

Appendix A
FY 2009 New York Public Employee Only State Plan (PESH) Enhance FAME Report
prepared by Region II
Summary of Findings and Recommendations

	Findings	Recommendations
1	<p>19 health complaint case files were reviewed. 12 of the 19 (63%) were not opened within 5 work days.</p> <p>24 safety complaint case files reviewed. 7 of the 24 (29%) were not opened within the 5 working days.</p>	<p>PESH should implement internal controls, such as supervisory notification of the receipt of complaint, so that the supervisor can prioritize the assignments, to ensure that complaints inspections are opened within the timeframes established by Agency Policy.</p>
2	<p>There appear to be issues with PESH failing to notify complainants of the results of complaint inspections (16% of cases)</p>	<p>Implement internal controls such as diary sheet entries, IMIS and other correspondence tracking methods (IMIS Standard Letters) and supervisory oversight to ensure that before the complaint investigation is closed that all appropriate notifications and/or correspondences have sent and noted in the file.</p>
3	<p>There were a number of cases (11%) in which it appears that all complaint items were not addressed.</p>	<p>Implement internal controls and supervisory oversight to ensure that before the CSHO has completed their on-site portion of the inspection that all complaint items have been investigated.</p>
4	<p>None of the cases reviewed (including fatalities) from either the safety or health programs contained sufficient prima facie evidence to support the citations issued. Typically the cases were lacking evidence of employee exposure and evidence of employer knowledge.</p>	<p>Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements as set forth by State of New York policy.</p>
5	<p>Improperly handled Media Referral (See Page 34)</p>	<p>Provide training to all field staff, including supervisory staff, to ensure that referrals are handled in accordance with requirements set forth in PESH's Field Operations Manual.</p>
6	<p>Workplace Violence Complaint Lacking Documentation (See Page 34)</p>	<p>Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described.</p>
7	<p>21 fatality case files were reviewed. In 6 (29%) of the cases it appears that all required next of kin (NOK) letters were not sent to the families of the victims.</p>	<p>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 the communication in the file.</p>
8	<p>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 PESH FOM (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>	<p>Provide training to all field staff, including supervisory staff, to ensure that all accident/fatality investigations meet the minimum requirements of the PESH FOM (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>
9	<p>PESH staff was not adhering to OSHA Instruction ADM 1-1.31 requirements in that PESH was not updating IMIS regarding the status of cases related to logging that cases were contested, and updates to IMIS related to the outcomes of informal conferences. PESH has indicated that NCR entries do not always match State procedures and that contest and penalty entries for IMIS do not fit the PESH program. OSHA and PESH will address this issue.</p>	<p>PESH must ensure compliance staff, consultation staff, support staff and management complete, and enter required IMIS forms into the system and ensure IMIS standard reports are reviewed on a regular basis to ensure that forms are complete.</p>
10	<p>Due to the general lack of documentation in the cases it was difficult to assess whether all hazards were accurately identified. Of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard cited, etc.) in 7 cases (7%), including 2 fatalities.</p>	<p>Provide additional hazard recognition, and IMIS training for CSHOs to ensure that investigations are completed, and all hazards and potential violations are addressed and corrected in a timely manner.</p>

	Findings	Recommendations
11	There was no documentation of employee interviews in 79% of the cases reviewed. In approximately 50% of the files reviewed, other than a check box on a PESH form in the file, there was little documentation regarding the level of union involvement.	Provide training to all field staff regarding the interviewing procedures and 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.
12	15 of the cases reviewed appeared to be inappropriately classified. 1 case may have been "willful", but was cited as serious. 1 case was cited as willful, but there was no documentation to support the classification. 13 cases had Non - Serious violations that appeared to present serious hazards.	Provide additional training to all field staff to adequately classify violations with appropriate description, severity, and probability of potential resulting injury.
13	Of the 98 cases reviewed - there were obvious issues with inaccurate hazard identification (such as missed violations, wrong standard cited, etc.) in 7 cases (7%), including 2 fatalities.	Implement internal controls and supervisory oversight to ensure that CSHO has evaluated all relevant hazards on the site, and has determined that all appropriate potential citations have been evaluated for issuance.
14	There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).	If a documentation issue - review with the staff the requirement to note why an obviously violative condition documented in a case file was not cited (i.e. no exposure, knowledge etc.).
15		If a hazard recognition issue – bolster supervisory review of CSHO's field observations. Supervisors should discuss field observations with CSHOs prior to issuing citations or closing the case as In-Compliance.
16		PESH should provide additional hazard recognition training for CSHOs to ensure that all hazards and potential violations are addressed.
17	Numerous Violation Classification Issues are identified on pages 50-52	Provide additional training to all field staff to adequately classify violations with appropriate severity (including willful classification) and probability of potential resulting injury. Train CSHOs on the concept of citing the most likely/most serious injury/illness likely to result from exposure.
18	Case files reviewed lacked evidence of employer knowledge of the cited hazardous conditions, names and contact information for employee(s) interviewed, evidence of employee exposure, narratives, OSHA 1B forms (forms in which violations are documented), and documentation of affirmative defense issues.	Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements as set forth by State of New York policy.
19	Several individual cases noted on page 53 indicate a lack of union/employee representative involvement and/or documentation of involvement.	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.
20	Pages 56-62 document numerous cases with inadequate prima facie documentation.	Provide training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements set forth in PESH's Field Inspection Reference Manual or Field Operations Manual.
21		Provide additional training to all field staff, including supervisory staff, to ensure that all citation documentation meets the minimum requirements of a prima facie case as set forth by federal OSHA and the FOM.
22		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.

