

October 26, 2010

Robert Kulick, Regional Administrator
US Department of Labor-OSHA
201 Varick Street
New York, NY 10014

Dear Mr. Kulick,

Below is the New Jersey Office of Public Employee Occupational Safety and Health (NJ OPEOSH) response to the summary of FY2009 EFAME recommendations.

The New Jersey Office of Public Employees' Occupational Safety and Health (NJ OPEOSH) fully supports regular monitoring and auditing of the NJ OPEOSH State plan program by Federal OSHA. It is the belief of NJ OPEOSH that appropriate auditing and monitoring is a valuable tool to enhance program effectiveness.

NJ OPEOSH is concerned, however, with the wording in the Enhanced Federal Annual Monitoring Evaluation (EFAME) executive summary. The wording leads the reader to believe that audit findings were pervasive throughout the NJ OPEOSH program. Out of 1329 enforcement inspection cases files performed for Federal Fiscal Year 2009, only 88 (or approximately 6.6 %) were reviewed by the OSHA audit team.

The executive summary questioned the "effectiveness" of the New Jersey's OPEOSH program yet, the team did not provide a specific definition as to how State plan "effectiveness" is measured.

The EFAME executive summary placed emphasis on following OSHA case file documentation procedures as one measure of NJ OPEOSH's effectiveness. NJ OPEOSH is not exactly the same type of program as OSHA (for example, NJ OPEOSH is public sector only and NJ OPEOSH does not issue first instance sanctions). The NJ OPEOSH is not aware of any empirical data that indicates first instance sanctions are more effective in reducing hazards in the workplace than allowing time for, and working with the employer to abate hazards prior to imposing penalties.

In the past, OSHA recognized that state plans like the NJ OPEOSH may not operate exactly as OSHA. Dr. Michael's Vision for OSHA (OSHA at Forty July 19, 2010: New Challenges and New Directions) states:

"A significant amount of OSHA's enforcement work is done by state plans; we are all part of the same system and we share a commitment to protecting worker safety and health. These programs cover private and public sector workers in twenty-two states and territories, and public sector employees only in five more. OSHA must continue to work closely with these plans, ensuring that they really are, as the law requires, at least as effective as the federal enforcement program. **Many state OSHA programs address challenges differently than we do, and there is much we can learn from their experience** (emphasis added). At the same time, we must help state plans grow in strength and effectiveness, and embrace some of our new initiatives and approaches."

For example, NJ OPEOSH like other State Plan States has developed unique occupational safety and health standards:

- Standards for Firefighters;
- Indoor Firing Range Standard;
- Hazard Communication Standard; and
- Indoor Air Quality Standards.

The NJ OPEOSH has developed many educational/outreach materials and training programs on numerous occupational safety and health issues to assist New Jersey public employers in providing a safe and healthful work environment free from recognized hazards. These and other occupational safety and health activities help to define NJ OPEOSH and must be considered in evaluating the effectiveness of the NJOPEOSH.

EFAME EXECUTIVE SUMMARY

OSHA statement 1: (Page 3 paragraph 2);

"The report documents a significant lack of attention to detail and procedures, raising concerns about program effectiveness."

NJ OPEOSH Response: NJ OPEOSH will correct and implement those recommendations. However, it is still unclear what is meant by program effectiveness. With this the case, it is respectfully requested that effectiveness should be defined by some specific objective criteria.

OSHA statement 2: (Page 3, paragraph 2); “Continued close Federal oversight with increased technical assistance and an explicit expectation of improved performance may be necessary to effect changes in the program”

NJ OPEOSH Response: The NJ OPEOSH looks forward to a renewed emphasis on oversight from OSHA. If there had been routine quarterly meetings, some of the OSHA concerns outlined in the report would have been addressed previously. Over the past year only one quarterly meeting between NJ OPEOSH and OSHA has taken place. If quarterly meetings occurred in accordance with the State plan monitoring agreement a number of the E FAME issues would have been previously addressed.

