIS are OSHA 90 referrals even though referrals are being made however are not documented.

In addition, the OSHA 31 (Timekeeping) Forms have not been entered for the PEOSH program. PEOSH indicated they utilize an alternative timekeeping system for tracking grant activities for grant-related financial reasons. OSHA 31 entry is necessary for Federal OSHA to track efficiency measures relating to inspections and other interventions.

Recommendation 13: Provide IMIS Administration training for PEOSH IT personnel, Supervisors, CSHO's, Consultants and Compliance Assistance Specialists and ensure appropriate IMIS management is implemented. Federal OSHA Region II is willing to assist in providing retraining for PEOSH personnel who use and manage the IMIS system.

Federal Program/State Initiated Changes and NJ Response

Federal Program Change Summary for NJ Report

During FY 2009 a total of six Federal Program Changes that required a notice of intent to adopt during FY 2009. PEOSH did not respond timely with their intent to adopt three of the six FPC's (see table below).

Federal Program Changes (Excluding Standards)

Date of Directive	Date of Intent due	Date of State Response	Directive Number	Display Title
09/30/2009	11/30/2009	11/09/2009	CPL-02-09-08 2010 355	Injury and Illness Recordkeeping National Emphasis Program
09/30/2009	11/30/2009	11/09/2009	CPL-02-01-046 2010 354	Rescission of OSHAs de minimis policies relating to floors/nets and shear connectors
08/18/2009	10/30/2009	*11/09/2009	CPL-03-00-010 2009 353	NEP Petroleum Refineries - Extension of Time
07/27/2009	09/28/2009	*11/06/2009	CPL-02(09-06) 2009 334	NEP-PSM Covered Chemical Facilities
07/20/2009	09/21/2009	*11/06/2009	CPL-2(09-05) 2009 333	Site-Specific Targeting 2009 (SST-09)
03/26/2009	06/01/2009	04/22/2009	CPL-02-00-148 2009 332	Field Operations Manual

- Untimely Response

Standards Adoption

Four Federal standards were issued during FY 2009. The notice of intent to adopt was timely in two of the four standards and actual adoption was timely in two of the four standards.

- Final Rule - Updating OSHA Standards based on National Consensus Standards; Personal Protective Equipment 74 FR No. 173 (46350-46361), September 9, 2009, Parts: 4 OSH 1910, 12 OSH 1915-18.

Notice of Intent Due Date: 11/20/2009
 Notice of Intent received: 11/09/2009
 Adoption Due Date: 03/09/2010
 Adoption Completed: 11/09/2009

- Final Rule - Electrical Standard; Clarifications; Corrections; 73FR, No. 210 (64202-64205) -October 29, 2008 Part: 4 OSH 1910.

Notice of Intent Due Date: 11/20/2009
 Notice of Intent Received: 11/09/2009

Adoption Due Date: 4/29/2009
Adoption Completed: 11/09/2009

- Final Rule - Longshoring and Maritime Terminals; Vertical Tandem Lifts; 73 FR, No. 238 (75246-75290), December 10, 2008 Parts 12 OSH 1915-18.

Notice of Intent Due Date: 02/17/2009
Notice of Intent Received: 11/05/2009
Adoption Due Date: 06/10/2009
Adoption Completed: 11/25/2009

- Final Rule - Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee; 73 FR, No. 240 (75568-75589), December 12, 2008 Parts 4 OSH 1910, 10 OSH 1926, 12 OSH 1915-18.

Notice of Intent due date: 02/17/2009
Notice of Intent received: 12/10/2009
Adoption due date: 06/12/2009
Adoption Completed: 12/10/2009

Variations

No permanent or temporary variance requests were received or granted by PEOSH during FY2009.

Public Sector Consultation Activities

PEOSH has an on-going 23(g) Public Sector Consultation program. During FY 209 it was necessary to reallocate staff from the consultation program to the enforcement program to supplement staff that were lost since 2005 due to the hiring freeze. Notwithstanding the above, PEOSH has been able to sustain a credible Public Sector consultation program.

As noted above, PEOSH public-sector consultation conducted a total of 189 public-sector consultation visits in FY09 which is 72% greater than their projected goal of 110 visits. There were a total of 42 safety visits conducted which is or 5% above their projected goal of 40 visits and 147 health visits conducted which is 110% above their projected goal of 70 visits.

Special Study Findings

A total of 18 Consultation case files were reviewed including 10 safety and 8 health files. All safety and health case files reviewed were organized however, each file lacked employer and employee interview documentation and sampling forms. With the exception of sampling forms, each case file included all the forms required for consultation case files.

All 18 case files lacked documentation such as field notes, and photos. All health case files relating to sampling did not include OSHA 92 and 98 air sampling and direct reading forms. Due to the lack of documentation such as field notes and photos it made it difficult to determine if any hazards were missed during the consultation visits. It was noted that most of the case files included a checklist developed by PEOSH Consultation for consultants to use as a tool when reviewing safety and health programs (e.g., Hazard Communication or Respiratory Protection programs). This form does not give the reviewer (including the Consultants' supervisors) information as to whether sub elements of these standards (e.g., training requirements with regard to the programs) were in compliance or perhaps lacking and therefore warranting a specific hazard notice, nor could the reviewer assess the quality of the Consultants' review of the programs. For example: a Y or a check mark, is next to written hazard communication but due to lack of documentation there is no mention as to the type of chemicals present, if exposure has been documented by employer and/or if monitoring had been performed. Also if personal protective equipment is provided, and if training is complete etc., these could be potential hazards.

In the health case files reviewed where Noise sampling was conducted, noise dosimeters are only calibrated at 114 dB, where as Federal OSHA calibrates at 94 dB, 114 dB, and 124 dB.

All 6 Safety and Health Achievement Recognition Program case files contained all the required forms and documentation. OSHA 33 "Safety and Health Program Assessment Worksheet" Case File Report forms were appropriately completed, Safety and Health Information (SHIM) evaluation sheet, SHARP checklist and 300 logs to include a copy of the BLS injuries and illness DART rates were found to be complete.