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23	<p>Excessive abatement periods were proposed in 16 of 65 cases (25%) that had citations, including a case in which hazards that were considered “imminent danger” were given abatement periods of 10 days. In several cases the abatement periods were 3 months or longer to correct hazards such as missing eyewash stations, unguarded floor holes, implementing lockout tagout procedures, PPE assessment, etc.</p> <p>Inadequate abatement appears to have been accepted in 6 cases (9%) reviewed.</p>	<p>Internal controls should be developed and implemented to ensure that appropriate PESH staff tracks the status of abatement for every citation issued by PESH. 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 PESH personnel should follow up with employers requesting the required abatement information and re-emphasizing the abatement due date. If at that time, if the employer needs additional time a timely and proper PMA can be submitted to PESH.</p>
24	<p>There appear to be 2 cases in which Failure-To-Abate (FTA) violations may have been appropriate, but not issued.</p> <p>There were 2 cases in which a FTA were issued but PESH had not received final abatement as of this review; and PESH does not appear to be pursuing abatement.</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.
25	<p>The auditors reviewed 3 inspections in which PESH conducted follow up inspections for the purpose of verifying abatement after they received and accepted abatement information from the employer. PESH conducts follow-up inspections regardless of whether acceptable abatement certification is received from employers.</p>	<p>Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described and the reasons for actions such as follow-up inspections are described.</p>
26	<p>Pages 69-70 document several individual cases where PMA documentation was inadequate.</p>	<p>Implement internal controls to ensure that all Petitions for Modification of Abatement Dates (PMAs) are reviewed on a supervisory level to ensure that all required information is contained in the request prior to granting the PMA, and that once a PMA is granted it is managed in accordance with PESH requirements.</p>
27	<p>Page 71 documents two individual cases where FTA appears to have been incorrectly administered.</p>	<p>Implement internal controls including supervisory oversight to ensure that Failure To Abate notices are issued where appropriate and administered in accordance with PESH policy.</p>
28	<p>Neither of the 2 informal conferences reviewed were documented sufficiently</p>	<p>Relating to informal conferences, PESH representatives must thoroughly document the following in the case file: The fact that the appropriate notifications to the parties of the date, time and location of the informal conference was made; indicate the date of the informal conference was held in the diary sheet; at the conclusion of the conference, all main issues and potential courses of action must be summarized and documented.</p>
29	<p>PESH staff was not adhering to OSHA Instruction ADM 1-1.31 requirements in that PESH was not updating IMIS regarding the status of cases related to logging that cases were contested, and updates to IMIS related to the outcomes of informal conferences. PESH has indicated that NCR entries do not always match State procedures and that contest and penalty entries for IMIS do not fit the PESH program. OSHA and PESH will address this issue.</p>	<p>PESH must begin to update the IMIS in a timely manner relating to logging status of informal conferences and contested cases. Federal OSHA Region II is willing to assist with resolving IMIS compatibility issues which have contributed to this problem.</p>

Findings - Variances		Recommendations
30	Adoption of standards was not timely in 2 of 3 applicable standards.	Standards adoption should be carefully reviewed and response to adoption be timely according to the Automated Tracking System request response date.
Special Study Findings – Consultation		Recommendations
31	Due to the lack of documentation such as field notes and photos the reviewer could not determine if all hazards were addressed during the consultation visits. The health consultants make no mention as to the type of chemicals present, or if exposure has been documented by employer and/or if monitoring had been performed. Cases in which apparent hazards were missed are described in detail on pages 76-77.	Internal controls should be implemented to ensure that all required consultation forms are completed, that field notes are maintained in case files, the employee involvement is documented, and that referrals to PESH enforcement are made as appropriate.
32		PESH should provide additional hazard recognition training for Consultation to ensure that all hazards and potential violations are addressed, that serious hazards are verified as being abated in a timely manner, and if not abated to be referred to enforcement for appropriate action.
Findings – Discrimination Program		Recommendations
33	8 of the 24 cases reviewed were sent to counsel’s office for their review. The State’s investigators stated that they send counsel all cases where complainants have made a prima facie allegation of discrimination. In many cases the investigation then halts while the investigators wait for a response from counsel. This means that respondent’s position statements are not tested. In order for the investigators to further the investigations they must test the respondents’ assertions. Investigators stated that they believed that the PESH FOM required them to wait for counsel to respond prior to continuing the investigation.	PESH should test respondent’s position statements without waiting for a response from department counsel.
34		Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainants’ prima facie allegations.
35		Once investigators have determined that there is a prima facie discrimination allegation they should continue with investigation by sending out a notification to the respondents. This has been counsel’s policy since at least 2001.
36	PESH Discrimination Investigators stated that that in the cases they do not believe will be referred for merit to the counsel’s office they do not prepare a report. The lack of documentation hampers an outside party’s ability to determine whether or not the appropriate result was reached in the cases.	PESH should ensure that all cases that are docketed have a final report outlining the work done regardless of the outcome. Each investigation should be documented by the creation of, at least, a simple narrative outlining the steps that were taken and the reasoning behind the actions taken in the investigation. These reports should be dated and recorded in IMIS. Each file should also have a table of contents (exhibit list).
37	In a number of cases, case files documenting an investigation are not complete enough to know what the investigator did and the reasons for the investigations conclusions. Investigators appear not to adhere uniformly to PESH investigative policy.	PESH should provide pertinent, such as Basic Whistleblowing Training 1420, for discrimination investigators’, discrimination investigators’ direct supervisors, and all program managers.
Special Study Findings – Training		Recommendations
38	There are multiple instances where CSHOs did not receive mandatory training. In addition, no CSHOs had advanced accident investigation training ¹ 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.	Develop and implement a comprehensive training plan to improve existing training records and 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”.