

New York Public Employee Only State Plan (PESH)

FY2009 Enhanced FAME Report - Corrective Action Plan Summary Sheet

Rec#	Findings	Recommendation	State Response / Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date*	Status*
Complaints and Referrals								
1	19 health complaint case files were reviewed of the 19 (63%) were not opened within 5 work days. 24 safety complaint case files reviewed. 7 of the 24 (29%) were not opened within the 5 working days.	: 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 complaint inspections are opened within the timeframes established by Agency Policy.	Complaints received are evaluated by the Supervisors, input into IMIS, and assigned to inspectors. Supervisors review the "Unsatisfied Activity" report routinely to monitor status of pending complaint inspections. Most PESH district offices are able to provide a quick response to complaints, but downstate districts receive more complaints and struggle to provide the same timely response.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
2	There appear to be issues with PESH failing to notify complainants of the results of complaint inspections (16% of cases)	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 [been] sent and noted in the file.	CSHOs have been instructed to enter all activities on the "Case Contact" sheet attached to each case file. The purpose of this sheet is to record all activity related to the file. Supervisors review all inspections completed which includes completion of all appropriate notifications and/or correspondences.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
3	There were a number of cases (11%) in which it appears that all complaint items were not addressed.	Implement internal controls and supervisory oversight to ensure that before the CSHO has completed their onsite portion of the inspection that all complaint items have been investigated.	CSHOs have been instructed to address all items contained in the complaint. Additionally, "Sample Narrative" templates for complaints have been developed and provided to CSHOs to utilize when preparing complaint narratives itemizing each complaint item and observation by CSHO.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance. Statewide staff training was provided on 12/8/10		11/4/2010	
4	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.	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.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. OSHA recommendations resulting from the 2009 E-Fame will be reviewed with supervisors and staff. A Supervisory meeting is scheduled for November 4th and it is expected that local office meetings will be held before the end of the 2010 calendar year which will include case file documentation.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. Proper documentation of the 1B Violation Worksheet will be reviewed in a teleconference with all field staff on December 8, 2010.	see worksheet for Supervisor and Managers meeting for attendance. Statewide staff training was provided on 12/8/10		12/8/2010	
5	Improperly handled Media Referral (See Page 36)	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	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. A Supervisory meeting is scheduled for November 4th and it is expected that local office meetings will be held before the end of the 2010 calendar year which will include a review of the proper handling of referrals.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance. Statewide staff training was provided on 12/8/10		11/4/2010	
6	Workplace Violence Complaint Lacking Documentation (See Page 36)	Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described	Ongoing efforts are continuing to instruct and train staff to document all events and observations and/or actions pertaining to each case file. A Supervisory meeting is scheduled for November 4th and it is expected that local office meetings will be held before the end of the 2010 calendar year which will include documentation to clearly identify the case file status.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	

*All Corrective Action items are subject to further Federal review and monitoring; and submission by PESH of documentation on all revised procedures, training, etc.

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Fatalities								
7	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.	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	Training of staff is an ongoing commitment through staff meetings on the State and Local level. This item will be reviewed with supervisors and field staff. A Supervisory meeting is scheduled for November 4th and it is expected that local office meetings will be held before the end of the 2010 calendar year which will include appropriate communication with the family of fatality victims.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
8	Information in two cases reviewed indicates that (1) the investigator may not have conducted the inspection in accordance with OSHA CPL 02-00-137 Fatality/Catastrophe Investigation Procedures dated April 14, 2005 and (2) the inspections may not be adequately supervised.	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)).	Training of staff is an ongoing commitment through staff meetings on the State and Local level. This item will be reviewed with supervisors and field staff. A Supervisory meeting is scheduled for November 4th and it is expected that local office meetings will be held before the end of the 2010 calendar year which will include providing detailed narratives documenting the facts that surround the incident, field notes, evidence of employee exposure, evidence of employer knowledge and completion of the appropriate forms.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. A template narrative was developed as additional guidance for staff and was distributed on 3/19/2010.	see worksheet for Supervisor and Managers meeting for attendance Statewide staff training was provided on 12/8/10		11/4/2010 Scheduled for 12/8/2010	
IMIS								
9	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.	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.	Supervisory Staff utilize IMIS generated reports to monitor CSHO activity and completion of forms. Secretaries monitor Host Reject and Draft Form reports 2 to 3 times per week for proper completion of IMIS forms. IMIS entries for contests and penalties have been a concern and we look forward to working on this with OSHA. Emphasis will be placed on the updating IMIS information after an Informal Conference. In the meantime, penalty and contest data can be provided to OSHA on a quarterly basis	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This item on contested cases can be added to the agenda at each Quarterly meeting until the time that contest data can be entered into IMIS or OIS by PESH	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	This issue will be reviewed after OIS deployment and corrective action will be required at that time. At a minimum, State may need to develop an internal system for tracking informal conferences and contested cases and enter only the final action into OIS.
Hazard Recognition								
10	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.	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.	CSHOs attend OTI to enhance hazard recognition skills as demonstrated by PESH inspections citing more hazards than the federal average per inspection. Open inspection reports are reviewed during monthly staff meetings to monitor status of inspections. Emphasis on documenting the date hazards are abated continues. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. Management reports including Open Inspection and Unsatisfied Activity are and will be reviewed on a monthly basis.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance. Statewide staff training was provided on 12/8/10		11/4/2010	