There was a written evaluation report found in all safety and health case files reviewed however, 4 safety case files had missing 300 logs, and there was no indication whether the employers' 300 logs had been reviewed by the Consultant. Potential hazards could have been missed due to the lack of review of the recordable injuries on the OSHA logs. The lack of employee interviews, photos, field notes also prevented reviewer from determining if hazards were missed.

Where Indoor Air Quality sampling was conducted no OSHA 92 Form was found in case file. The monitoring equipment used in 5 safety case files was TSI-Q Track Model 8551. There was no documentation that this equipment was calibrated either pre or post use. Hazards found in 17 of the 18 files reviewed were documented as abated in a timely manner. In 1 health case file an extension request was received one month after the correction due date and it was granted. In this case all items were abated at time of follow up visit.

Discrimination Program:

Three Regional Discrimination Investigators conducted a Special Study of the NJ PEOSH Discrimination Program on site on January 12, 2010 and January 13, 2010.

The state of New Jersey PEOSH Program and its implementing regulations were reviewed by the study team. The program appears to be effective overall, however, several areas of concern were observed by the Special Study Team and provide the opportunity to readily resolve issues that arose.

The areas of concern, each of which is addressed later in detail are as follows:

1. Duplicated cases listed in IMIS
2. The number of discrimination investigators dedicated to the discrimination program may be inadequate.
3. Lack of investigator training in the state program
4. Inconsistency in case file organization and presentation
5. Lack of documentation of complainant, witness interviews and case activity

The team examined twenty two cases which are recorded on IMIS Case Listing from 10/1/08 through 9/30/09. The team also reviewed the case files of eight cases active in IMIS which had an inordinate number of days pending. All of the twenty two cases were investigated by either of the two investigators assigned to the program. One complaint which was referred by the Federal Program to the state was also examined. 7 Cases reviewed by the team were selected by team members on a random basis.

Prior to the study Region II identified eight cases which indicated an inordinate number of days open. The cases indicated the number of days pending from 377 days to 1896 days. A review of this matter revealed that the eight cases entered into the IMIS system were duplicates/triplicates that were created erroneously. The review indicated that entry errors had been made but that in every case the complaint was properly investigated and brought to resolution. The duplicate numbers were identified and the state plan was requested to contact the help desk to have the duplicates removed from the system.

At the time of the study there were two investigators assigned to investigate complaints within the entire state of New Jersey. One investigator has just been promoted to Assistant Chief leaving only one investigator assigned to handle discrimination complaints. According to PEOSH, the Assistant Chief will continue to investigate discrimination complaints in his new role as conditions warrant. Both of the assigned investigators are assigned to additional enforcement duties beyond working on discrimination investigations. The workload of the other additional responsibilities of the investigators was not measured during this study.

For several years the New Jersey State Plan has been unable to send an employee to the OSHA Training Institute for Investigator Training. The lack of training is directly attributed to a state policy that precludes employees from traveling outside the state due to budgetary restrictions. While the state plan has expressed the desire to train additional personnel they are precluded from doing so because of budgetary limits placed upon the program.

There is a lack of consistency with the methods and procedures followed for the investigation of discrimination complaints. Some case files are well organized and indexed in a manner similar to the federal model. The case files are presented in a logical sequence and are well documented and closed with a "Final Investigative Report". In these cases it was readily apparent how the case proceeded to the conclusion reached by the investigator.

Other cases, however, were difficult to follow because the cases were not well organized or documented; they were not indexed in any manner and contained no Final Investigative Reports. Though the cases appear to have been brought to a logical conclusion, this fact is not easily determined due to the lack of case file organization and presentation. All recorded cases were the subject of some type of investigation and were brought to a conclusion.

Complainants were advised of the outcomes of their complaints.

The plan utilizes a "Discrimination Complaint Form" which is filled out by the complainant, is signed and dated and then mailed to the Office of Public Employee Safety. This form initiates the start of an investigation. The Complaint Form aside there is no formal documentation of interviews with either complainants, witnesses or other involved or interested parties. The plan does not use written or recorded statements or memorandums to file to document the underlying elements of a discrimination complaint. The plan does not use the Case Activity Log or any other means to document the flow of investigative activity with respect to each case.

The plan has achieved an 18% merit/success rate during the period reviewed. All of the cases examined were processed in a timely manner.

RECOMMENDATIONS:

Recommendation 14: Supervisors should continue to review IMIS Reports in order to eliminate duplicate discrimination case reporting. (A procedure has already been put in place to address this concern.)

Recommendation 15: State plan administrators should review the number of discrimination investigators that are qualified and assigned to handle discrimination investigations and adjust staffing based on demand throughout the state.

Recommendation 16: State plan administrators should ensure discrimination investigators assigned to the program are properly trained. Means to send investigators to required training should be developed.

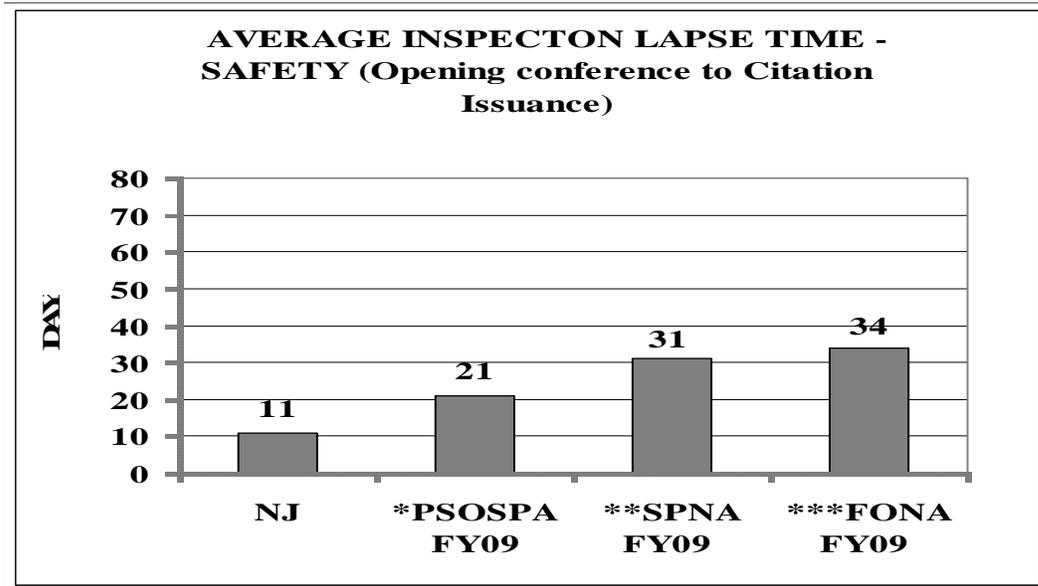
Recommendation 17: The discrimination investigation unit should adopt a case file organization system such as the system which is outlined in the discrimination investigators manual.