NJ OPEOSH understands that the purpose of the quarterly meetings with OSHA is to identify program deficiencies and make adjustments accordingly.

OSHA Statement 3: (Page 3, paragraph 3); Problems and challenges revealed as a result of the on-site special study include:

- The NJ OPEOSH does not issue first instance penalties and therefore rarely has contested cases or requests for informal conferences.

NJ OPEOSH Response: OSHA did not provide an explanation as to why not issuing first instance penalties are a “problem or challenge” for NJ OPEOSH. When citations are issued by NJ OPEOSH, it ensures that all citations are abated. When an employer does not abate citations the employer is penalized on a per diem basis using the Federal Penalty schedule. OSHA approved the developmental NJ OPEOSH State Plan knowing that first instance penalties are not issued.

OSHA did not provide an explanation as to why it is a “problem or challenge” for NJ OPEOSH that contested cases are rare.

OSHA did not provide an explanation as to why it is a “problem or challenge” for NJ OPEOSH that requests for informal conferences are rare.

- All safety inspections resulted in follow-up visits. Failures to abate citations with penalties are the States enforcement mechanism. The report indicated that no failures to abate citations were issued in FY2009. Our case files identified 2 failure to abate penalties that were issued in Federal fiscal year 2009. NJ PEOSH has asked the Region for help for several years in getting contested cases as well as willful and repeat penalty cases onto the NCR.
- NJ OPEOSH's penalty filing system was changed following the audit. Initial inspection and penalty files are now filed together. This was not the case during the audit.

OSHA Statement 4 : (Page 4, paragraph 1) Hazards not identified; violations are not cited; sampling is not done.

NJ OPEOSH Response: **NJPEOSH Response:** A goal of NJ OPEOSH is to thoroughly inspect work environments. NJ OPEOSH disagrees with some findings in the report but will work to continuously improve our ability to identify hazards. The OSHA evaluation cited a case file where an opportunity for sampling was not done. NJ OPEOSH disagrees that an opportunity was missed in this case. Asbestos was identified in an ammunition magazine. NJ OPEOSH took a bulk sample and identified asbestos. The potential exposure to asbestos was limited to a small hole and less than one gram of debris in the corner of a heavily guarded, fully enclosed, locked ammunition magazine in a medium security state prison. Employees stated that they access the magazine once every 1-3 days and spend about 10-15 minutes in the magazine. Duties in the magazine are limited to unloading and retrieving ammunition and do not involve contact with the damaged piece of asbestos thermal system insulation. The CSHO who investigated this case has over 20 years of industrial hygiene experience, including previously being an EPA accredited AHERA asbestos building inspector and a State licensed Asbestos Safety Technician. Based on the CSHO's professional judgment, considering the small amount of disturbed material (less than one square inch), the limited access to the area, the type of work, and the employee's limited potential exposure time (10-15 minutes) in the magazine, the CSHO did not believe that there was a reasonable potential for an inhalation exposure near the PEL, STEL, or other occupational limit.

There is no basis for the audit team to have indicated that hazards are not identified, cited and that sampling is not done.

OSHA Statement 5: (Page 4, 3rd paragraph after bullets); "This report documents lack of attention to detail and adherence to procedures which raise concerns about the program effectiveness."

NJ OPEOSH Response: When one reviews the Federal SAMM (enforcement measurement tool) and MARC (consultation measurement tool) the standard by which effectiveness has been judged in the past) the NJ OPEOSH is doing well. Effectiveness should be judged on identifying hazards, and not on unidentified vague and obscure terminology such as "at least effective as" or whether New Jersey's State plan is similar to Federal OSHA's.

OSHA Statement 6: (Page 16, Performance Goal 3.1) Initiate inspections of fatalities and catastrophes within one day of notification and for 95% of occurrences to prevent further injuries or deaths. Eight out of 9 (89%) of fatality investigations were initiated within the one day during 2009. The goal was not met.