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Interviewing Procedures								
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.	Interviewing techniques and documentation training has been conducted beginning in September 2010. Supervisors will monitor the case files for improvement.		see worksheet for Supervisor and Managers meeting for attendance. Statewide staff training was provided on 12/8/10		Sep-10	
Violation Classification								
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.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Violation Worksheets to document classification of all hazards are being implemented. OSHA recommendations resulting from the 2009 EFAME will be reviewed with supervisors on November 4th who will in turn review with CSHOs before the end of the year.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance. Statewide staff training was provided on 12/8/10		11/4/2010	
Hazard Identification								
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. There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).	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.	Supervisory Staff have conducted field audits of all CSHOs this past year which did include a review of hazard identification for some staff. Supervisors are instructed to conduct a field audit with staff semi-annually. Training of staff is an ongoing commitment. Additional training including fire safety, health and safety cross over courses, cranes and material handling, excavation and trenching, and machine guarding have been scheduled for FY 2011.	An in-house review of field audits was completed in September of 2010. Supervisory staff are conducting field visits twice per year. Additional training is being scheduled for staff as needed. This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance.		9/2010 11/4/2010	
14		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.)	Documentation of hazards or lack of hazards (for complaint items) is reviewed by each CSHOs technical supervisor for every inspection.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance.		11/4/2010	
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.	Supervisors are instructed to conduct a field audit with staff semiannually. Training of staff is an ongoing commitment. Documentation of hazards or lack of hazards (for complaint items) is reviewed by each CSHOs technical supervisor for every inspection. Despite concerns with hazard recognition, PESH staff were able to cite more hazards in FY09 than the federal average.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance.		11/4/2010	
16		PESH should provide additional hazard recognition training for CSHOs to ensure that all hazards and potential violations are addressed.	CSHOs attend OTI to enhance hazard recognition skills as demonstrated by PESH inspections citing more hazards than the federal average per inspection. Open inspection reports are reviewed during monthly staff meetings to monitor status of inspections. Emphasis on documenting the date hazards are abated continues. Additional training including fire safety, health and safety cross over will be scheduled.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. We have 53 OTI classes scheduled for staff in FY 2011. Additional in-house training for FY 2011 includes workzone safety, bloodborne pathogens update, and an IH day for all health CSHOs	see worksheet for Supervisor and Managers meeting for attendance.		11/4/2010	
Violation Classification								
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 to result from exposure.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. The use of the 1B Violation Worksheets to document classification of all hazards is being implemented and will be reviewed with staff before the end of CY 2010.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This will be reviewed again with staff on 12/8/2010 during statewide training.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010 Scheduled for 12/8/2010	

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Case File Documentation								
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.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Efforts are being made to improve documentation of employer knowledge, employee exposure, and affirmative defense issues. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any additional field staff training that may be needed.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This will be reviewed again with staff on 12/8/2010 during statewide training.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010 Scheduled for 12/8/2010	
Employee/Union Involvement								
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.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. This issue will be covered with Supervisors and inspection staff. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This will be reviewed again with staff on 12/8/2010 during statewide training.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010 Scheduled for 12/8/2010	
Case File Documentation								
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.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. OSHA recommendations resulting from the 2009 E-Fame will be reviewed with supervisors and staff including prima facie documentation of violations. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Additional all staff training on specific topics such as critical elements of Prima Facie documentation will be conducted using teleconferencing to reach all field staff statewide. This will be performed before the second quarter of FY 2011.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This will be reviewed again with staff on 12/8/2010 during statewide training.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010 Scheduled for 12/8/2010	
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.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. OSHA recommendations resulting from the 2009 E-Fame will be reviewed with supervisors and staff. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. Additional all staff training on specific topics such as critical elements of Prima Facie documentation will be conducted using teleconferencing to reach all field staff statewide. This will be performed before the second quarter of FY 2011.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This will be reviewed again with staff on 12/8/2010 during statewide training.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010 Scheduled for 12/8/2010	