Recommendation 18: The discrimination investigation unit should use either a statement form or a memorandum to file to document statements made by complainants, witnesses or other interested parties, utilize the Case Activity Log and the Final Investigative Report format.

CASPAs:

No CASPAs were received relating to PEOSH's program during FY2009

Program Administration



Furloughs and hiring freezes

During FY09 PEOSH employees were furloughed for a total of 94 furlough days; consisting of 46 safety enforcement, 29 health enforcement, and 19 training and consultation days. The total number of furlough days constitutes approximately one-third of a full-time-equivalent employee (FTE). Although it is clear furlough days negatively affect the program, PEOSH has taken steps to minimize the negative impact. This was accomplished by assigning furlough days to personnel on a rotational basis ensuring consistent coverage.

In addition to the furloughs, PEOSH has continued to lose personnel due to attrition and have not been able to replace these employees due to an on-going hiring freeze. As a result, PEOSH's staffing on the safety side is now at less than half of their enforcement benchmark (9 vs. 20). Even with this erosion in FTEs, PEOSH, with its limited staff was able to successfully exceed their projected inspection goals for FY09.

CSHO Training

For several years the New Jersey State Plan has been unable to send Safety and Health Compliance and discrimination investigation personnel to the OSHA Training Institute for technical training. The lack of training is directly attributed to the New

Jersey Department of Labor and Workforce Development's (LWD) policy that precludes state funds from being expended for employees to travel outside the state due to budgetary restrictions. Any travel outside the State of New Jersey requires special approval. PEOSH management has repeatedly attempted to send their CSHOs to required training, however, travel for this purpose was not considered to be essential travel worthy of such approval in the vast majority of cases. One exception was PEOSH was allowed to send two Industrial Hygienists to the initial compliance course during FY 2008. As a result of this policy there are multiple instances where CSHOs did not receive mandatory training (see below). In addition, no CSHOs had advanced accident investigation training⁷ including those who conduct fatality inspections. Further, it is likely this lack of training has negatively impacted overall inspection quality relating to hazard identification and the ability to adequately document legally defensible cases.

It should be noted that PEOSH management has made efforts to obtain training opportunities for CSHOs within the State of New Jersey. PEOSH has requested that OSHA include them where possible in OSHA's internal training efforts within New Jersey. During FY09 PEOSH personnel attended OSHA's Senior CSHO training, and also participated in state emergency response drills. PEOSH has also taken full advantage of applicable OSHA in house Webinars conducted by the OSHA Training Institute. These webinars are not meant to replace mandatory training courses for CSHOs but to augment CSHO knowledge in various areas. During FY09 training courses taken were Process Safety Management of Ammonia Refrigeration Systems, Information System Security and Rules of Conduct, and the H1N1 Compliance Directive-Webinar.

Training is essential for the PEOSH program so they may continue to develop and improve their case file documentation. PEOSH adopted the Initial Training Program for OSHA Compliance Personnel OSHA Instruction TED-01-00-018 effective date 08/06/08.

This instruction provides guidance and direction to those entities who adopt it concerning OSHA's policies and procedures for training of Compliance Safety and Health Officers (CSHOs). It is essential that CSHOs have the requisite knowledge, skills, capability and varied professional backgrounds to accomplish OSHA's mission of protecting America's working men and women. In the instruction OSHA provided detailed guidance relating to mandatory training requirements for CSHOs.

The following tables outline the mandatory training courses that are required to be taken by Safety Compliance Officers and Industrial Hygienists. Mandatory course numbers are listed in bold print at the left of the chart. Missing courses are highlighted in yellow under the CSHO designation.

⁷ Note: The Basic Accident Investigation course and Advanced Accident Investigation Courses were combined into the current Accident Investigation Course number 1230.

Safety Compliance Officer and Consultant Training

Course	Title	CSHO02	CSHO02	CSHO03	CSHO04	CSHO05
Safety CSHO Training Path for Compliance						
1000*	Initial Compliance	X	X	X	X	X
1050*	Introduction to Safety Standards		X			X
1310*	Investigative Interviewing Techniques					
1410*	Inspection Techniques and Legal Aspects		X	X		
2450*	Evaluation of Safety and Health Management Systems	X				
1230*	Accident Investigation					
1080*	Health Hazard Awareness for Safety (OR 1250)					
1250*	Introduction to Health Standards for IH's (OR 1080)					
2000*	Construction Standards (AND/OR 1050)	X	X	X		
8200*	Incident Command System I-200 or Equivalent		X	X		
1420	Whistleblower				X	
2030	Basic Electrical Principles		X	X		X
2040	Machine Guarding	X		X		
3100	Spray Finishing & Coating Operations	X				
3220	Applied Welding Principles	X	X			
2080	Cranes & Material Handling for General Industry	X				
3010	Excavation Trenching & Soil Mechanics	X		X		
2260	Confined Space	X				
3080	Scaffolding	X	X			
3090	Advanced Electrical Hazards	X				
2264	Permit-Required Confined Space		X			
1020	Basic Accident Investigation		X	X		X
2220	Respiratory Protection			X		

***Bolded course numbers are required courses for compliance officers during first three years. Mandatory courses not taken are **Highlighted**.**