NJ OPEOSH Response: The only case in question in the audit was an automobile accident. The NJ OPEOSH responded immediately as soon as news of the fatality was discovered on the internet.

This case would not normally be investigated because it was a motor vehicle accident. However, NJ OPEOSH had concerns with police vehicle safety and therefore looked into the matter. Therefore NJ OPEOSH completely disagrees with this finding.

FINDINGS

Following are specific responses and action plans based on audit findings:

FY 2009 New Jersey Public Employee Only State Plan (PEOSH) Enhance FAME Report
Prepared by Region II

Summary of Findings, Recommendations and PEOSH Response

	Findings	Recommendations	PEOSH Response
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.7)</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>	<p>The NJ OPEOSH has requested training from Region 2 for compliance staff in reference to IMIS NCR ongoing problems. PEOSH has also requested that staff be trained on running NCR/IMIS reports. To date, PEOSH has not received any assistance from the Region although this training has been requested numerous times in the past. The OPEOSH is asking that this training be provided ASAP so that the IMIS/NCR problems indentified in the audit are resolved. Following the audit, the NJ OPEOSH began printing OSHA forms 91A, 91B, 92, 93 and 98 and including these forms in each file. PEOSH is entering the required data into the IMIS system.</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>	<p>Completed Since the audit, NJ OPEOSH Consultation Supervisors are verifying evidence of employee involvement is properly entered into the IMIS system as part of the formal case file review process. NJ OPEOSH has repeatedly requested training from the Region to help with ongoing NCR/IMIS issues.</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.34)</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>	<p>Completed. Since the audit, the NJ OPEOSH is using the uncorrected hazard report which is run on a weekly basis, NJ OPEOSH Consultation Supervisors are currently identifying cases where abatement extends beyond established timeframes to ensure timely correction.</p>

	Findings	Recommendations	PEOSH Response
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.6)</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>	<p>Completed.</p> <p>Following the Region 2 audit the NJ OPEOSH management reviewed recommendations with field staff. Suggested changes were implemented in September of 2010 and files are maintained with a check list to ensure that complete documentation is contained in each file. Field staff is currently including the required NCR forms in all case files since the study. NJ OPEOSH has repeatedly requested additional file management training from the Region in addition to NCR training</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.41)</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 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)). 	<p>Completed</p> <p>All next of kin are now notified of Fatality investigations. Letters are sent for each file. This was implemented immediately after the NJ OPEOSH was notified at the closing conference in May 2010 of these requirements.</p> <p>All fatality investigations are opened within 1 day of the NJ OPEOSH becoming aware. There have been no exceptions to this. This has always been the case.</p> <p>The only case in question in the audit was an automobile accident. The NJ OPEOSH responded immediately as soon as news of the fatality was discovered on the internet.</p> <p>This case would not normally be investigated because it was a motor vehicle accident. However, the NJ OPEOSH had concerns with police vehicle safety and therefore looked into the matter.</p> <p>All fatality investigations and reports are have always been reviewed by NJ OPEOSH management. Updates on the status of these reports are completed weekly. All fatality investigations are discussed among management and staff. Comprehensive field notes are included in all files. OSHA 36's and 170's are completed for each file. These forms were not printed previously. Since The study, hard copies</p>