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Abatement Verification								
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.	Additional internal controls will be implemented to look for adequate documentation of Prima Facie elements. With advice from our internal control unit, we can look to review an appropriate number of random case files for proper violation documentation on a quarterly basis. Comprehensive annual audits will be performed for each CSHO.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. We will include this item during the next case file audit performed by the managers in FY 2011	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
23	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. Inadequate abatement appears to have been accepted in 6 cases (9%) reviewed.	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.	Supervisors review IMIS generated reports at least monthly to monitor status of inspections. CSHOs are instructed to make contact with an employer three times after the closing conference to monitor abatement progress. If there is any concern in meeting the assigned abatement dates, the CSHO reminds the employer of the process for a PMA. These contacts are being documented on the Case Contact sheet. We will include this topic in our audits as part of our internal control program	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. We will include this item during the next case file audit performed by the managers.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
24	There appear to be 2 cases in which Failure-To-Abate (FTA) violations may have been appropriate, but not issued. 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.	Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including: <input type="checkbox"/> Ensure appropriate abatement periods are assigned for unabated violations. <input type="checkbox"/> Ensure that all abatement information accepted satisfies the order to comply prior to closing the case. <input type="checkbox"/> For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.	Training of staff is an ongoing commitment through staff meetings on the State and Local level. Each District Supervisor reviews a section of the PESH Field Operations Manual with staff during monthly staff meetings. Supervisors review case files for appropriate abatement periods and verification of abatement methods. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. Additional all staff training on specific topics such as abatement procedures will be conducted using teleconferencing to reach all field staff statewide. This will be performed before the second quarter of FY 2011.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. This will be reviewed again with staff in FY 2011 during statewide training, hopefully before the 2nd quarter.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
Follow-up Inspections								
25	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.	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.	Follow-up narratives are being standardized to address method of abatement for each violation cited. Case Contact sheets are maintained in each case file to document all activities related to the inspection. Supervisors review all follow-up inspections as per PESH policy.	A follow-up template for narrative reports was provided to staff on 2/11/2010 to standardize report documentation statewide. Proper use of the case contact sheet was reviewed with Supervisors on 11/4/2010.	see worksheet for Supervisor and Managers meeting for attendance		2/11/2010 11/4/2010	

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Petitions for Modification of Abatement								
26	Pages 69-70 document several individual cases where PMA documentation was inadequate.	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.	PMAs are only granted at the supervisory level with input from Program Managers. Approved PMAs are entered into IMIS and tracked on Open Inspection Reports during monthly staff meetings. All PMAs will be reviewed by the Program Manager's Office for proper documentation and management. The PMA form itself was recently revised to improve clarity and to gather more information. We will include this topic as part of our internal controls program. We plan to audit a sampling of PMA 's prior to approval being granted.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers. As of 11/4/2010, managers reviewed all PMAs.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
Failure to Abate Notices								
27	Page 71 documents two individual cases where FTA appears to have been incorrectly administered.	Implement internal controls including supervisory oversight to ensure that Failure To Abate notices are issued where appropriate and administered in accordance with PESH policy.	All case files are reviewed at the supervisory level including the issuance and monitoring of Failure To Abate citations. Emphasis by supervisors on monitoring when violations reach their Abatement Due Date takes place through review of Open Inspection Reports at monthly staff meetings. FTA cases will be included in the random quarterly audits for proper documentation and management.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
Informal Conferences								
28	Neither of the 2 informal conferences reviewed were documented sufficiently	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.	The PESH Field Operations Manual addresses notification and the preparation of an Informal Conference Report. Such instruction will be reinforced at the next supervisor meeting. This will be reviewed with supervisors on November 4th.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
IMIS								
29	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.	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.	PESH appreciates OSHA assistance and looks forward to OSHA correcting IMIS compatibility issues to incorporate PESH policies and procedures related to informal conferences and contested cases.	To date, we have not been able to enter contested case data into IMIS.	The next quarterly meetin is scheduled for 1/27/11 at which time an update on contested cases will be provided			This issue will be reviewed after OIS deployment and corrective action will be required at that time. At a minimum, State may need to develop an internal system for tracking informal conferences and contested cases and enter only the final action into OIS.

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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.	PESH adopts new OSHA standards through the State Administrative Procedures Act. PESH strives to adopt all new OSHA standards within OSHA parameters.					PESH must identify the source of the delay and develop corrective action, ranging from a legislative change to allow faster adoption of identical standards to a system to expedite processing.
Public Sector Consultation								
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.	All PESH consultation forms are reviewed by supervisors. Additional emphasis will be provided regarding documentation issues, verification of abatement, and referral to enforcement. This will be reviewed with supervisors on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed. PESH will look to adopt the elements of 1908 and will require employee participation in every consultation.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers.	see worksheet for Supervisor and Managers meeting for attendance		11/4/2010	
32		PESH should provide additional hazard recognition training for Consultation to ensure that all hazard 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.	PESH routinely cites more hazards than the federal average, but the scope of the consultation may be limited by the employer in accordance to PESH policies. These issues have been reviewed with supervisors and consultation staff for proper case file documentation and follow up action. This will be reviewed with supervisors again on November 4th and they will in turn review with CSHOs before the end of the year. Supervisors will continue to monitor case file documentation for any addition field staff training that may be needed.	This issue was reviewed at a Supervisor's meeting on 11/4/10 with all of our Supervisors and Managers	see worksheet for Supervisor and Managers meeting for attendance			
Discrimination Program								
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	PESH should test respondent's position statements without waiting for a response from department counsel.	PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures including completion of a Complaint Intake Form to assess whether the complaint meets required criteria. Training on the new procedures is scheduled for Q1FY11.	The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of our Supervisors and discrimination investigators.	see worksheet for Discrimination Review meeting for attendance		11/3/2010	
34	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	Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainant's prima facie allegations.	PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures. Training on the new procedures is scheduled for Q1FY11.	The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of our Supervisors and discrimination investigators	see worksheet for Discrimination Review meeting for attendance		11/3/2010	
35	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.	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.	PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures. Training on the new procedures is scheduled for Q1FY11.	The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of our Supervisors and discrimination investigators	see worksheet for Discrimination Review meeting for attendance		11/3/2010	

*All Corrective Action items are subject to further Federal review and monitoring; and submission by PESH of documentation on all revised procedures, training, etc.

Rec#	Findings	Recommendation	State Response / Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date*	Status*
36	PESH Discrimination Investigators stated 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).	PESH has revised the PESH discrimination portion of our Field Operations Manual to more closely mirror OSHA discrimination procedures. Training on the new procedures is scheduled for Q1FY11.	The FOM was modified to address this. This issue was reviewed at a meeting on 11/3/10 with all of our Supervisors and discrimination investigators	see worksheet for Discrimination Review meeting for attendance		11/3/2010	
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 [training], such as Basic Whistleblowing Training 1420, for discrimination investigators, discrimination investigators' direct supervisors, and all program managers.	All current and future discrimination investigators have or will receive Whistleblower training. Considering the differences between OSHA and PESH rules and regulations, PESH would welcome an abbreviated offsite OTI Whistleblower class to be held in upstate NY.	As of 11/4/2010, all current discrimination investigators have received OTI Whistleblower training. In-house training was provided on 11/3/2010	see worksheet for Discrimination Review meeting for attendance		11/3/2010 11/4/2010	

Rec#	Findings	Recommendation	State Response / Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date*	Status*
CSHO Training								
38	There are multiple instances where CSHOs did not receive mandatory training. In addition, no CSHOs had advanced accident investigation training, 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".	PESH has strived to train CSHOs to OSHA standards at the time such standards were in place. PESH and OSHA training records were not compatible. PESH has centralized training records in the Program Manager's office and continues to send CSHOs to OTI training with priority to newer CSHOs and continuing training for experienced CSHOs on a cyclical basis. We will train all staff hired after we adopted TED-01-00-018 to the level that meets that directive. That effort was started in 2009 and will continue.	53 OTI classes have been scheduled for staff in FY 2011. We are looking to turn our spreadsheet record into an Access database. We will have that done by the 2nd Q of FY2011.			3/31/2011	

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