Course	Title	CSHO06	CSHO07	CSHO08	CSHO09	CSHO/ CONSULT 10
Safety CSHO Training Path for Compliance						
1000	Initial Compliance	X	X	X	X	X
1050	Introduction to Safety Standards			X		X
1310	Investigative Interviewing Techniques					
1410	Inspection Techniques and Legal Aspects		X			
2450	Evaluation of Safety and Health Management Systems			X		X
1230	Accident Investigation					
1080	Health Hazard Awareness for Safety (OR 1250)					
1250	Introduction to Health Standards for IH's (OR 1080)		X			X
2000	Construction Standards (AND/OR 1050)					X
8200	Incident Command System I-200 or Equivalent	X				
1420	Whistleblower					
2030	Basic Electrical Principles		X			X
2040	Machine Guarding		X		X	
3100	Spray Finishing & Coating Operations					
3220	Applied Welding Principles					
2080	Cranes & Material Handling for General Industry					
3010	Excavation Trenching & Soil Mechanics			X		
2260	Confined Space					
3080	Principles of Scaffolding			X	X	X
3090	Advanced Electrical Hazards	X		X		X
2264	Permit-Required Confined Space			X		X
1020	Basic Accident Investigation			X		
2220	Respiratory Protection					
1500	Basic On-Site Consultation			X		
7100	Introduction to Machine Guarding			X		

Bolded course numbers are required courses for compliance officers during first three years. Mandatory courses not taken are **Highlighted in blue.*

Safety Compliance Manager Training

Course	Title	Manager01	Manager02	Manager03
Safety CSHO Training Path for Compliance				
1000	Initial Compliance	X	X	X
1050	Introduction to Safety Standards		X	X
1310	Investigative Interviewing Techniques			
1410	Inspection Techniques and Legal Aspects		X	X
2450	Evaluation of Safety and Health Management Systems			
1230	Accident Investigation			X
1080	Health Hazard Awareness for Safety (OR 1250)			
1250	Introduction to Health Standards for IH's (OR 1080)			
2000	Construction Standards (AND/OR 1050)		X	X
8200	Incident Command System I-200 or Equivalent		X	X
1420	Whistleblower	X		
2030	Basic Electrical Principles	X	X	X
2040	Machine Guarding			
3100	Spray Finishing & Coating Operations			
3220	Applied Welding Principles			
2080	Cranes & Material Handling for General Industry			
3010	Excavation Trenching & Soil Mechanics			X
2260	Confined Space			
3080	Principles of Scaffolding			
3090	Advanced Electrical Hazards			
2264	Permit-Required Confined Space			X
1020	Basic Accident Investigation	X		X
2220	Respiratory Protection			
1500	Basic On-Site Consultation		X	
7100	Introduction to Machine Guarding			

***Bolded course numbers are required courses for compliance officers during first three years. Mandatory courses not taken by Managers are Highlighted in blue.**

Health Compliance Officer and Consultant Training

Course	Title	CSHO11	CSHO12	CONSULT01	CSHO13	CSHO14
	Health CSHO Training Path for Compliance					
1000*	Initial Compliance	X	X		X	X
1250*	Introduction to Health Standards	X	X		X	X
1310*	Investigative Interviewing Techniques					
1410*	Inspection Techniques and Legal Aspects	X			X	X
2450*	Evaluation of Safety and Health Management Systems			X		
1230*	Accident Investigation	X	X			
1280*	Safety Hazard Awareness for Health (OR 1050)					
1050*	Introduction to Safety Standards (OR 1280)					
8200*	Incident Command System I-200 or Equivalent	X	X	X		
2000	Construction Standards			X		
2220	Respiratory Protection	X		X		
2200	Industrial Noise	X		X		
2210	Industrial Ventilation		X			
1500	Basic On-Site Consultation			X		

***Bolded course numbers are required courses for compliance officers during first three years. Mandatory courses not taken are **Highlighted in Y**ellow.**

Health Compliance Officer, Manager and Consultant Training

Course	Title	CSHO15	CONSULT02	CONSULT03	MANAGER04	MANAGER05
	Health CSHO Training Path for Compliance					
1000*	Initial Compliance	X		X		X
1250*	Introduction to Health Standards	X		X	X	X
1310*	Investigative Interviewing Techniques					
1410*	Inspection Techniques and Legal Aspects	X				X
2450*	Evaluation of Safety and Health Management Systems			X		
1230*	Accident Investigation	X				X
1280*	Safety Hazard Awareness for Health (OR 1050)					X
1050*	Introduction to Safety Standards (OR 1280)					
8200*	Incident Command System I-200 or Equivalent	X	X	X	X	X
2000	Construction Standards	X				
2220	Respiratory Protection	X		X		X
2200	Industrial Noise	X		X		
2210	Industrial Ventilation					
1500	Basic On-Site Consultation			X		

***Bolded course numbers are required courses for compliance officers during first three years. Mandatory courses not taken are **Highlighted in Yellow**. Mandatory courses not taken by Managers are **Highlighted in Blue**.**

Recommendation 19: It is recommended that the PEOSH resolve the budgetary restrictions which prohibit investigators from attending courses at The OSHA Training Institute and the Annual Discrimination Investigator Training Conference as the program receives Federal funding and is required to meet specific staff training requirements.

Recommendation 20: Develop and implement a comprehensive training plan to provide mandatory training to CSHOs and their supervisors to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 "Initial Training Program for OSHA Compliance Personnel" and to providing adequate training for discrimination investigators. PEOSH must also ensure the allocation of necessary funding to accomplish the training plan.