	Findings	Recommendations	PEOSH Response
			<p>are included in all fatality files. These procedures have been reinforced with all field, management and support personnel.</p>
6	<p>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.43)</p>	<p>OSHA recommends that PEOSH develop 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.</p>	<p>The NJ OPEOSH has a consistent inspection selection program and focuses on the facilities identified in the 5 year Strategic plan. The NJ OPEOSH prioritizes inspections and responds to complaints, imminent danger and planned inspections are per the methodology fully explained in the OPEOSH FIRM and the annual performance plan. Compliance staff focuses on targeted facilities. The NJ OPEOSH internal data base tracks these inspections. NJ OPEOSH publishes a list of most frequently cited violations on a quarterly basis. Targeted inspections are coded by their proper NAICS and logged into the NJ OPEOSH internal data base and IMIS. All targeted inspections are scheduled to be comprehensive. Proper NAICS codes are assigned and tracked in NJ OPEOSH's internal data base.</p>
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. 	<p>NJ OPEOSH is developing inspection form guidance for all targeted facilities and will provide field staff with a check list for those specific targeted sites. These lists will identify common hazards in these facilities. In addition, PEOSH supervision will make copies of all assigned county log books and will direct field staff to target facilities and will monitor these audits weekly. This process will begin by the end of November 2010. PEOSH's inspection scheduling criteria is to inspect all targeted facilities within each assigned territory. The policy will be drafted by the end of November 2010.</p>
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</p>	<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).</p>	<p>PEOSH field staffs have been re-trained to document exposures in all case files. NJ OPEOSH is including printed 1B forms Since June of 2010 in all files as well as the inspection narrative that documents employee exposures.</p>

	Findings	Recommendations	PEOSH Response
	<p>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.6)</p>		
9	<p>Employer/employee representative involvement is not documented in the case file notes in both safety and health files. (p.7)</p>	<p>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 the case file.</p>	<p>100% of all NJ OPEOSH cases have always included employee /union participation. This is documented in each case file. Opening conference check sheets have always included this information. Employee and union representatives have always received copies of all orders to comply and case closing information .This has always been NJ OPEOSH policy and procedure.</p> <p>NJ OPEOSH staff have been retrained to include employee names in interview notes and include these as part of the inspection file.</p> <p>All files reviewed by the audit team contained the name of the union rep. The only criticism dealt with names to be included on field notes. Nj PEOSH will receive training from the Region on case file documentation and expects this to be completed by the end of November 2010. As indicated above, employees / unions receive notification by receiving an order to comply and have always accompanied field staff on inspections. Field notes will be modified following the training by the Region.</p>
10	<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</p>	<p>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 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>All case files currently include hard copies of OSHA 1B's and narrative reports. These were formerly completed, but not printed out and placed in the case files. Since the audit, case file documentation has been augmented to include evidence of exposure and employer knowledge.</p> <p>NJ OPEOSH has completed a model case file and uses this as a template for all current cases. NJ OPEOSH supervision reviews and signs off on each submitted case and maintains its case file status through its internal data base.</p>

	Findings	Recommendations	PEOSH Response
	<p>of employer knowledge and employee exposure was either inadequate or missing. (p.6)</p>		
11	<p>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.7)</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</p>	<p>NJ OPEOSH is revisiting this issue and will reassess shorter time periods for abatements and also encourage abatement during inspection whenever possible.</p> <p>NJ OPEOSH has always verified abatement for all Orders to Comply. (LWD) conducts 100% follow up inspections to verify abatement).</p> <p>Immediately following the audit, NJ OPEOSH management began monitoring PMA.</p> <p>NJ OPEOSH has asked for additional NCR training from Region 2 in order to aid with this process.</p> <p>NJ OPEOSH has a process for failure to abate. A second penalty order to comply establishing penalties is issued in these cases.</p> <p>NJ OPEOSH tracks all outstanding orders to comply. NJ OPEOSH offered to review this data base with Region 2 during the audit. Employers are required to submit abatement documentation prior to the abatement date. This information is kept in each file.</p> <p>Employers are required to submit PMA information in a timely manner and to supply NJ OPEOSH with interim procedures prior to sending extensions.</p> <p>Compliance staffs are required to enter abatement information into IMIS when abatement occurs.</p> <p>Since the audit NJ OPEOSH management is monitoring to assure that this is occurring. NJ OPEOSH has asked the Region for additional IMIS training in this area.</p> <p>NJ OPEOSH has always maintained an</p>