Appendices

Appendix A	Findings and Recommendations
Appendix B	Enforcement Comparison Chart
Appendix C	FY 2009 SOAR (Available Separately)
Appendix D	FY 2009 SAMM
Appendix E	FY 2009 SIR
Appendix F	FY 2009 MARC

Appendix A
FY 2009 New Jersey State Plan (PEOSH)
Enhanced FAME Report

Findings and Recommendations Summary Chart

**FY 2009 New Jersey Public Employee Only State Plan (PEOSH)
Enhanced FAME Report
Summary of Findings and Recommendations**

	Special Study Findings (In order as they appear in the E-FAME report)	Recommendations
1	<p>The baseline special study revealed that IMIS data input and maintenance was not being managed in accordance with PEOSH and OSHA policy. Rejected forms were not being corrected, standard IMIS reports such as draft forms reports were not reviewed and uplinks and data transfer from the local IMIS to the NCR Host computer was not being ensured. In many instances data was not transferred from PEOSH to the host resulting inaccurate data available for evaluation, analysis, and review. (p.9)</p>	<p>PEOSH must ensure Compliance Staff and Management complete required IMIS forms and ensure IMIS standard reports are reviewed on a regular basis to ensure proper IMIS database management. Corrective actions should include comprehensive IMIS data entry training. OSHA is prepared to assist PEOSH with IMIS training.</p>
2	<p>PEOSH consultants and management indicated employees are conferred with in all interventions and that they are having problems entering this data into the IMIS. (p.34)</p> <p>A total of 18 Consultation case files were reviewed including 10 safety and 8 health files. All safety and health case files reviewed were organized however, each file lacked employer and employee interview documentation and sampling forms. (p. 65)</p>	<p>PEOSH Public Sector Consultation must ensure that consultants conferring with employees properly enter this data into the IMIS system.</p>
3	<p>The percent of serious hazards verified corrected in original time or on site is 12.77%. Out of the 329 total serious hazards identified, 42 were verified corrected on site and 37 were verified within the original time frame. The reference standard is 65%. (p.35)</p>	<p>PEOSH Consultation must improve its performance in verifying the abatement of serious hazards in a timely manner. Delaying abatement verification until follow-up visits delays verification of hazards that can be abated quickly.</p>
4	<p>The baseline special evaluation revealed PEOSH case file documentation is lacking, especially in safety cases. Case files reviewed lacked evidence of employee exposure, employer knowledge of the cited hazardous conditions, names and contact information for employee(s) interviewed and documentation addressing affirmative defense issues. In addition many files also did not include narratives or OSHA 1B forms or their equivalent (forms in which violations are documented). (p.8)</p>	<p>Provide training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements set forth in PEOSH's Field Inspection Reference Manual or Field Operations Manual and institutionalize established documentation requirements.</p>
5	<p>A total of 9 fatality case files were reviewed by Region II Team members. A common theme with regard to these inspections is the lack of documentation in the case files. None of the fatality inspections had hard copies of OSHA 36 (Accident Report), or OSHA 170 (Findings of the Accident Investigation) forms.</p> <p>There was no evidence of next of kin letters, or other contact with the families, including notification of enforcement action in any of the fatality files. (p.42)</p>	<p>Provide training to CSHOs to reiterate the policies relating to fatality investigations including the following:</p> <ul style="list-style-type: none"> • Proper procedures relating to making the appropriate communication to the family of victims (i.e. next of kin letters, inspection findings, etc.) and the requirement of documenting such communication in the file. • Implement internal controls to ensure that all fatality

		<p>investigations are opened within a timeframe established by agency policy.</p> <ul style="list-style-type: none"> • Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of federal OSHA and the PEOSH FOM or FIRM (i.e. providing detailed narrative documenting the facts that surround the incident, field notes, evidence of employee exposure, evidence of employer knowledge and completion of the appropriate forms (i.e. OSHA 36's and OSHA 170's)).
6	The state developed a new Strategic Plan that focused on four high hazard areas within the public sector. There were numerous inspections conducted in those specific SIC codes, but there is no formal policy relating to targeting methodologies. (p.44)	OSHA recommends that PEOSH develop a consistent inspection selection criteria for the selection of sites within targeted NAICs codes for inspection and that inspections that are opened as a result of unprogrammed activity (e.g., complaints and referrals, etc.) in targeted NAICs that have not recently received a comprehensive inspection are expanded to comprehensive inspections under the program.
7		<p>PEOSH should develop a formal policy relating to the industries targeted under its Strategic Plan for FY09-2013 including:</p> <ol style="list-style-type: none"> 1) The identification and selection of sites targeted for inspection 2) Guidance for CSHOs on conducting inspections of sites targeted (e.g., common hazards that may be causing the high injury and illness rates, when to expand unprogrammed inspections to comprehensive, etc..) 3) Proper coding of targeted inspections.
8	<p>The baseline special evaluation revealed PEOSH case file documentation is lacking, especially in safety cases. Case files reviewed lacked evidence of employee exposure, employer knowledge of the cited hazardous conditions, names and contact information for employee(s) interviewed and documentation addressing affirmative defense issues. In addition many files also did not include narratives or OSHA 1B forms or their equivalent (forms in which violations are documented).</p> <p>In 100% of the cases reviewed in which citations were issued; prima facie information regarding evidence of employer knowledge and employee exposure was either inadequate or missing. (p.8)</p>	Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements of a prima facie case as set forth by federal OSHA and the State of New Jersey policy (Field Inspection Reference Manual or Field Operations Manual).
9	Employee/employee representative involvement is not documented in the case file notes in both safety and health files. (p.8)	Provide training to all field staff regarding the agency's policy of Union/Employee Representative involvement during and after inspections and the requirement to properly document compliance with this policy in case file.
10	The baseline special evaluation revealed PEOSH case file documentation is lacking, especially in safety cases. Case files reviewed lacked evidence of employee	Provide training to all field staff, including supervisory staff, to ensure that all inspection case files contain all of the documentation required by Federal OSHA FIRM and the