	Findings	Recommendations	PEOSH Response
		<p>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>	<p>internal data base that tracks all inspections and abatements. During the audit, the Region did not review this data base.</p>
12	<p>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.60)</p>	<p>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.</p>	<p>Informal conferences are attended by field staff and NJ OPEOSH managers. All informal conferences include documentation of employee involvement and the outcome of the meeting. Each file contains the outcome and any further actions that were a result of the conference.</p> <p>This was not evident to the audit team as NJ OPEOSH maintains separate files for penalty cases. Following the audit NJ PEOSH took measures to assure that failure to abate files will be combined with general inspection files to eliminate this problem.</p> <p>Since penalty cases are not entered into the NCR (separate orders are issued) no tracking exists in the NCR for these cases. NJ OPEOSH has repeatedly asked the Region to help with this issue.</p>
13	<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.7)</p>	<p>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.</p>	<p>NJ OPEOSH continues to work with NCR issues and has asked the Region for training in this area.</p> <p>NJ OPEOSH has repeatedly requested training from the Region on printing out monitoring reports as well.</p> <p>NJ OPEOSH continues to work with the antiquated NCR system and continues to find issues with downloading reports from the lap top ORACLE to the NCR.</p> <p>NJ OPEOSH needs the Regions help with these issues and works with the help desk to resolve problems as they occur. NJ OPEOSH continues to experience long delays in correcting NCR issues with the help desk.</p>

	Findings	Recommendations	PEOSH Response
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.67)	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.)	NJ OPEOSH has cleared up this matter immediately following the audit in May 2010. Again issues with the IMIS would not allow NJ OPEOSH managers to go into these files and remove old cases which appeared to be active when they were not.
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.	NJ OPEOSH will have individuals trained when the 1420 becomes available at OTI. OTI has limited offerings and NJ OPEOSH has asked to Region to help with this. The newly appointed Assistant Chief is continuing to handle discrimination cases as part of his duties.
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.70)	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.	OTI has limited offerings so NJ OPEOSH has decided to use local resources to bring in new training opportunities. NJ OPEOSH attends all courses offered through the Region and has sent compliance staff to OTI. Additional staff will be attending OTI in the fall of 2010 for legal aspects training. Again OTI has a limited number of course offerings and NJ OPEOSH has repeatedly asked the Region to provide training whenever possible.
17	There is a lack of consistency with the methods and procedures followed for the investigation of discrimination complaints. (p.67) 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.	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.	NJ OPEOSH follows OSHA's discrimination file organization form outline while conducting whistleblower investigations. PEOSH has 2 discrimination officers and following the audit, both are following the OSHA format. This was put in place immediately following the audit.
18	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	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.	NJ OPEOSH is following the format as indicted by the region in its assessment of the NJ OPEOSH whistleblower program. Both discrimination investigators are following the same format in all case files since the audit.

	Findings	Recommendations	PEOSH Response
	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. (p.68)		
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.	NJ OPEOSH Staffs are attending OTI and local and regional training when offered. OTI has severely limited course offerings and NJPEOSH is sending staff to available courses in the summer and fall of 2010. PEOSH is using local training sources and attending courses put on by the Region.
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.5)	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 provide adequate training for discrimination investigators. PEOSH must also ensure the allocation of necessary funding to accomplish the training plan.	OTI has limited course offerings and NJ PEOSH is reaching out to local providers to bring all staff up to speed on new standards and other training. PEOSH will schedule staff for training required by TED 01-00-018. A training plan for PEOSH staff and supervisors that identifies the minimum training standards required by OSHA Instruction TED-01-00-018 "Initial Training Program for OSHA Compliance Personnel" is being implemented. Since there are limited class openings PEOSH will prioritize the training plan based on staff training needs available space and program needs. The training plan will be put in place by the end of November 2010.