<p>exposure, employer knowledge of the cited hazardous conditions, names and contact information for employee(s) interviewed and documentation addressing affirmative defense issues. In addition many files also did not include narratives or OSHA 1B forms or their equivalent (forms in which violations are documented).</p> <p>In 100% of the cases reviewed in which citations were issued; prima facie information regarding evidence of employer knowledge and employee exposure was either inadequate or missing. (p.8)</p>	<p>equivalent requirements of the State of New Jersey FIRM. Implement internal controls to ensure that all cases are reviewed on a supervisory level to make certain that all violations issued meet the prima facie requirements. Prima Facie documentation includes evidence of employee exposure to a hazard, evidence of employer knowledge, an assessment of the severity of the injury/illness resulting from exposure to the hazard, and the probability of that exposure.</p>
<p>11 In both the health and safety cases reviewed; the overwhelming majority of violations in which abatement periods granted were given 60 day abatement periods. In many cases, given the nature of the violations, the abatement time period assessed was excessive. (p.9)</p>	<p>Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including:</p> <ul style="list-style-type: none"> • Ensure appropriate abatement periods are assigned for unabated violations. • Ensure that all abatement information accepted satisfies the order to comply prior to closing the case. • For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement. • Implement internal controls to ensure that all Petitions for Modification of Abatement (PMA) Dates are reviewed on a supervisory level to ensure that all required information is contained in the request prior to granting the PMA. • Ensure that Failure To Abate Notices are issued where appropriate. <p>Additional recommendations related to Abatement taken from the Summary of Recommendations (p.12) in the Enhanced FAME Report:</p> <p>Internal controls should be developed to ensure that appropriate PEOSH staff tracks the status of abatement for every citation issued by PEOSH. OSHA recommends that staff reviews IMIS generated abatement status reports to identify citations with pending or overdue abatement dates. Prior to the abatement due date PEOSH personnel should follow up with employers requesting the required abatement information and re-emphasizing the abatement due date. If at that time, the employer needs additional time, a timely and proper PMA can be submitted to PEOSH.</p> <p>Internal controls should be developed to ensure that abatement is reviewed and entered into IMIS as soon as possible once it is received and determined to be sufficient. The date entered into IMIS as completion of the abatement should either be the date that the employer has certified the abatement was completed, or absent that information, the date that PEOSH received the information, not the date the information was reviewed.</p>

12	Based on case file reviews it was determined that appropriate informal conference notes were not maintained in the files thus it was not possible to determine whether correct procedures were followed. No documentation was included in the files indicating who was present or what was discussed. (p.59)	Relating to informal conferences, PEOSH representatives must thoroughly document the following in the case file: The fact that notification to the parties was made (employee and/or employee representative notification) and the date such notification was made, time and location the informal conference was held; at the conclusion of the informal conference, all main issues and potential courses of action must be summarized and documented in accordance with PEOSH policy.
13	The baseline special study revealed that IMIS data input and maintenance was not being managed in accordance with PEOSH and OSHA policy. Rejected forms were not being corrected, standard IMIS reports such as draft forms reports were not reviewed and uplinks and data transfer from the local IMIS to the NCR Host computer was not being ensured. In many instances data was not transferred from PEOSH to the host resulting inaccurate data available for evaluation, analysis, and review. (p.9)	Provide IMIS Administration training for PEOSH IT personnel, Supervisors, CSHO's, Consultants and Compliance Assistance Specialists and ensure appropriate IMIS management is implemented. Federal OSHA Region II is willing to assist in providing retraining for PEOSH personnel who use and manage the IMIS system.
14	Prior to the study, Region II identified eight (<i>discrimination</i>) cases which indicated an inordinate number of days open. The cases indicated the number of days pending from 377 days to 1896 days. A review of this matter revealed that the eight cases entered into the IMIS system were duplicates/triplicates that were created erroneously. (p.66)	It is recommended that supervisors continue to review IMIS Reports in order to eliminate duplicate discrimination case reporting. (A procedure has already been put in place to address this concern.)
15	At the time of the study there were two investigators assigned to investigate complaints within the entire state of New Jersey. One investigator has just been promoted to Assistant Chief leaving only one investigator assigned to handle discrimination complaints. (p.67)	It is recommended that the state plan review the number of discrimination investigators that are qualified and assigned to handle discrimination investigations and adjust staffing based on demand throughout the state.
16	For several years the New Jersey State Plan has been unable to send Safety and Health Compliance and discrimination investigation personnel to the OSHA Training Institute for technical training. The lack of training is directly attributed to the New Jersey Department of Labor and Workforce Development's (LWD) policy that precludes state funds from being expended for employees to travel outside the state due to budgetary restrictions. (p.67)	It is recommended that the State Plan ensure discrimination investigators assigned to the program are properly trained. Means to send investigators to required training should be developed.
17	There is a lack of consistency with the methods and procedures followed for the investigation of discrimination complaints. (p.67)	It is recommended that the State Plan adopt a case file organization system such as the system which is outlined in the discrimination investigators manual.
18	The plan utilizes a "Discrimination Complaint Form" which is filled out by the complainant, is signed and dated and then mailed to the Office of Public Employee Safety. This form initiates the start of an investigation. The Complaint Form aside there is no formal documentation of interviews with either complainants, witnesses or other involved or interested parties. The plan does not use written or recorded statements or memorandums to file to document the underlying elements of a discrimination complaint. The plan does not use the Case Activity Log or any other means to	It is recommended that the state plan use either a statement form or a memorandum to file to document statements made by complainants, witnesses or other interested parties, utilize the Case Activity Log and the Final Investigative Report format.

	document the flow of investigative activity with respect to each case. (p.67)	
19	The study found that for several years PEOSH has not sent Safety and Health CSHOs or their supervisors to the OSHA Training Institute or any other out of state location for technical training. This is directly attributed to a State policy that prohibits state funds from being used for employee travel outside the state (ostensibly due to budgetary restrictions). (p.5)	It is recommended that the PEOSH resolve the budgetary restrictions which prohibit investigators from attending courses at The OSHA Training Institute and the Annual Discrimination Investigator Training Conference should be lifted.
20	There are several CSHOs who did not receive mandatory training, for example; 50% of the enforcement staff (both safety and health) did not have Legal Aspects training. (p.7)	Develop and implement a comprehensive training plan to provide mandatory training to CSHOs and their supervisors to bring them up to the minimum training standards established in OSHA Instruction TED-01-00-018 "Initial Training Program for OSHA Compliance Personnel" and to providing adequate training for discrimination investigators. PEOSH must also ensure the allocation of necessary funding to accomplish the training plan.

Appendix B
FY 2009 New Jersey State Plan (PEOSH)
Enhanced FAME Report

Enforcement Comparison Summary Chart

FY 2009 New Jersey Enforcement Activity

	New Jersey (PEO)	State Plan Total	Federal OSHA
Total Inspections	1,750	61,016	39,004
Safety	1,470	48,002	33,221
% Safety	84%	79%	85%
Health	280	13,014	5,783
% Health	16%	21%	15%
Construction	31	26,103	23,935
% Construction	2%	43%	61%
Public Sector	1,750	7,749	N/A
% Public Sector	100%	13%	N/A
Programmed	800	39,538	24,316
% Programmed	46%	65%	62%
Complaint	220	8,573	6,661
% Complaint	13%	14%	17%
Accident	6	3,098	836
Insp w/ Viols Cited	774	37,978	27,165
% Insp w/ Viols Cited (NIC)	44%	62%	70%
% NIC w/ Serious Violations	59%	62%	87%
Total Violations	2,984	129,363	87,663
Serious	2,453	55,309	67,668
% Serious	82%	43%	77%
Willful	-	171	401
Repeat	-	2,040	2,762
Serious/Willful/Repeat	2,453	57,520	70,831
% S/W/R	82%	44%	81%
Failure to Abate	-	494	207
Other than Serious	531	71,336	16,615
% Other	18%	55%	19%
Avg # Violations/ Initial Inspection	3.8	3.3	3.1
Total Penalties	\$ 200	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 0.10	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	-	\$ 934.70	\$ 977.50
% Penalty Reduced	0.0%	51.9%	43.7%
% Insp w/ Contested Viols	0.0%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	2.5	15.7	17.7
Avg Case Hrs/Insp- Health	2.0	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	7.9	31.6	34.3
Lapse Days Insp to Citation Issued- Health	22.1	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	7	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
FY 2009 New Jersey State Plan (PEOSH)
Enhanced FAME Report

FY 2009 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix D
FY 2009 New Jersey State Plan (PEOSH)
Enhanced FAME Report

FY 2009 State Activity Mandated Measures (SAMM)

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

APR 11, 2010
 PAGE 1 OF 2

State: NEW JERSEY

RID: 0253400

From: 10/01/2008 CURRENT
 To: 09/30/2009 FY-TO-DATE REFERENCE/STANDARD

MEASURE

1. Average number of days to initiate Complaint Inspections	3265 14.32 228	2362 23.85 99	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	0 0	0 0	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	227 100.00 227	97 100.00 97	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	0 0	0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified	0	0	
Private	0	0	100%
Public	2761 96.03 2875	657 89.02 738	100%
7. Average number of calendar days from Opening Conference to Citation Issue			

Safety	7517	3060	2490574	National Data (1 year)
	11.20	11.90	43.7	
	671	257	56942	
Health	3333	2111	693541	National Data (1 year)
	28.00	42.22	57.3	
	119	50	12105	

*NJB09

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

APR 11, 2010
 PAGE 2 OF 2

State: NEW JERSEY

RID: 0253400

MEASURE	From: 10/01/2008	CURRENT	REFERENCE/STANDARD
	To: 09/30/2009	FY-TO-DATE	
8. Percent of Programmed Inspections with S/W/R Violations			
	394	122	92287
Safety	50.38	48.22	58.5 National Data (3 years)
	782	253	157875
	33	19	11008
Health	58.93	67.86	51.1 National Data (3 years)
	56	28	21554
9. Average Violations per Inspection with Vioations			
	2657	763	421088
S/W/R	4.83	4.05	2.1 National Data (3 years)
	549	188	201266
	563	234	243728
Other	1.02	1.24	1.2 National Data (3 years)
	549	188	201266
10. Average Initial Penalty per Serious Violation (Private Sector Only)			
	0	0	493254527
			1336.9 National Data (3 years)
	0	0	368941
11. Percent of Total Inspections in Public Sector			
	1805	604	5255
	100.00	100.00	100.0 Data for this State (3 years)
	1805	604	5255
12. Average lapse time from receipt of Contest to first level decision			
	0	0	4318238
			237.2 National Data (3 years)
	0	0	18205
13. Percent of 11c Investigations			
	14	4	100%

Completed within 90 days	82.35	80.00		
	17	5		
14. Percent of 11c Complaints that are Meritorious	3	2	1474	
	17.65	40.00	20.8	National Data (3 years)
	17	5	7082	
15. Percent of Meritorious 11c Complaints that are Settled	2	0	1271	
	66.67	.00	86.2	National Data (3 years)
	3	2	1474	

*NJB09

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E
FY 2009 New Jersey State Plan (PEOSH)
Enhanced FAME Report

FY 2009 State Inspection Report (SIR)

OSHA REPORT
(RSOCOVER)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N

2010-04-11

IMIS REPORT
KEEP THIS PAGE WITH THIS REPORT
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY DATA WERE SELECTED

TYPE OF REPORT: INSPECTION

USER SELECTION NAME: NJ09I

DATE OF REPORT: 2010-04-11

REQUESTOR: OSH311

***** SELECTION CRITERIA *****

REPORTING LEVEL(S): 08 - STATE BY DIVISION FOR 18(B) STATE (ONLY)

OPENING CONFERENCE DATE: 01 OCT 2008 THRU 30 SEP 2009

REGION: 02 - NJ CENTRAL (TRENTON)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
I N S P E C T I O N R E P O R T

REGION 2 STATE 34 - NJ

(18B) STATE DATA ONLY	DIVISION			STATE TOTAL
	NJ CE	NJ HL	NJ SA	
TOTAL INSPECTIONS	59	286	1460	1805
RECORDS INSPECTIONS	1	0	7	8
INSPECTIONS BY CATEGORY				
SAFETY INSPECTIONS	59	0	1458	1517
HEALTH INSPECTIONS	0	286	2	288
INSPECTIONS BY TYPE				
UNPROGRAMMED	12	230	742	984
ACCIDENT	4	0	5	9
COMPLAINT	7	135	75	217
REFERRAL	0	4	2	6
MONITORING	0	2	0	2
VARIANCE	0	0	0	0
FOLLOW-UP	0	89	659	748
UNPROGRAMMED RELATED	1	0	1	2
OTHER	0	0	0	0
PROGRAMMED	47	56	718	821
PLANNED	47	49	630	726
PROGRAMMED RELATED	0	0	2	2
OTHER	0	7	86	93
OTHER	0	0	0	0
INSPECTIONS BY INDUSTRY				
CONSTRUCTION	0	28	3	31
MARITIME	0	0	1	1
MANUFACTURING	0	0	2	2
OTHER	59	258	1454	1771
INSPECTIONS BY OWNERSHIP				
PRIVATE SECTOR	0	0	0	0
PUBLIC SECTOR	59	286	1460	1805
FEDERAL AGENCY	0	0	0	0

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
I N S P E C T I O N R E P O R T

REGION 2 STATE 34 - NJ

(18B) STATE DATA ONLY

DIVISION DIVISION DIVISION
NJ CE NJ HL NJ SA

STATE
TOTAL

INSPECTION CLASSIFICATION

	NJ CE	NJ HL	NJ SA	STATE TOTAL
SAFETY PLANNING GUIDE	0	0	1	1
HEALTH PLANNING GUIDE	0	0	0	0
LOCAL EMPHASIS PROGRAM	0	0	0	0
NATIONAL EMPHASIS PROGRAM	0	0	0	0
MIGRANT FARMWORKER CAMP	0	0	0	0

EMPLOYEE INFORMATION

	NJ CE	NJ HL	NJ SA	STATE TOTAL
EMPLOYED IN ESTABLISHMENT	288715	50313	545656	884684
COVERED BY INSPECTION	288715	37990	533505	860210

AVG CASE HRS PER INSP

	NJ CE	NJ HL	NJ SA	STATE TOTAL
SAFETY	0.0	0.0	2.5	2.5
HEALTH	0.0	2.0	0.0	2.0

VIOLATIONS

	NJ CE	NJ HL	NJ SA	STATE TOTAL
WILLFUL	0	0	0	0
REPEAT	0	0	0	0
SERIOUS	40	244	2373	2657
UNCLASSIFIED	0	0	0	0
OTHER	0	216	347	563
F-T-A	0	0	0	0
TOTAL	40	460	2720	3220

PENALTIES

	NJ CE	NJ HL	NJ SA	STATE TOTAL
WILLFUL	0	0	0	0
REPEAT	0	0	0	0
SERIOUS	100	0	0	100
UNCLASSIFIED	0	0	0	0
OTHER	0	0	0	0
F-T-A	0	0	0	0
TOTAL	100	0	0	100

CONTESTED CASES

	NJ CE	NJ HL	NJ SA	STATE TOTAL
INSPECTIONS CONTESTED	0	0	0	0
INSP W/CITATIONS CONTESTED (%)	0.0	0.0	0.0	0.0

Appendix F
FY 2009 New Jersey State Plan (PEOSH)
Enhanced FAME Report

FY 2009 Mandated Activities Report for Consultation (MARC)

PROJECT NAME: New Jersey

PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	36	189	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	12	74	
Percent	54.55	69.16	
Number of Initial Visits	22	107	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	22	107	
Visits <= 250 Employees in Estab	21	105	
Percent	95.45	98.13	
Visits <= 500 Employees CB by Empr	19	97	
Percent	86.36	90.65	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	22	107	
Percent	100.00	100.00	
Number of Initial Visits	22	107	
Follow-Up	11	54	
Number with Empe Conferences	100.00	96.43	
Percent	11	56	
Number of Follow-Up Visits			
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	9	
Percent		47.37	
Number of T&A Visits	0	19	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: New Jersey

PUBLIC SECTOR

MEASURE QUARTER FY-TO-DATE REFERENCE/STANDARD

4A Thru 4D based on Closed Cases ONLY

4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date) 100%

Number Verified Timely	9	167
Percent	100.00	50.76
Total Serious Hazards	9	329

Number of Serious Hazards Verified Corrected:

On-Site	0	5
Within Original Time Frame	6	37
Within Extension Time Frame	0	22
Within 14 Days of Latest Correction Due Date	3	103

4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)

Number NOT Verified Timely	0	162
Percent	.00	49.24
Total Serious Hazards	9	329

4C. Percent of Serious Hazards Referred to Enforcement

Number Referred to Enforcement	0	0
Percent	.00	.00
Total Serious Hazards	9	329

4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE) 65%

NUMBER VERIFIED	6	42
Percent	66.67	12.77
Total Serious Hazards	9	329

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	6	42	
On-Site	0	5	
Within Original Time Frame	6	37	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			5

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: New Jersey

PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	22	74	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	12	41	
Percent	54.55	55.41	
Number of Initial Visits	22	74	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	22	74	
Visits <= 250 Employees in Estab	21	72	
Percent	95.45	97.30	
Visits <= 500 Employees CB by Empr	19	64	
Percent	86.36	86.49	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	22	74	
Percent	100.00	100.00	
Number of Initial Visits	22	74	
Follow-Up			
Number with Empe Conferences	0	0	
Percent	0	0	
Number of Follow-Up Visits			
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	6	31	
On-Site	0	2	
Within Original Time Frame	6	29	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: New Jersey

PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	0	33	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	0	33	
Percent		100.00	
Number of Initial Visits	0	33	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	0	33	
Visits <= 250 Employees in Estab	0	33	
Percent		100.00	
Visits <= 500 Employees CB by Empr	0	33	
Percent		100.00	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	0	33	
Percent		100.00	
Number of Initial Visits	0	33	
Follow-Up			
Number with Empe Conferences	0	0	
Percent		0	
Number of Follow-Up Visits	0	0	
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent		0	
Number of T&A Visits	0	0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: New Jersey PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	0	100	
Percent		38.17	
Total Serious Hazards	0	262	
Number of Serious Hazards Verified Corrected:	0	100	
On-Site	0	3	
Within Original Time Frame	0	8	
Within Extension Time Frame	0	5	
Within 14 Days of Latest Correction Due Date	0	84	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	162	
Percent		61.83	
Total Serious Hazards	0	262	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent		.00	
Total Serious Hazards	0	262	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	0	11	
Percent		4.20	
Total Serious Hazards	0	262	

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	0	11	
On-Site	0	3	
Within Original Time Frame	0	8	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			5

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION