



**State of New York
Public Employees Safety and Health
(PESH)**

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

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FY 2009 Enhanced FAME BSE Report for New York

I. EXECUTIVE SUMMARY

Introduction (PESH Plan Background)

PESH is administered by the Division of Safety and Health (DOSHS), which is part of the New York State Department of Labor. The State Plan has nine offices throughout the State performing public sector enforcement and consultation activities.

In the public sector, PESH covers both safety and health disciplines. Private sector enforcement is retained under Federal jurisdiction, while private-sector consultative services are provided by the NYSDOL-DOSHS Consultation Services Bureau under section 21(d) of the OSH Act. PESH adopted all applicable Federal OSHA safety and health standards either identically or through alternative means.

The PESH program does not allow for the issuance of "first instance" monetary penalties for public employers found to be in violation of PESH standards on a first instance basis. Per Diem penalties can be assessed when Failure-To-Abate notices are issued.

PESH's review proceedings are conducted through an administrative law judge and the appeals are heard by the State's Industrial Board of Appeals.

The Public Employee Safety and Health (PESH) Bureau executes its mission to provide a safe and healthful workplaces through two separate divisions; the Enforcement Unit, which inspects workplaces to determine what, if any, violations exist and attempts to bring such workplaces into compliance with promulgated standards, and the Consultation Unit which, upon an employer's request, assists employers with compliance with the standards and provides information to assists employers in eliminating hazards. The Consultation Unit also offers training and education services to public employers and employees throughout the State.

PESH has allocated safety and health inspectors and industrial hygienist positions in the Enforcement and Consultation Units. Additional service is provided by the Engineering Services Unit (ESU) and the Compliance Assistance Specialist (CAS) position. The ESU provides employers and PESH staff with expert technical assistance and reviews requests for permanent variances submitted by public employers. The CAS position is designed to increase workplace health and safety by devoting resources to stakeholders, employees and employee associations in the form of leadership, information sharing, attending conferences, seminars and participating in partnerships. Through the creation of a proactive health and safety culture the

employer is expected to benefit through lower injury and illness rates as well as a decrease in worker compensation costs.

PESH Industrial Hygiene analyses are conducted by Galson Laboratories, 6601 Kirkville Road, East Syracuse, N.Y. 13057, which has been AIHA accredited since 1976. This accreditation conforms to ISO 17025 standards. Galson Laboratories is also approved for environmental air analyses by the New York State Department of Health. The approval conforms to the National Environmental Laboratory Accreditation Conference Standards (NELAC).

Summary of the Report

The purpose of this report is to assess the State's progress towards achieving their annual performance goals established in their Fiscal Year (FY) 2009 Annual Performance Plan, and to review the effectiveness of the programmatic areas related to enforcement activities. This report incorporates the findings of a baseline special evaluation for the State's 23(g) program.

The annual performance plan results, reported by the PESH in the State OSHA Annual Report (SOAR), indicate that the program has made advancements towards achieving its strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed, and the results are identified in this report.

The special study audit was conducted on site at the PESH Offices in Albany, NY from February 22, 2010 through April 15, 2010. The audit team consisted of 5 members.

The Special Study identified PESH's program strengths: Hazards are identified and PESH achieves abatement. In most cases complainants were notified of complaint inspection results. CSHOs and Consultants were sampling for health hazards and entering sampling data into the IMIS. Outreach activities such as seminars, conferences and training activities were being performed and tracked.

Major challenges included: failure in some cases to investigate all alleged complaint items, the seeming inability of the enforcement staff to recognize and cite all hazards at inspected establishments, excessive abatement periods granted for the abatement of cited conditions, failure to contact next-of-kin of victims of fatal accidents, failure to communicate with complainants, lack of mandatory training for Compliance Officers (CSHOs), inadequacy of documentation in enforcement and consultation case files, lack of documentation of employee and employee representative involvement in the inspection process, and potentially missed opportunities to issue Failure to Abate notices.

PESH staffing level is slightly below their benchmark of 29 safety compliance officers and 21 health compliance officers. PESH grant application for FY 2009 indicated that there were 26 safety compliance officers and 20 health compliance officers.

The special study found some issues that need to be addressed such as CSHO training, hazard identification, citation classification, lack of case file documentation, overlong abatement periods, and the establishment of prima facie evidence to support citations, as well as the apparent problems with communication with victims' families. Notwithstanding the above, it has been determined that PESH continues to work in a positive manner to continuously improve program effectiveness. The State continues to meet its 23(g) enforcement program's operational requirements.

Study Methodology

This Federal Annual Monitoring Evaluation (FAME) report presents the results of a comprehensive Baseline Special Evaluation (BSE) of the New York Public Employee Safety and Health (PESH) program.

This report also includes an evaluation of PESH's progress towards meeting its targeted performance goals as outlined in its FY09 Annual Performance Plan.

Baseline Special Evaluation

In accordance with Acting Assistant Secretary Jordan Barab's memorandum dated November 24, 2009, this FAME report incorporates the BSE of the PESH program. A team of Federal OSHA personnel conducted onsite audit at PESH's office in Albany, NY starting on February 22, 2010 and ending on April 15, 2010.

The BSE of the PESH Program covered Fiscal Year 2009, the period of October 1, 2008 through September 30, 2009 (FY09).

The OSHA team's evaluation consisted of case file reviews, interviews of PESH staff, review of the discrimination investigation program files, review of the public sector consultation program files, PESH's enforcement statistics and areas of interest identified by stakeholders. In addition the review focused on areas not recently reviewed, such as the outcome of PESH contested cases and settlement procedures.

The special study of the PESH program focused on mainly FY09 enforcement activities however, in certain instances, such as IMIS data evaluation, activities from more recent time frames were reviewed.

This report is also an assessment of the State's progress towards achieving their performance goals established in their 2009 Annual Performance Plan and a review of the effectiveness of programmatic areas related to enforcement and consultation

activities.

Findings and Recommendations

Findings:

The following represent OSHA's significant findings and recommendations - Similar or grouped recommendations are described and the recommendation number for individual recommendations are noted.

Baseline Special Evaluation (BSE) Summary

The evaluation indicates that aspects (identified below) of the PESH program are functioning well.

Positives

- With regard to enforcement activity - abatement verification was generally in accordance with agency policy. CSHOs documented witnessing abatement during follow ups with good descriptions of abatement.
- Overall, complainants were notified in the vast majority of cases of the inspection results.
- CSHOs and Consultants were adequately entering sampling data into the IMIS.
- Outreach activities such as seminars, conferences and training activities were being performed. PESH staff members are entering OSHA 55 forms for such activities into the IMIS system.

The findings are noted below in descending order of priority – more detailed descriptions of the BSE findings are contained in Section VI of this document.

Investigation Of All Complaint Items

In 4 of 43 (9%) Complaints reviewed it appears that not all items were addressed.

All Apparent Violations Were Not Cited

4 cases reviewed, including 2 fatalities may have had citable hazards that were not addressed by citations

Timeliness Of Response To Complaints

Health Complaints - 19 health complaints were reviewed. 12 of the 19 (63%) were not opened within 5 work days. Of the cases not opened within the deadline, the average number of days to open a health complaint was 36 days. One notable outlier was a complaint that took 8 months to open the inspection. A serious citation for workplace violence was issued that was related to the complaint item.

24 safety complaint case files reviewed. 7 of the 24 (29%) were not opened within the 5 working days. Of the cases not opened within the deadline, the average number of days to open a safety complaint was 59 days. Notable outlier was case coded as "imminent danger" - dealing with trench hazards - that was opened 32 days after receipt.

Fatalities And Next Of Kin Letters

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. There was 1 case in which the jurisdictional issue was unclear.

4 (20%) cases were either missing required IMIS forms, or the forms were in the file, but were incomplete.

Information in 2 cases reviewed indicates that (1) the investigators may not have conducted the inspection (case # SK-2) 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

2 cases took nearly one year to complete.

Appropriateness of State Response to Complaints

There appear to be issues with a limited number of complaint cases in which PESH failed to notify complainants of the results of complaint inspections (16% of cases), there were a number of cases (11%) in which it appears that all complaint items were not addressed, though the auditors observed that the narratives describing the compliance officers' investigation of the complaint items were limited, only 1 case that was reviewed completely lacked a narrative.

Workplace Violence Complaint Lacking Documentation:

There was a significant issue in one specific complaint. The inspection was opened 22 days after receiving the complaint. PESH policy requires serious complaints to be responded to within 30 days. Case involves a complaint indicating that the employer did not provide a Work Place Violence (WPV) evaluation and program to the employees. An inspection was conducted and three WPV violations were issued and

then withdrawn without any justification in the file. The final entry in the diary sheet indicates that the violations to be issued to the employer as "Universal." There was no further documentation in the case file as to the result of the issuing of "Universal" citations, or any event after the citations were issued.

Cases Where Failure to Abate (FTA) and/or Penalties May Have Been Appropriate

Two cases reviewed bore evidence that the employer failed to abate violations in a timely manner, follow-up inspections were conducted, yet no FTA was issued.

Lack Of Documentation Of Employee and Union Involvement

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. PESH asserts that authorized employee representatives are invited to attend opening conferences, walkaround, and closing conferences.

Training

There are multiple instances where PESH records indicated CSHOs did not receive mandatory training. PESH has indicated they frequently encounter difficulties with registering CSHOs for OSHA Training Institute classes due to class size and availability. PESH is working toward closing the gap between the current training status and mandatory training requirements that were established in 2008. In addition, OSHA is working with PESH to ensure PESH's CSHO training records are accurate and complete.

Lack Documentation & Organization in Enforcement & Consultation case files

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.

Inadequate Evidence to Support Citations

Adequate evidence to support a citation is comprised of three elements: (1) evidence that shows that a hazardous condition existed, (2) evidence of employee exposure to the hazard, (3) evidence that the employer, through the exercise of reasonable diligence, could have known that employees were exposed to the hazard.

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.

Inappropriately Classified Violations

Fifteen of the cases reviewed appeared to be inappropriately classified. One case may have been "willful", but was cited as serious. One case was cited as willful, but there was no documentation to support the classification.

Thirteen cases had Non - Serious violations that appeared to present serious hazards.

Abatement

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 one case (SK-8) the abatement date noted was "immediately upon receipt" - which is impossible to measure. 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.

PESH indicated that public sector employers have added requirements and more lengthy approval process prior to purchasing equipment. Also, in many rural towns, purchasing managers (Town Boards) are not readily available unlike private sector employers. In many instances these differences lead to abatement periods that are longer than what is typically found in the private sector. Notwithstanding the above, the study found abatement periods that were excessive for easily correctable violations such as unlocking exit doors or removing employees from trenches.

Adequate abatement was not documented in 6 cases (9%) reviewed.

Two cases were reviewed in which Failure-To-Abate (FTA) violations may have been appropriate, but were 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.

Adequate Verification/Evidence of Abatement

In 6 of 65 cases (9%) with citations adequate abatement is not documented in the file.

Excessive Abatement Periods

In 17 of the 65 cases (26%) with citations the abatement period was excessive. Typically the abatement periods assigned were at least 30 days.

There were 6 cases (9%) in which the hazard was characterized as “imminent danger” yet were given excessive abatement dates (30 days to abate a locked exit, 2 weeks for trench violations, and electrical hazards, 15 weeks for an unguarded hatchway, 8 week for an unguarded floor hole, 10 days for a blocked exit, 45 days for exit signs, 5 months to guard a mechanics pit. Additionally there were 10 cases (15%) in which violations that were not “imminent danger” were given excessive abatement periods.

Petitions for Modification of Abatement (PMA) Improperly Managed

There were 3 cases reviewed with PMAs in which it was apparent that the PMAs were granted either without a proper PMA request or without adequate rationale.

Informal Conferences Inadequately Documented

Neither of the 2 informal conferences reviewed were documented sufficiently.

Injury/Illness Data Was Not Collected

SH-900 logs were not collected and placed in the case files nor was there documentation in case files that the logs were reviewed by CSHOs for injury or illness trends.

Integrated Management Information System (IMIS)

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.

Discrimination Program

The PESH Discrimination Program was reviewed by the study team. Overall, the program appears to be effective, however, several areas of concern were found by the Special Study Team:

- 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's investigative policy.

Recommendations:

Complaints and Referrals (See Recommendations # 1-6, 12- 14, and 29)

PESH should implement internal controls to maintain compliance with agency policy including: ensuring that complaints inspections are opened within appropriate timeframes and that all complaint items have been investigated; ensuring that before closing complaint investigations that all required notifications and/or correspondences have been sent; ensuring that all documentation is present in the case file; ensuring that referrals are handled adequately; and verifying that there is sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly explained.

Fatalities (See Recommendations # 7, 8)

Provide training to CSHOs to reiterate the policies relating to fatality investigations to ensure that all accident/fatality investigations meet the minimum requirements of the PESH Field Operations Manual.

IMIS (See Recommendations # 9, 36)

PESH must ensure staff completes and enters required IMIS forms into the system and also ensure IMIS standard reports are reviewed on a regular basis to ensure that forms are completed. In addition PESH must begin to update the IMIS in a timely manner relating to logging status of informal conferences and contested cases.

Citations (See Recommendations # 10, 15-22, 26, and 27)

Implement internal controls and supervisory oversight to ensure that CSHO has evaluated all relevant hazards at the inspection site and has determined that all appropriate potential citations have been evaluated for issuance. PESH should improve supervisory controls and provide additional hazard recognition and citation classification training for CSHOs to ensure that all hazards and potential violations are appropriately identified and characterized, and that all hazards and potential violations are corrected in a timely manner.

Employee and Union Involvement (See Recommendations # 11, 23, 24, and 25)

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.

Abatement of Cited Items (See Recommendations # 30, 31, 33, 34, and 35)

Internal controls should be developed and implemented to ensure that appropriate PESH staff tracks the status of abatement for every citation issued by PESH. Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy. 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 Petitions for Modification of Abatement Dates (PMAs) can be submitted to PESH. PMAs should be managed in accordance with PESH requirements

Implement internal controls including supervisory oversight to ensure that Failure To Abate notices are issued where appropriate and administered in accordance with PESH policy.

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.

Consultation (See Recommendations # 38, 39)

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. Consultants should be provided additional hazard recognition training 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.

Discrimination Program (See Recommendations # 40-44)

PESH should provide pertinent, such as Basic Whistleblowing Training 1420, for discrimination investigators', discrimination investigators' direct supervisors, and all program managers. Overall timeliness can be improved through improved handling of prima facie cases. All cases that are docketed need 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.

CSHO Training (See Recommendation # 45)

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".

II. STATE'S PROGRESS TOWARD ACHIEVING ITS STRATEGIC PLAN PERFORMANCE GOALS

PESH's FY 2009 Annual Performance Plan consisted of three broad-based strategic goals with complementary performance goals:

Reduce the Total Recordable Injury Rate in local government agencies in (1) Highways, Street and Bridge Construction (Heavy Construction except buildings), (2) Fire Protection & Ambulance Services, and (3) Health Services & Nursing Homes. Details follow:

Performance Goal 1A: NAICS 237310 Highway, Street and Bridge Construction.

PESHs goal is to reduce the Total Recordable Injury Rate in local government agencies within NAICS 237310 (Highway, Street and Bridge Construction) by 2% per year. New injury rate reduction goal for this group has been set at 2 percent for the year using 2006 as the baseline.

The annual strategic plan was to reduce injuries in local government agencies within the NAICS 237310 Highway, Street and Bridges by 2% cumulative total for FY 2009, this goal has been met. PESH collected the most recent injury and illness data (SH-900 log) data available from County Highway Departments to include New York counties and the New York City boroughs.

To date, the BLS data information is unavailable. Data collection included all the information reported on the SH-900.1's for 2006. This data showed that the Total Case Incident Rate (TCIR) steadily declined from 12.5 in 2006 to 10.7

The Highway Strategic Planning committee includes PESH's safety and health consultants, supervisors, and Industrial Hygienists – who continue to dedicate time to working with employers to obtain, review, and then analyze their injury and illness data.

The goal was to identify the counties with the highest injury and illness rates and determine the cause of those injuries. The employers were approached and offered a training program designed to address the more frequent injuries identified on their own injury and illness logs (SH-900). This effort continues to result in an increased demand for PESH safety training from the county highway departments.

PESH continued its effort to build partnerships with organizations in an effort to reach more employers and ultimately reduce the incidence of injuries to highway department employees. The partnership with the Association of Counties has proven to be very valuable in promoting workplace safety initiatives to county governments.

PESH and the Highway Strategic Planning Committee continued to work with state employers such as NYS DOT, NYS Office of Parks Recreation & Historic Preservation, NYS Thruway Authority and NYS Office General Services and partnerships with associations were continued with the NYS Association of Counties, NYS Safety Officer's Association, Cornell Local Roads, the Southern Tier Water Works Association, and the Highway Superintendents Association.

In FY 2009, PESH conducted 672 inspections, 75 outreach visits, 115 technical assistance activities, 88 consultations, and 51 training sessions in the highway, street and bridge construction industry.

Performance Goal 1B: NAICS 922160 and 621910 Fire Protection and Ambulance Services. Reduce the number of work injuries, illnesses and fatalities in NAICS 922160 and 621910 (Fire Protection and Ambulance Services), focusing statewide attention and bureau resources on the most significant types of injuries and illnesses. Set up program to reduce injuries and illnesses by 2% in NAICS 922160 and 621910.

During FY 2009 PESH continued to work with the Fire Protection & Ambulance Service Strategic Plan Committee. PESH is focusing its efforts on reducing injuries and illnesses to the various emergency workers and emergency responders within New York State. Members continued to network with the emergency response community to discuss topics of concern and develop strategies that may help in the reduction of accidents. PESH asserted that their continued commitment to worker protection and the States emergency response community helps this partnership network to grow year after year.

PESH maintained partnerships with county fire organizations, individual fire departments, firefighter unions, firefighter associations, NYS Office of Homeland Security CBRNE Task Force, NYS Emergency Management Office and NYC Metropolitan Area Safety and Health Committee.

In FY 2009, PESH conducted 129 inspections, 18 outreach visits, 68 technical assistance activities, 32 consultations visits, and 2 formal training sessions in the Fire Protection and Ambulance Services sector.

Performance Goal 1C: NAICS 623110 Health Services and Nursing Homes. PESH's goal is to reduce the number of workplace injuries and illnesses in NAICS 623110 (local government nursing homes and New York State Veterans' Homes) by partnering with the homes to focus on and help reduce such hazards as ergonomic injuries, workplace violence, and needlesticks PESH met their goal.

PESH continued establishing partnerships with the public nursing homes throughout New York particularly those with the highest injury rates. PESHs efforts in maintaining partnerships with Kaleida Health (a private employer), Civil Service Employees Association (CSEA), Public Employee Federation (PEF), NYCOSH, WYNCOSH and the NYS Zero Lift Task Force.

In FY 2009, PESH conducted 8 inspections, 3 outreach visits, 16 technical assistance activities, 8 consultations visits, and 2 formal training sessions in the highway, street and bridge construction industry. There was one Safe Patient Handling Conference held in FY 2009 which was a multi day conference for October 1-2, 2008.

Inspection Activities

In FY 2009 PESH conducted a total of 2,350 inspections, or 138% of the 1,700 inspections projected for the year. A total of 6,020 Notices of Violations (NOV's) were issued as a result of the inspection activity. PESH investigated 23 alleged discrimination cases where none were settled as of the review.

Mandated Activities

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

Mandated Activities Report for Consultation (MARC): PESH performed successfully relating to 4 out of 5 established mandated consultation measures. The only outlier was the percent of serious hazards verified corrected in a timely manner in the public sector.

III. NEW YORK STATE PLAN PROFILE

State Plan: Initial Plan Approval - August 19, 1984
Certification – August 16, 2006 (71 FR 47089)

Designee - Colleen C. Gardner, Commissioner
New York State Department of Labor

Excluded Coverage

Occupational Safety and Health enforcement in the private sector.
Occupational Safety and Health consultation or compliance assistance in the private sector.

Employee Coverage

Public Employee Coverage
1,292,100 Total State, County and Local Government Employees
7,211 Public Sector Employers

Operational Grant

FY 2009 Federal Share:	\$3,163,000
FY 2009 State Share:	\$4,257,000
FY 2009 100% State Funds:	<u>\$1,094,000</u>
FY 2009 Total State and Federal Grant:	\$8,514,000

Plan Benchmark Enforcement Staffing

Safety Enforcement: 29
Health Enforcement: 21

Allocated Staff

Safety Enforcement: 27
Health Enforcement: 18

Consultation

Safety: 9
Health: 8

Actual Staffing in FY 2009

Total Full Time: 70
Total Part Time: 2
Safety Enforcement: 26
Health Enforcement: 20

Chart 1: Allocated Staff vs. Benchmarks for Safety and Health

Allocated Staff vs. Benchmarks for FY 2009



IV. SUMMARY OF FY 2008 FAME RECOMMENDATIONS AND STATE ACTIONS

OSHA Recommendation #1: OSHA recommends that PESH conduct a trend analysis of the injuries and illnesses reported and provide outreach and technical assistance specifically targeted to the root causes of the most common injuries and illnesses. In addition, it is recommended that PESH enhance its efforts to fostering improvements in safety and health management systems throughout the sector.

#1. Performance Goal 1C:

Reduce injuries and illnesses in NAICS 922160 and 621910 (Fire Protection and Ambulance Services) by 2% for each year of the five-year strategic plan, or 10% by 2008.

State Action/Response:

An analysis of the injury and illness data provided by the New York Department of State's Office of Fire Protection and Control and the New York City Fire Department indicates that the data from these two agencies are not compatible as there are differences in how the data is reported. Rather than investing resources to conduct a trend analysis on data that may prove unreliable, PESH will look at working with fire service agencies to improve the quality of the data.

PESH will continue to work with fire and emergency medical service departments to promote and improve safety and health programs in these industries.

OSHA's Findings:

PESH continued to maintain partnerships with county fire organizations, individual fire departments, firefighter unions, firefighter associations, NYS Office of Homeland Security CBRNE Task Force, NYS Emergency Management Office and NYC Metropolitan Area Safety and Health Committee.

In FY 2009, PESH conducted 129 inspections, 18 outreach visits, 68 technical assistance activities, 32 consultations visits, and 2 formal training sessions in the highway, street and bridge construction industry.

OSHA Recommendation #2: State Activity Mandated Measures 7:

Average number of calendar days from opening conference to citations issued.

OSHA Recommendation #2: PESH needs to implement necessary steps to enhance case management to reduce the health case lapse time.

State Action/Response:

This concern has been discussed with the District Office Supervisors who are giving this more attention and making an effort to examine this during reviews of open case reports. The case lapse time had decreased from 90 days in FY2008 to 80 in FY2009 with sharper decreases seen in the 3rd and 4th quarters of the year with lapse times of 71 and 65. This measure is approaching the national average of 57 days.

OSHA's Findings:

As of the BSE final data from the full year of FY2009 were available. PESH's citation lapse time for FY 2009 was calculated at 48.40 days for safety and 76.56 days for health. PESH's figures are above the national averages of 43.7 days for safety and above the national average 57.3 days for health. PESH has reduced the health citation lapse time by 15% from 90.6 in FY2008 and increased safety lapse time by 11% from 43.53 in FY2008.

OSHA Recommendation #3: Public Sector Consultation

MARC 3: Percent of Visits where Consultant Conferred with Employees - Goal 100%: OSHA Recommends that PESH retrain their compliance officers in accurately entering data into the IMIS.

State Action/Response:

PESH consultants were instructed on proper procedure and data entry for the IMIS system. For FY 2009, the data for employee participation was 95% for initial visits, 100% for follow-up visits, and 100% for training and assistance visits. The results in the first quarter of FY2010 indicated 100% employee participation for all types of consultation visits.

OSHA's Findings:

28 consultation file were reviewed. None of the files reviewed had clear documentation of employee interviews or the level to which employees were involved in the consultation inspection.

OSHA Recommendation #4: Public Sector Consultation

MARC 4a-c: Percent of Serious Hazards Verified Corrected in a Timely Manner, Goal 100%; MARC4d: reference goal 65%. PESH must ensure timely verification of hazard correction by evaluating the abatement certification received from the employer and entering the data into IMIS in a timely manner.

State Action/Response:

PESH has made improvements in the timely verification hazards with a FY2009 4th quarter measure of 100% and a YTD average of 90%. The % of hazards verified corrected in the original time frame or on-site remained above the reference of 65% for all quarters in FY 2009 with a YTD average of 70%

OSHA's Findings:

PESH generally appears to be verifying hazards within the abatement periods that have been noted in citations issued. In a number of the cases reviewed in the BSE PESH had issued citations with excessively long abatement dates. In addition, inadequate abatement appears to have been accepted in 9% of case reviewed.

V. MAJOR ISSUES

Separate from the findings of the BSE, PESH experienced no major issues in FY09. PESH did not experience furloughs, hiring freezes, or net losses in personnel through attrition.

VI. ASSESSMENT OF STATE PERFORMANCE

A. Assessment of State Progress in Achieving Annual Performance Goals.

Inspection Activity¹

The FY 2009 Inspection Activity Micro-to-Host Report (IMIS data) indicated that PESH conducted a total of 2,350 inspections during the fiscal year 1,622 safety inspections and 728 health inspections. This is 145% higher than their PVA (Planned vs. Actual) projection of 1,700 inspections. PESH also issued 4,442 Notices of Violation (NOV) in FY 2009. In the seven PESH upstate district offices, 50% of the enforcement safety staff was hired within the last year.

¹ Source: MTOH Insp8 Report – 05/06/10

Of the 2,350 inspections conducted, 1,355 or 73% were classified as unprogrammed inspections. The unprogrammed inspections included 21 accident inspections, 350 complaint inspections, 43 referral inspections, 152 monitoring inspections, 788 follow-up inspections, 1 other, and 0 unprogrammed related.

No variance inspections were conducted in FY 2009.

Of the 995 inspections classified as programmed (97% of the total), 967 were planned, 24 were program related, and 4 were classified as "other".

Inspections by industry: there were a total of 683 construction inspections and 1,667 classified as other inspections.

During FY2009 PESH conducted 1,568 local emphasis programmed inspections of which 6,020 Violations were issued. A total of 11 Willful, 12 Repeat, 3,464 Serious, 2,511 Other, and 22 Notifications of Failure to Abate were issued.

There were 20 contested cases for FY2009. Because this information was not available on the IMIS database the total was obtained directly from the New York Industrial Board of Appeals.

The issue of not updating the IMIS is addressed elsewhere in this report.

Public Sector Consultation Activity

PESH's public sector consultation program conducted a total of 402 public sector consultation visits during FY 2009, or 161% of its projected 250 visits outlined in the Annual Performance Plan.

State's Progress Toward Achieving Its Strategic Plan Performance Goals

PESH's FY 2009 Annual Performance Plan consisted of three broad-based strategic goals with complementary performance goals.

PESHs goal is to reduce the Total Recordable Injury Rate in local government agencies within the following sectors; NAICS 237310 Highways, Street and Bridge Construction (Heavy Construction except buildings), NAICS 922160 and 621910 Fire Protection and Ambulance Services, and NAICS 623110 Health Services and Nursing Homes.

Performance Goal 1A: NAICS 237310 Highway, Street and Bridge Construction. PESH's goal is to reduce the Total Recordable Injury Rate in local government agencies within NAICS 237310 (Highway, Street and Bridge Construction)

by 2% per year. New injury rate reduction goal for this group has been set at 2 percent for the year using 2006 as the baseline.

The annual strategic plan was to reduce injuries in local government agencies within the NAICS 237310 Highway, Street and Bridges by 2% cumulative total for FY 2009, this goal has been met. PESH collected the most recent injury and illness data (SH-900 log) data available from County Highway Departments to include New York counties and the New York City boroughs.

Highway, Street and Bridge Construction

Year	Total Recordable Injury Rate*	% Change
2006	12.5	BASELINE
2007	10.7	14.4% Decrease
2008	10.7	14.4% Decrease

* Injury rates have changed due to updated information being provided by employers. This data was collected directly from the counties. The calculations are for total injury and illness rates: Number of recordable injuries and illnesses (N) divided by total hours worked (EH) multiplied by 200,000.

To date the BLS data information continues to not be available. Data collection included all the information reported on the SH-900.1's for 2006. This data showed that the TCIR steadily declined from 12.5 in 2006 to 10.7 in 2008

The Highway Strategic Planning committee includes PESH's safety and health consultants, supervisors, and Associate Industrial Hygienists continue dedicate a time to working with employers to obtain, review, and then analyze their injury and illness data. The goal was to identify the counties with the highest injury and illness rates and determine the cause of those injuries. The employers were approached and offered a training program designed to address the more frequent injuries identified on their own injury and illness logs (SH-900). This effort continues to result in an increased demand for PESH safety training from the county highway departments.

PESH continued its effort to build partnerships with organizations in an effort to reach more employers and ultimately reduce the incidence of injuries to highway department employees. The partnership with the Association of Counties has proven to be very valuable in promoting workplace safety initiatives to county governments.

PESH and the Highway Strategic Planning Committee continued to work with state employers such as NYS DOT, NYS Office of Parks Recreation & Historic Preservation, NYS Thruway Authority and NYS Office General Services and partnerships with associations were continued with the NYS Association of Counties, NYS Safety Officer's Association, Cornell Local Roads, the Southern Tier Water Works Association, and the Highway Superintendents Association.

In FY 2009, PESH conducted 672 inspections, 75 outreach visits, 115 technical assistance activities, 88 consultations, and 51 training sessions in the highway, street and bridge construction industry.

Performance Goal 1B: NAICS 922160 and 621910 Fire Protection and Ambulance Services. PESH’s goal is to reduce the number of work injuries, illnesses and fatalities in NAICS 922160 and 621910 (Fire Protection and Ambulance Services), focusing statewide attention and bureau resources on the most significant types of injuries and illnesses. Set up program to reduce injuries and illnesses by 2% in NAICS 922160 and 621910.

Fire Protection and Ambulance Services

Year	Injury Rate	% Change
2006	7.1 %	Baseline Year
2008	8.6%	Increase of 19.8%

In FY 2009 PESH worked with the Fire Protection/Ambulance Service Strategic Plan Committee. PESH focused on reducing injuries and illnesses to the various emergency workers and emergency responders within New York State. PESH as the committee continued to network with the emergency response community to discuss topics of concern and develop strategies that may help in the reduction of accidents.

PESH continued to maintain partnerships with county fire organizations, individual fire departments, firefighter unions, firefighter associations, NYS Office of Homeland Security CBRNE Task Force, NYS Emergency Management Office and NYC Metropolitan Area Safety and Health Committee.

In FY 2009, PESH conducted 129 inspections, 18 outreach visits, 68 technical assistance activities, 32 consultations visits, and 2 formal training sessions in the Fire Protection and Ambulance Services sector.

Performance Goal 1C: NAICS 623110 Health Services and Nursing Homes. PESH’s goal is to reduce the number of workplace injuries and illnesses in NAICS 623110 (local government nursing homes and New York State Veterans’ Homes) by partnering with the homes to focus on and help reduce such hazards as ergonomic injuries, workplace violence, and needlesticks PESH met their goal.

Health Services and Nursing Homes

Year	Injury and Illness Rate	% Change
2006	11.7	Baseline
2008	10.6	9.4% reduction

Year	Total # Days Away	% Change
2006	49205	Baseline
2008	38279	22% reduction

Note: Although many public nursing homes in New York do not offer light or alternate duty, the DART rate was calculated from the SH-900.1's indicate a DART rate reduction of 9.7% from 2006 to 2008.

PESH continued establishing partnerships with the public nursing homes throughout New York particularly those with the highest injury rates. PESHs maintained partnerships with Kaleida Health, Civil Service Employees Association (CSEA), Public Employee Federation (PEF), NYCOSH, WYNCOSH and the NYS Zero Lift Task Force.

In FY 2009, PESH conducted 8 inspections, 3 outreach visits, 16 technical assistance activities, 8 consultations visits, and 2 formal training sessions in the health services and nursing homes industries. There was one Safe Patient Handling Conference held on October 1-2, 2008.

Assessment of State Performance on Mandated and Other Related Activities.

State Activity Mandated Measures²

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

During this evaluation period, PESH responded to 338 complaints with an average response time of 28.56 days an increase from 25.78 days in FY2008, 28.30 days in FY2007, 33.67 days in FY 2006, 49.03 days in FY 2005 and 56.08 days in FY 2004, reflecting a 50% improvement from the FY 2004 response rate.

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

This measure does not apply to PESH as all complaints are handled by inspection.

(SAMM 3): Percent of Complaints where Complainants are notified on time.

Complainants were notified on time in 96.12 % (332 out of 335) of all complaints processed in FY 2009 an increase from 95.24% in FY 2008, 97.22% in FY2007 and a decrease from 99.46% in FY 2006. The reference measure is 100%.

² Source: State Activity Mandated Measures Report – 05/06/10

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

For FY 2009 PESH had conducted 11 complaints and referrals classified as imminent danger, all were responded to within one day for a 100% timely response rate. The reference measure is 100%.

(SAMM 5): Number of denials where entry not obtained.

PESH had no denials of entry during the evaluation period.

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

During FY 2009, the percentage of serious, willful, repeat violations cited that were verified as abated within the abatement date plus 30 days was 93% (3036 out of 3255). This represents a 5% improvement from FY 2007's measure of 88%. The reference measure is 100%.

(SAMM 7): Average number of calendar days from opening conference to Citations Issued.

PESH's citation lapse time for FY 2009 was calculated at 48.40 days for safety and 76.56 days for health. PESH's figures are above the national averages of 43.7 days for safety and above the national average 57.3 days for health. PESH has reduced the health citation lapse time by 15% from 90.6 in FY2008 and increased safety lapse time by 11% from 43.53 in FY2008.

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

The percentage of programmed inspections with S/W/R violations issued was calculated at 75.88% for safety and 51.25% for health. PESH's figures are significantly higher than the public sector only national average of 58.5% for safety and 51.1% for health.

(SAMM 9): Average Violations per Inspection with Violations.

For inspections with violations, the performance indicators for FY 2009 showed an average of 3.58 S/W/R violations/inspection and 2.58 for "other-than-serious" violations/inspection. PESH continues to be above the national averages of 2.1 for S/W/R and 1.2 for "other-than-serious" violations/inspection.

(SAMM 10): Average Initial Penalty per Serious Violation (Private Sector Only).

The average initial penalty per serious in the private sector is not applicable to PESH.

(SAMM 11): Percent of Total Inspections Conducted in the Public Sector Only.

100% of 2,350 inspections conducted were in the Public Sector.

(SAMM 12): Percent Lapse Time from receipt of Contest to first level decision.

Contested case data was not logged into the IMIS database, this measure could not be evaluated. There were 20 contested cases for FY2009. This total was obtained directly from the New York Industrial Board of Appeals.

The issues related to the accuracy of the PESH IMIS data and PESH's failures to adequately maintain the IMIS database are addressed elsewhere in this report.

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

A total of 23 discrimination investigations were completed in FY 2009. 14 of these investigations (60.87%) were completed within 90 days. The reference measure is 100%.

Although PESH did not meet the measure they have asserted that they are working diligently to complete discrimination investigations within 90 days.

Training and Education Program

During FY 2009, PESH conducted compliance assistance activities within the Strategic Plan's targeted industries: Highways, Street and Bridge Construction (Heavy Construction except buildings), Fire Protection, Ambulance Services, Health Services, and Nursing Homes.

For the Highway, Street and Bridge construction sector, PESH conducted 75 outreach activities, and 115 technical assistance activities.

For the Health Services and Nursing Homes sector, PESH conducted 3 outreach and 16 technical assistance activities and 1 AIHA poster conference focusing on reducing injuries to employees working in nursing homes.

For the Fire Protection and Ambulance Services industry, PESH conducted 18 outreach and 68 technical assistance activities and 2 formal training programs.

PESH attended the Crossing Borders Conference (an annual multinational conference), the Long Island Fire Show, the SEMO Disaster Preparedness Conference,

Fire Chiefs Convention, the NYS Association of Fire Districts Conference and the annual FASNY Conference which was held in Rochester NY.

For FY 2008 PESH continues to use training provided by the state to include MRSA/Influenza, and participated in ICS 200, 300 and 400 level on-line courses provided by FEMA.

The Fire Protection and Ambulance Strategic Plan Workgroup members have provided Hazardous Materials Emergency Response Awareness Level training to various groups and continue to participate in tabletop exercises throughout New York.

Public Sector Consultation

All consultations conducted by PESH are in the public sector. The OSHA Mandated Activities Report for Consultation (MARC) for PESH indicates that during FY 2009, PESH conducted a total of 296 consultation visits, constituting 98.67% of their planned 300 visits.³

The following MARC statistics are provided:

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

PESH conducted 94.76% of its consultation visits in high hazard establishments.

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

PESH conducted 93.26% of its' consultation visits in businesses with fewer than 250 employees and 73.78% consultation visits in businesses with fewer than 500 employees.

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

PESH conferred with employees in 97% or 258 out 267 of initial visits, an increase of 2.5% or 94.66% in FY2008, 100% or 17 out 17 in follow-up visits and 100% or 21 out 21 in training and assistance visits.

MARC 4a-c: Percent of Serious Hazards Verified Corrected in a Timely Manner Goal 100%: MARC4d: reference goal 65%.

PESH verified correction of serious hazards (MARC 4a) in a timely manner in 95.6% an increase of 33.4% from 62.8% in FY2008 of all serious hazards cited. The total numbers of serious hazards verified in timely manner were 196 out of 205 violations.

³ Source: MARC Report – 11/30/09)

This also represents 4.39% not verified timely. (MARC 4b) PESH did not refer any serious hazards to enforcement (MARC 4c) PESH verified 144 out of 205 or 70.24% serious hazards corrected in original time or onsite (MARC4d).

MARC 5: Number of Uncorrected Serious Hazards with Correction Date Greater than 90 Days Past Due:

There were no serious hazards uncorrected as of the end of FY 2009.

VII. SUMMARY OF FY 2009 BASELINE SPECIAL EVALUATION

The purpose of the Special Evaluation Study is to assess the current performance of New York's program and identify any performance issues of concern. The study focused mainly on enforcement effectiveness and the findings of this study are detailed below. Recommendations related to vulnerabilities notes are at the end of this section.

Stakeholder Contact

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

A meeting was held with a number of key unions that represent public employees throughout the State of New York. These stakeholders included representatives from: The New York State AFL-CIO Public Employee Division which represents public employees State-Wide; AFSME AFL-CIO District Council 37 which is the largest public employee union in New York City; Teamsters Local 237, Teamsters Local 237 which represents New York City employees and several municipalities on Long Island; the Civil Service Employees Association (CSEA) representing public employees; and the Public Employees Federation representing New York State's professional scientific and technical employees.

The group expressed that overall; they felt that PESH was doing a good job and that PESH continues to have an open dialogue with public employee unions. They also felt that PESH was generally responsive to their needs and responded positively to their feedback. They agreed that PESH CSHOs include union representatives in opening conferences and that PESH notifies unions when a Petition to Modify an Abatement Date (PMA) is received from an agency. In addition, they indicated that the union representatives are routinely invited to attend informal conferences and that these conferences are typically held jointly.

Issues they had with PESH revolved mainly around PESH's performance in New York City. Issues raised by stakeholders includes the following:

Issue: Complaint response time is slow.

Finding: PESH generally follows the PESH FOM Chapter IX Complaints Bureau Response - which allows up to 30 days for PESH to respond to complaints. IMIS data indicates that the average response time to initiate complaint inspection was approximately 29 days.

44% of the 43 complaints reviewed as part of the BSE were not opened within 5 work days (Federal OSHA's goal).

Issue: Some CSHOs speak to union representatives but not front line workers.

Finding: Investigation of this issue indicates that CSHOs follow the FOM Chapter 3.D.2.a Procedures for Union Representation during PESH Investigation. The CSHOs speak to Employee Representatives and invite them to participate during opening conference, walkaround, closing and informal conferences. The BSE revealed that CSHO's documentation of employee representative participation needs improvement.

Issue: Obtaining copies of reports (including narrative) takes much more than six months.

Finding: PESH appears to be following its Freedom Of Information Law (FOIL). In addition, PESH has indicated it has initiated a system of providing copies of Notices of Violation and narrative reports by email to the employer and employee representatives.

Issue: One representative indicated he felt cases remain open for prolonged periods while the CSHOs wait for abatement.

Finding: PESH follows the Abatement action per the FOM Chapter 3 D.9.b. Case files are closed as soon as investigation has been completed and Notices of Violations and Order to Comply are issued.

The BSE revealed that abatement periods were excessive in 25% of the cases reviewed.

Cases may remain open due to Informal conferences, or post contest activities. An informal conference requested by the employee and/or employer has to be within 20 working days from receipt of notice. If there is a Formal Appeal either by the employee and/or employer a petition with the Industrial Bureau of Appeals is required within 60 days of issuance.

Issue: PMAs were being granted too often.

Finding: According to PESH; Petition to Modify and Abate (PMA) are applied by the employer no later than day following the abatement due date. PMA's are granted to the employer once the employer has met the criteria. The BSE revealed there had been PMAs granted that had not met the criteria required by PESH FOM Chapter 3.E.10.

Issue: Penalties are cut significantly for settlement purposes.

Finding: PESH follows FOM Chapter 6 General Policy for situations where a Penalty may or may not be assessed, civil penalties, probability assessment, and gravity based penalty. A penalty letter is sent to the employer with which offers a 20% informal reduction. PESH does not issue penalties in the overwhelming majority of cases. In FY2009 there were 20 inspections out of 2350 in which the employer contested. It appears that of the 20 cases contested in which the citations were found to have merit, 1 case was settled for a penalty reduction. It should be noted that PESH penalties are not capped and continue to accrue from issuance to abatement which could accrue to penalties which are in excess to what Federal OSHA would issue.

Issue: When CSHOs are evaluating a qualitative issue such as the quality of hazard communication training, or the adequacy of a trainer, they never look at the training curricula.

Finding: PESH asserted that CSHOs follow the FOM requirements for evaluating training violations. CSHOs also have a check lists to assure they have evaluated all of the employers' safety and health programs to include training documentation.

Issue: Where both public and private employers are at the same site and a private contractor is the exposing employer they have been told that OSHA cannot release information to PESH and vice versa (e.g., air monitoring results).

Finding: PESH has instructed CSHOs on release of monitoring results. Federal OSHA's policy is that PESH cannot release Federal OSHA's information (e.g., air monitoring results) until Federal OSHA approves.

State Personnel Interviews

Reviewers had informal discussions with State inspectors and managers in order to obtain a comprehensive understanding of the overall administration of the program.

Case File Review

The Region II BSE study team conducted an on-site review of the 23(g) Public Employee Only State Plan from February 22, 2010 through March 5, 2010 and again from April 14, 2010 through April 16, 2010. The evaluation included a review of case files for FY 2009, covering the period October 1, 2008 through September 30, 2009. Although the vast majority of files selected were closed cases, a small number of open case files were selected for review as well. This review included both PESH enforcement cases and 23(g) public sector consultation visits. A total of 153 case files were reviewed which included 125 enforcement and 28 (15 safety and 13 health) consultation files. In order to streamline the review process and minimize the impact on PESH operations throughout its district offices, the on-site review of files from all districts was conducted at PESH's Albany, New York location.

Enforcement

Complaints

43 complaints were reviewed. 19 health and 24 safety complaints.

Concerns And Recommendations Regarding Complaints

Timeliness

PESH policy requires that complaints alleging serious violations be opened within 30 days and those alleging non-serious hazards must be opened within 120 days. Federal OSHA requires all formal complaints to be opened within 5 work days.

19 health complaint case files were reviewed. 12 of the 19 (63%) were not opened within 5 work days. Of the cases not opened within the deadline, the average number of days to open a health complaint was 36 days. One notable outlier was a complaint that took 8 months to open. In this case a serious citation was issued for workplace violence that was related to the complaint item.

24 safety complaint case files reviewed. 7 of the 24 (29%) were not opened within the 5 working days. Of the cases not opened within the deadline, the average number of days to open a safety complaint was 59 days. Notable outlier was case coded as "imminent danger" - dealing with trench hazards - that was opened 32 days after receipt.

Timeliness of Response To Complaints

Policy Reference:

OSHA

The Federal FIRM does not specify the time frame within which a complaint must be opened. OSHA CPL 02-00-140 Section XII D, effective 6/23/2006, states: "If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days."

PESH

PESH FOM Chapter IX

A.6. Responding to Complaints Alleging Imminent Danger Conditions. Any complaint which, in the professional opinion of the District Supervisor constitutes an imminent danger, as defined in Chapter VII, shall be inspected irrespective of whether or not it meets the formality requirements of Section 27-a(5)(a). It shall

be inspected the same day received, where possible, but not later than the employer's next working day after receipt of the complaint.

A.7.b.(2) Serious complaints shall be investigated on a priority basis within 30 working days and other-than-serious complaints within 120 days.

A.7.b.(3) If resources do not permit investigations within the time frames given in (2), a letter to the complainant shall explain the delay and shall indicate when an investigation may occur. The complainant shall be asked to confirm the continuation of the alleged hazardous conditions.

A.7.b.(4) If a late complaint inspection is to be conducted, the District Supervisor may contact the complainant to ensure that the alleged hazards are still existent.

Recommendation 1: 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.

Vulnerabilities Identified In Specific Cases Are As Follows:

Appropriateness of State Response

There appear to be issues with PESH failing to notify complainants of the results of complaint inspections (16% of cases), there were a number of cases (11%) in which it appears that all complaint items were not addressed. The auditors observed that the narratives describing the compliance officers' investigation of the complaint items were limited. 1 case that was reviewed completely lacked a narrative.

Specifics Follow:

Notifications To Complainant:

- In 2 out of 19 (11%) of the health complaint inspections and 4 of 24 (17%) safety inspections, evidence was not provided indicating that the complainant was notified of the inspection results. They may have been notified but no copy of the Letter H notification of inspection results letter, or other evidence was found in the case files.

Policy Reference:

OSHA

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

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

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

PESH

FOM Chapter IX

A.9.d. Results of Inspection to Complainant. After the completion of an inspection based on a complaint, the complainant shall be informed of the results as follows:

9.d.(1) Each complaint shall be addressed with a reference to a citation item on an attached copy of the NYPESH-2 issued as a result of the complaint inspection and/or with a sufficiently detailed description of the findings and why they did or did not result in a citation.

Recommendation 2: 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.

Investigation Of All Complaint Items

In 4 of 43 (9%) Complaints reviewed it appears that not all items were addressed.

Cases In Which Complaint Items Were Not Addressed:

- TH-12 There was an item on the complaint regarding insufficient lighting which was not addressed in the file.
- SK-8 The complaint lack of traffic control for work in and adjacent to the roadway. Traffic control was not addressed.
- SK-16
 - 4/25/08 - Appears that a complaint regarding tipping over of buses in the NYCTA maintenance shop was forwarded from OSHA to PESH – there is no information in the file as to how or if this complaint was addressed. There

is a handwritten number (appears to be an O-1 # 350039020) on the O-7. There is no associated O-1 with the file.

■ SK -13

- The complainant's original statement alleges that there was an exposure to diesel fumes, other fumes, and other unspecified chemicals, and poor ventilation. These allegations do not appear to be addressed by PESH.

In addition the case has the following issues.

- This inspection appears to be as the result of a complaint. There is no completed O-7 (or equivalent) in the file that contains an itemized list of the complaints. There is also a referral (it appears to be a self referral) but the referral appears to be an item (leaking diesel fuel pump) that is noted in the complainant's allegation. Unclear why this item was separated out as a referral item.
- The complaint file mentions potential Bloodborne Pathogens (BBP) exposure and notes that another CSHO was addressing the BBP issues. The file should be cross referenced.
- A copy of the complaint does not appear to have been given to the employer – there is a note on the original complaint saying "Confidential do not show to ER (employer)" - this is counter to the PESH FOM which stipulates that a copy of the complaint is to be given to the employer.
- As the only thing confidential is information that could ID the complainant, this does not preclude the CSHO from retyping the complaint items as an itemized list and presenting that to the ER. This preserves the ID of the complainant and fulfills the obligation of giving the ER sufficient notice of the complaint items.

Recommendation 3: 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

Complaint Case Lacking a Narrative:

■ SK-12

- The complaint alleged: no radio communication, no security cameras, lack of "fall arrest" and no emergency stop switches on a specific piece of machinery.
- There is no narrative describing the CSHO's investigation of the allegations, or whether the conditions complained about were covered by a standard.
- PESH wrote a letter to the complainant that stated the complaint items were not sustained, but there is no discussion of the investigation of the complaint

items. In addition PESH did issue citations relating to fall hazards that may have related to the complaint about lack of fall arrest.

Recommendation 4: 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.

Improperly handled Media Referral:

- SK-7 [Referral - which according to the PESH FOM are to be handled "similar" to complaints] - It appears that the compliance officer looked at a picture of workers in a trench that was in the local newspaper and issued 4 citations based on what appeared in the picture. When the CSHO got to the site the trench was closed and the CSHO could not take measurements - due to lack of information in the file the auditor could not assess whether the referral was handled appropriately.

Recommendation 5: 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.

Workplace Violence Complaint Lacking Documentation:

- MS-24
The inspection was opened 22 days after receiving the complaint. Case involves a complaint indicating that the employer did not provide a Work Place Violence Evaluation and Program to the employees. An inspection was conducted and 3 WPV violations were issued and then withdrawn without any justification in the file. The final entry in the diary sheet indicates that the violations to be issued to the employer as "Universal."
There was no further documentation in the case file as to the result of the issuing of "Universal" citations, or any event after the citations were issued.

Recommendation 6: Include sufficient documentation to describe the events that occurred during and after the inspection so that the status of the case is clearly described.

Fatalities

21 fatality case files were reviewed. In 6 (29%) of the cases it appears that not all required next of kin (NOK) letters were sent to the families of the victims. There was 1 case in which the jurisdictional issue was unclear.

There was 1 case in which the inspection was initiated 2 days after PESH was notified of the fatality.

4 (20%) cases were either missing IMIS forms, or if the forms were in the case they were incomplete. 2 cases took nearly 1 year to complete. Information in 2 cases reviewed indicates that (1) the investigator may not have conducted the inspection (case # SK-2) 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 (see case #TH-03 below).

Specific information follows:

Contact and involvement of families, including notification of enforcement action

- SK-2 - 1st Next of Kin (NOK) letter was sent to Next-of-Kin. There is no indication that inspection results were sent to Next-of-Kin.
- SK-4 - No NOK letters. The file is noted as Partial Inspection –however a note in file says death was not work related. If an inspection was conducted because the “work relatedness” has not been determined then a NOK letter should have been sent.
- SK-19 - No NOK letter in file or note that NOK letter was sent to the NOK
- MS-1 - No NOK letter in file or note that NOK letter was sent to the NOK
- TH-2 - No NOK letter in file or note that NOK letter was sent to the NOK
- BC-04 - 1st NOK letter was sent to NOK. There is no indication that inspection results were sent to Next-of-Kin.

Recommendation 7: 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.

Appropriate use of “no inspection” or “no jurisdiction”

- SK-1
 - There is no O-1A. Although on the face of it this fatality was from a self inflicted gunshot (suicide) there is nothing “official” in the file that confirms this.

Recommendation 8: 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)).

Incomplete IMIS Forms

- SK-1
 - Reported on 10/3/08 – closed on 10/6/08 – opening date was not noted on O-1
 - There was no O-1A in file. There were no opening/closing conference notes; yet there were handwritten notes of an interview which briefly described the events and the victim's job history, but the interviewee's identity was not documented.
 - There are no entries related to the actual inspection. Unable to determine if the CSHO went on site.
 - Diary notes 7/16/09 "OK to close." Hard copy of O-1 not updated
 - O-170 has no abstract.

IMIS

Policy Reference:

OSHA

Federal ADM 1-1.31 CH1 Office of Management Data Systems Chapter VII.

PESH

PESH FOM Chapter VI Operation of PESH Penalty Database. [A94-2, A94-3] The database utilizes the mainframe computer which will allow electronic transfer of information from the Program Manager's office to the District offices. It will also provide a centralized database of information from which reports can be generated for statistical and tracking purposes. The information in this database is updated regularly and is available for OSHA monitoring purposes.

Recommendation 9: 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.

Timeliness of file completion

- SK-1 - The accident occurred on 10/3/2008. The diary sheet entry which was dated 11/6/2009 that states that the file is ready to be "sent to... Albany"
- MS-02 – The citation was issued 11 months after the inspection was opened.

Recommendation 10: 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.

Appropriateness of State Response

- SK-2 Employees appear to have been interviewed however the names/identifiers of the employees were not documented. The Q & A is in "group" format with one question asked of the group and one "combined" answer.
- TH-3 There was no diary sheet. There was no OSHA 1, 1A or 1Bs. There is an "investigative narrative" with a conclusion that no standards have been violated. There is a recommendation for a citation for annual fit test but no evidence that it was ever issued. However, there was a citation in the folder which was stamped draft. The file had not been closed to date. IMIS indicates the opening and closing conferences were held on 3/24/09 and a citation for 1910.134(f)(2) wasn't issued until 11/24/09 with an abatement date of 1/13/10.

Recommendation 11: 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.

Also See Recommendation 4.

In addition - the following cases had vulnerabilities as described below:

Incomplete "Catastophe" file

- TH-5 – 2 employees injured. Nothing in the case file other than the IMIS printout. Two fire fighters were injured when they fell though an unprotected doorway. An inspection was opened on 2/25/09 and closed on 4/15/09 according to IMIS. There was no other information in the file – No O-1, O-1A,

or diary sheet. PESH indicated the file could not be located and a file had to be reproduced.

See Recommendation 4.

"Catastrophe" with missing field notes

- MS- 05 This case involved two fire fighters who were injured while fighting a fire. Several employee interviews were noted as having been conducted, however there were no employee interviews or field notes in the case file. The case file consisted of the following OSHA 1, OSHA 170, OSHA 36, DOSH 914 (Descriptive Narrative).

See Recommendation 4.

Fatalities with Inconsistent Injury Illness noted

- SK-2 All items related to high voltage electrical violations. Injuries noted as Electrocution, burns. Death, loss of consciousness. Choose most likely/most serious – in this case electrocution.
- SK-19 (Fatality) Death is listed, but the CSHO also includes lacerations – unnecessary as there was a fatality.

Recommendation 12: Provide additional training to all field staff to adequately classify violations with appropriate description, severity, and probability of potential resulting injury.

Targeting/Inspections

Targeting/Inspections

The state developed a new Strategic Plan that focused on three high hazard areas within the public sector. These focus areas include establishments within the SIC/NAICS Codes covering, **SIC 1611/NAICS 237310** Highways, Street and Bridge Construction (Heavy Construction except buildings), **SIC 9224/ NAICS 922160** and **SIC 4119/NAICS 621910** Fire Protection and Ambulance Services and **SIC 8053/ NAICS 623110** Health Services and Nursing Homes.

There were 995 programmed, 967 planned, 24 programmed related, and 4 other inspections conducted in those specific SIC/NAICS codes. PESH's selection criteria for inspections that were conducted within these SIC/NAICS were in accordance with the New York State Department of Labor Administrative Plan for Public Employee Safety and Health Program Inspections pursuant to Labor Law Section 27-a, Subdivision 5c, the Department of Labor.

According to PESH's Administrative Plan; inspections are conducted within each of the nine geographically defined districts of the Public Employee Safety and Health Bureau are be assigned according to the schedule of priorities listed below in descending order of priority.

1. Imminent danger.
2. Fatalities/Catastrophe investigations.
3. Complaint investigations (including Discrimination Complaints).
4. Timely follow-up visits to employers with outstanding serious violations.
5. Inspections of construction sites at which public employees are engaged in construction and related activities.
6. Programmed inspections

Programmed inspections are scheduled within each of the Bureaus nine district offices by assigning each inspector to a specific geographic area, usually defined by county boundaries. Upon assignment of a specific county the inspector will complete inspections of all places of public employment in such locality before being assigned to conduct inspections in another specific geographic locality.

At the discretion of the Director of Safety and Health, inspections of facilities and occupations which statistics and past experience indicate have a low hazard potential may be deferred in favor of assignment to higher hazard worksites in other areas. Generally, no more than one programmed inspection of a worksite per year shall occur. If the Director finds that statistics indicate a high probability that a particular safety and health hazard exists within a standard industrial classification or at an individual facility, inspection of such worksites shall be given priority and may occur more frequently than once a year.

Programmed inspections are scheduled in accordance with the State Administrative Plan.

Safety Inspections: Safety and Health Inspectors are assigned to specific counties or portions of counties. An inspector will not inspect all public employee worksites within one county before proceeding to the next, but rather will visit an equal mixing of locations by selecting limited areas to inspect within all the assigned counties. Programmed safety inspections will not be conducted in establishments not on the safety high hazard list (Chapter III Appendix, Paragraph H) [A96-3] When visiting a small geographical area such as a village, town or state facility, the public employee worksites therein will be inspected according to the following priority:

1. Worksites whose Standard Industrial Classification/North American Industrial Classification System (SIC/NAICS) Code appears on the PESH list of a high incidence rate of injuries and illnesses SIC codes.

2. Worksites whose SIC/NAICS code does not appear on the PESH list when authorized by the Program Manager's Office.

Health Inspections: [A96-3] Programmed health inspections will continue to be selected and scheduled from the health high hazard list distributed from the Program Manager's office. However, Industrial Hygienists will now be assigned a specific territory which they will move through in a systematic manner to insure that all worksites with SIC/NAICS Codes on the health high hazard list are inspected. A listing by SIC/NAICS code of health high hazard workplaces is periodically issued from the Program Managers office.

Each PESH district office will maintain a list, arranged by county, of facilities with the designated SIC/NAICS codes. No industrial hygienist will give special emphasis to any one particular type of workplace.

Where no establishment list is provided by the Program Manager's Office, the District Supervisor shall compile a complete list of active establishments (work sites) considering all establishments (work sites) within the coverage of the office and using the best available information (commerce directories, commercial telephone listings, local permits, local knowledge, etc.). From this list work sites for inspection will be selected randomly.

Order of Priority: Unless otherwise noted in particular cases, priority of accomplishment and assignment of manpower resources for inspection categories shall be as follows:

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Fatality/Catastrophe Investigations
Third	Investigation of Complaints/Discriminations/Referrals
Fourth	Follow-ups
Fifth	Programmed Inspections

Efficient Use of Resources:

Unprogrammed inspections normally shall be scheduled and conducted prior to program inspections. For efficient use of resources, or when bureau objectives so dictate, programmed inspections may occasionally receive a higher priority than unprogrammed inspections. For example, a programmed inspection may be conducted during the response period for a formal non-serious complaint.

Targeting appears to be effective as the four target areas do have very high injury and illness rates compared to the rest of state and local government (see table below). In addition, the effectiveness of targeting is reflected in the number of

violations per inspection and percent serious/willful/repeat violations being higher than the national averages for both the State and Federal OSHA.

Top 10 standards cited

Comparing PESH to State Plan Public Sector Only States (VI, NJ, NY, CT) - PESH's "Top 10" profile is similar, in that Lockout Tagout, electrical hazards, exits, and HazCom were violations were all among the top 10 most frequently cited standards.

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

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

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

New York State Plan (PESH) Most Frequently Cited Standards – All Industries
October 1, 2008 to September 30, 2009

	Standard	Description	Total
1	1910.147 c	Control of Hazardous Energy	269
2	1910.303 b	Examination, installation and use of electrical equipment	258
3	19101200 e	Written Hazard Communication Program	257
4	1910.037 b	Exit Routes - Lighting and marking must be adequate and appropriate.	248
5	1910.132 d	Hazard Assessment and Personal Protective Equipment selection	220
6	1910.305 b	Wiring methods, cabinets entering boxes, cabinets or fittings	213
7	1910.305 g	Electrical, Flexible Cords and Cables	182
8	19101200 h	Hazard Communication Information and Training	163
9	1910.334 a	Portable electric equipment	150
10	19101200 f	Hazard Communication Labels and other forms of warning	130

BLS Rates (Illness, Injury and Fatality)

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

New York

Total Recordable Case Rates

Industry	NAICS code	2008	2007	2006	2005
All industries including state and local government		3.5	3.7	3.8	4.0
Private industry		2.8	3.1	3.0	3.2
State and Local Government		7.4	7.8	8.9	8.7
State Government		7.7	8.4	8.2	8.3
Highways, Street and Bridge Construction	237310	5.8	4.8	5.8	6.5
Local Government		7.6	7.3	9.1	8.8
Public Administration	92	5.1	5.5	5.4	5.5
Fire Protection	922160	53.1	66.0	56.8	56.8
Ambulance	621910	10.4	2.0	2.8	1.7
Health Services and Nursing Homes	623110	18.5	19.4	19.1	19.5

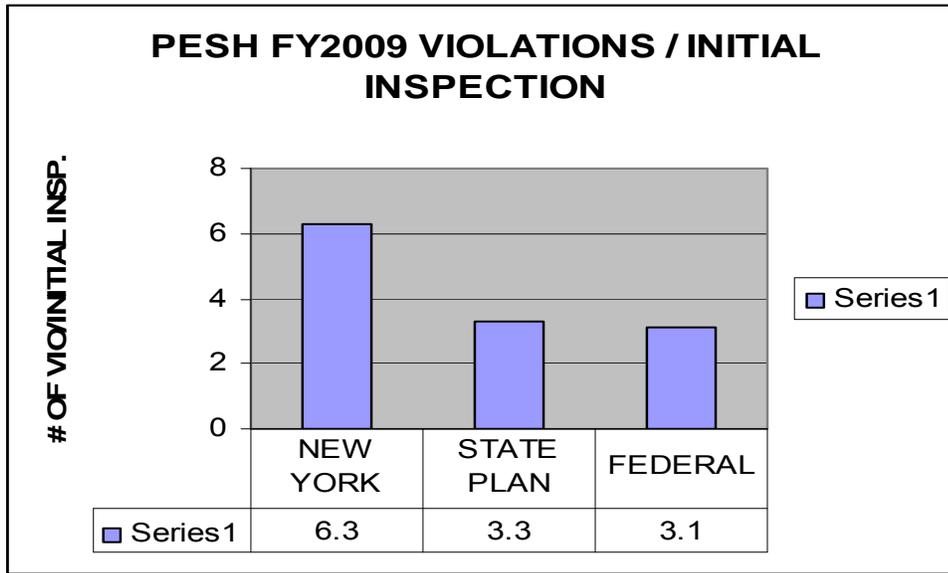
Incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: $(N/EH) \times 200,000$ where:

N = number of injuries and illnesses

EH = total hours worked by all employees during

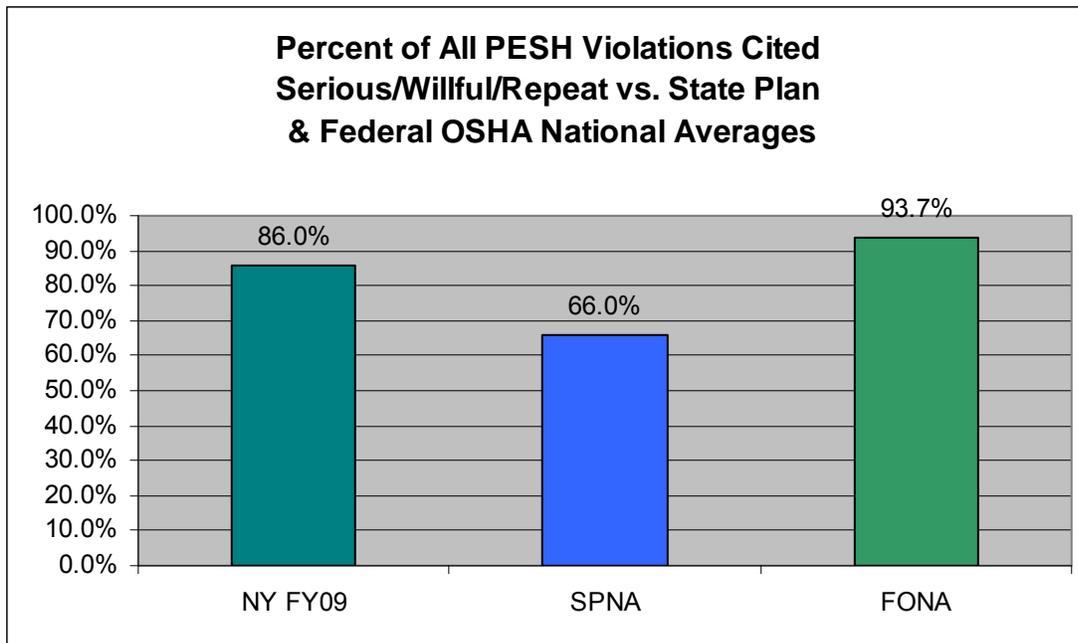
Violations per Inspection

For FY2009 PESH had a total of 6.3 violations per initial inspection which is 90% greater than the State Plan National average of 3.3 and 103% greater than the Federal national average of 3.1.



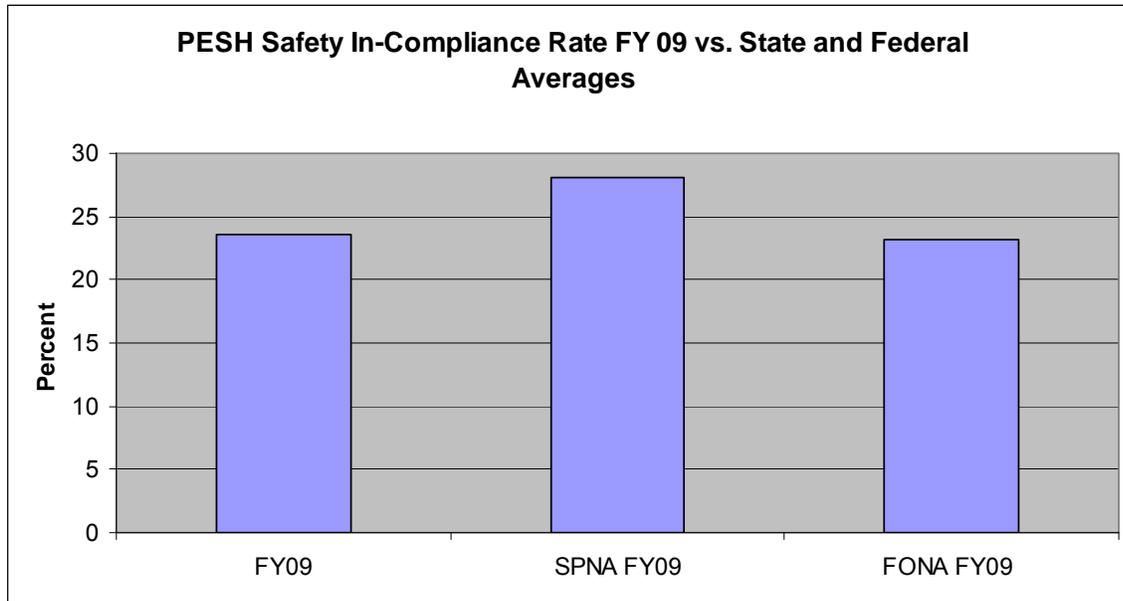
Percent Serious/Willful/Repeat Violations

For FY2009 PESH cited 86% of its violations as Serious/Willful/Repeat violations. This figure indicates the PESH's program is more aggressive compared to its State Plan counterparts (66% cited S/W/R) and is in alignment with Federal OSHA's (93.7% S/W/R) enforcement experience.

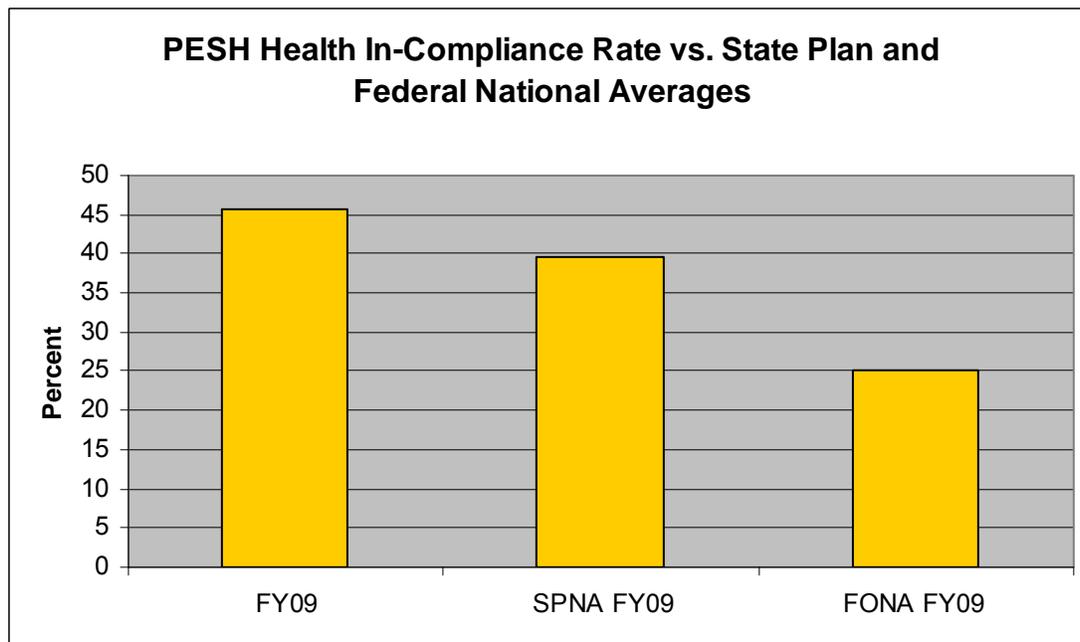


In-Compliance Inspections

Safety In-Compliance Rate



Health In-Compliance Rate



Hazard Identification

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.

There appeared to be incorrect violation classifications in 15 of the 65 cases reviewed that had citations (23%).

All apparent violations were not cited

- SK-11 Pulley not guarded. The AVD notes that the belt was not guarded – but the unguarded belt was not cited.

- KC-003
Citation 2 item 2; 1910.134(c)(1) The employer did not develop and implement a written respiratory protection program. There is no indication what the respiratory hazards are, and what kind of respirators the employees are using, whether they were fit tested, whether they received medical evaluations, or whether the respirators required or for voluntary use.

Given the lack of information in the file it cannot be determined if additional sections of the standards were violated, but the lack of a respiratory protection program is usually associated with violations of other parts of the standard.

- BC-02 Fatality Firefighter struck by collapsing building debris while fighting the fire on the exterior of the brick building. PESH could have considered citing a general duty clause – hazard identified brick exterior wall falling onto exposed employees – CSHO should have reviewed training records and established employer recognition and the need to either train or retrain employees when performing exterior/interior structural firefighting.

There is no indication that general duty clause was considered.

- BC-03 Fatality - related inspection to BC-02 - see above.

Recommendation 13: 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.

Recommendation 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.)

Recommendation 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.

Recommendation 16: PESH should provide additional hazard recognition training for CSHOs to ensure that all hazards and potential violations are addressed.

Citation was Inappropriately Issued

- SK-14
 - Lack of written PPE assessment. CSHO notes in the AVD that ER provided PPE and EEs used the PPE (thus eliminating exposure) yet they issued a citation anyway. Also under ER knowledge the CSHO noted that the ER provided PPE – The CSHO did not prove a hazard.

See Recommendation 13

Wrong Standard Cited

- SK-17
 - 1910.22(a)(3) To facilitate cleaning, floors were not kept free of protruding nails, splinters, holes, or loose boards.
 - ◆ Instance 1 cites deteriorated floor mats, Instance 2 cites an electrical outlet box, and instance 3 & 4 cited electrical cables – none of which are covered by the standard.
 - ◆ Instance 5 notes that the hazard was created by “floor holes” which were portions of the concrete floor that had become damaged resulting in ¼” to ½” deep depressions, which are not floor holes. This should not have been sited, or been cited as a 5(a)(1) – or PESH equivalent – presuming the CSHO could show a serious hazard existed.
- MS-16
 - Cited incorrect standard for fire extinguisher gauge reading discharged, the CSHO cited 191.37(a)(4), should have cited 1910.157(c)(4)

See Recommendation 13

Violation Classification

Appropriateness of Violation Classification

- SK-7 Potential Missed Willful - Citation for a trench. No competent person - As stated in the AVD the CSHO relied on a photo of the hazardous condition as evidence of employee exposure. A manager stated that all personnel have had competent training. The CSHO does not appear to have interviewed the "competent" person(s). It is possible that the person in charge and was competent and willfully violated the standard.

- SK-9
 - All Citations – 1B worksheets or equivalent were not included so it is impossible to assess whether classifications are accurate. However there were certain items as "Non Serious" which on their face may be "Serious"
 - Examples:
 - Exit light not illuminated – may be serious depending on the visibility at the exit.
 - No LoTo program – cited as "Non Serious"
 - Unadjusted tongue guard on abrasive wheel – could be serious depending on the stock being ground.
 - CSHO cited 1926.20(b)(4) - lack of training -but does not describe the equipment that untrained employees were using PLUS there are no employee interviews to establish the hazardous condition
 - All citations – no documentation of employee exposure. No exposed employees noted.

- SK-10
 - The following citations were issued as "Non Serious" which on their face may be "Serious"
 - Exit from a garage was not marked. Depending on the layout of the garage and whether there were doors that could have been confused with the exit door this can be a serious violation. The file does not address the issue.
 - Materials were not stored securely. Unsecure metal shelf. This could be serious depending on what is stored on the shelf, how high the material could fall. The file does not address the issue.
 - Storage areas not kept free of materials/pest harborage/fire explosion. The AVD states only "Accumulation of materials" no description of what materials.

- Working space around electrical panels not kept clear. The purpose of this standard is to ensure that electrical systems can be turned off in the event of an emergency and to prevent fire. There is no worksheet describing the conditions.
- ▣ SK-11 - Working space around electrical panels not kept clear. Cited "Non Serious" The purpose of this standard is to ensure that electrical systems can be turned off in the event of an emergency and to prevent fire. On its face this is a serious hazard. There is no worksheet describing the conditions.
- ▣ MS-13
 - Unsecured Compressed Gas Cylinder was cited as non-serious, this condition is typically considered a serious hazard. Lack of documentation did not facilitate review by the auditor.
 - First Responder Awareness level training was cited as Non-Serious, possibly should have been cited as serious. Lack of documentation did not facilitate review.
- ▣ SK-14 No lockout program – Cited as non-serious, yet the CSHO notes that the employees perform equipment and vehicle maintenance. Should be Serious.
- ▣ SK-17 1910.22(a)(3) To facilitate cleaning, floors were not kept free of protruding nails, splinters, holes, or loose boards. - This was cited as "Non-serious," yet all instances (1 thru 5) note that the injury as "sprains, strains, and possible broken bone(s)..." Broken bones are serious injuries.
- ▣ MS-15
 - Numerous 1910.1030 violations were cited, some were serious and some were other than serious. They should all be serious due to the potential injury - including paperwork violations.
- ▣ MS-21 The inspection involved a programmed planned inspection which yielded on non-serious citation of 1910.303 (g)(1)(v) burnt out light bulb, not enough illumination in electrical room. The AVD sites a potential electrocution hazard yet it was cited Non-serious, lack of consistency.
- ▣ MS-25
 - Fire extinguisher citations 1910.157(e)(3) (Annual maintenance checks) 1910.157(f)(2) (lack of hydrostatic testing) & 1910.157(c)(1) (not mounted) were all cited as Non-serious. The complaint that generated the inspection states that the air conditioner unit caught fire and filled the room with smoke, this could justify a serious violations.

- KC-003
 - Other Than Serious violation was issued for lack of an audible alarm in the basement. The information in the 1B states that the hazard is “employees may be exposed to fire due to the lack of an alarm.” The hazard noted does not coincide with the classification of the violation. Violation should be classified as Serious with the probability taken into account.
 - Citation 2 item 2; 1910.134(c)(1) Did not develop and implement a written respiratory protection program - cited Non-Serious
 - The injury and illness states that there is potential for respiratory hazards as the result of lack of equipment, breakdown, improper use or maintenance due to the lack of a comprehensive respiratory program. This does not appear to be simply a “paperwork” issue.
 - There is no indication what the respiratory hazards are, and what kind of respirators the employees are using, whether they were fit tested, whether they received medical evaluations, or whether the respirators required or for voluntary use. Given the information in the file it cannot be determined if this violation is appropriately classified.

- TH-7 – Four willful violations were issued for trench violations and lack of hazard recognition training.. There were no employee interviews. There is NO Willful documentation to support the classification of Willful for these trenching violations. Cannot discern whether the violations are appropriately classified or not.

- File TH-18 Violations for 1910.147(c)(1) and 1910.1200 (e)(1) and (h) were cited as “Other” with amputations and death as the likely injuries.

- File TH-20 – Lack of eyewash where the employees were using corrosive chemicals was classified as “Other”. Classified 1910.1200(e)(1) and (h) as “Other” when using corrosive chemicals.

- BC-01 - HazCom and Work Place Violence standard citations were issued as OTS. These would typically be issued as serious. There is no documentation in the file that supports OTS.

Recommendation 17: 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.

Employee and Union Involvement

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.

Specifics follow:

Employee Interviews; adequacy of documentation of EE interviews

- There was no documentation of EE interviews in the following 77 cases (79%) cases:
 - SK-7, SK-8, SK-9, SK-10, SK-11, SK-12, SK-13, SK-15, MS-1 thru MS-28. KC-001 thru KC-016, TH-7, TH-8, TH-13, TH-14, TH-17, TH-18, TH-19, TH-21, TH-22, TH-23, TH-24, BC-01 thru BC-09, BC-11 thru BC-15.
- SK-4 - Fatality
 - The addresses of persons interviewed were not documented.
 - There is no discussion of union involvement in the file other than a checked box on the O-1.
- SK-6 - Interviews are summarized, but separate interviews are not documented other than brief statements that appear to have been made by workers on site to the CSHO
- SK-16 & SK-17 - The fact that employee interviews were conducted was noted, yet no documentation of the interviews was in the case file.
- MS-08 Employees were interviewed, but the identity and contact information of the interviewees was not in the file.

Recommendation 18: 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.

Recommendation 19: 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.

Union or Other Labor Representative Participation.

- ✓ SK-1 thru SK-19, MS-1 thru MS-13, MS-14 thru MS-28. These cases with union representation the CSHO noted that employee rep was involved in the inspection process.
- MS-13 - There was no documentation of Union involvement during the inspection process.
- BC-01 thru BC-15 - Of the cases where a union was indicated there was limited or no narrative description at all. There was no specific mention of the degree to which the Union was involved with the inspection process.
- KC-001 thru KC-016
 - These cases had limited or no narrative description at all. There was no specific mention of the degree to which the Union was involved with the inspection process. The only evidence of Union involvement was a signature of the Union Representative on the attendance sheet that was filled out at the beginning of the inspection.

See Recommendation 19

Citations and Penalties

Adequate Evidence to Support Violation

Adequate evidence to support a citation is comprised of 3 elements: (1) evidence that shows that a hazardous condition existed, (2) evidence of employee exposure to the hazard, (3) evidence that the employer, through the exercise of reasonable diligence, could have known that employees were exposed to the hazard.

None of the cases reviewed 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.

Details on specific cases follow:

Fatality Citations With Incomplete Documentation

- BC-01 all citations including HazCom and Workplace Violence were lacking documentation of employee exposure and employer knowledge.

Fatality with Violations With Inadequate Prima Facie Documentation

■ SK-2

- Citation AVDs do not contain the date that the violations occurred on Citation 1 Items 2, 3, & 4
- All citations relate to exposure to electrical hazards – No measurements are included on 1Bs and none were found in the file.
- All Citations – No names/identifiers of exposed employees were noted. 1Bs contained a number (15) of employees, but no information as to how the number of exposed was determined.
- Lack of PPE – Employer knowledge noted was “Reasonable Diligence.” This is insufficient.
- Undocumented PPE assessment – Employer knowledge noted was “Reasonable Diligence.” This is insufficient.
- Lack of S&H program - Employer knowledge noted was “Reasonable Diligence.” This is insufficient. This was for the employer failing to enforce its cell phone policy (in that the employee answered his cell phone while in the raised bucket) – however other employees stated that they told the victim to not answer the phone whereupon he did anyway – potentially employee misconduct
- Lack of jobsite inspections Employer knowledge was noted as “Reasonable Diligence.” This is insufficient.
- Proximity to energized overhead lines - Employer knowledge was noted as; employer “should have known” of existing hazards. This is insufficient.

Inadequate Prima Facie Documentation

- SK-7 All citations – employer knowledge noted was that the employer “should have known.” Management knowledge of the condition was not established. The file does not note whether there was a manager on site when the conditions occurred or how a manager could have been aware that employees were exposed to the hazards noted in the citations.
- SK-9
 - No employee exposure for any citations
 - No Employer knowledge for any citations
 - No Injury / Illness noted for any citations
- SK-10
 - Listed or labeled electrical – Employer knowledge noted as “Plain View” no description of how the employer could have known.
 - Non current carrying parts found to be not grounded - the case for a refrigerator tested “hot.” Employer knowledge noted as “Plain View.” There is no description of how employer could have known.
 - All citations – no documentation of employee exposure. No exposed employees were noted. No date that exposure occurred was noted.
- SK-11
 - All Citations – No documentation of employee exposure, Employer Knowledge (Citation 1 Item 1 thru 1 Item 8) noted as “plain view” insufficient.
 - Dates of Exposure are not noted in AVD (or elsewhere).
 - Visi Vests were not available – Employer knowledge states “safety vests were not available” no description of employer knowledge
 - 120(q)(i)(E) – US DOT guidebook was not available for review. The standard specifically states the employee must have “An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.” The CSHO does not prove that the employees lacked that knowledge.
 - LOTO - Lack of Periodic Inspections. CSHO notes that the ER provided its LOTO program, but a copy of the program is not in the file – in addition the CSHO did not document that the lack of periodic inspection resulted in employee exposure to a hazard.
 - 2/5 1200(e)(1) No HazCom program – no discussion of the chemicals that employees were exposed to, thus not establishing exposure to a hazard.
- SK-12
All citations – dates of exposure not noted

All Serious violations:

ER knowledge noted as "Plain View" but there is no description of how ER could have known.

- Unguarded hatchway.
 - Unguarded floor hole (missing cover)
 - Unguarded floor hole (missing chain)
 - Fixed ladder rails did not extend 3' onto landing
 - Fixed ladders not safe – rungs were not
 - Workplace Hazard Assessment
 - Workplace Hazard Assessment – AVD does not describe what hazards EEs were exposed to.
- SK-14
- All Serious citations: Each states "...with reasonable diligence the employer should have knowledge of the standard." This does not describe how the ER could have been aware of the condition.
 - Drill press not anchored
 - Damaged leads on arc welder
 - Damaged GFCI
 - Damaged enclosures over electrical equipment (fluorescent light fixtures) 303(g)(2)(ii) may be the wrong std
 - Unused openings of electrical cabinets not closed
 - Lack of injury illness logs
 - 120(q) – EEs engaged in emergency response did not have training
 - No workplace hazard assessment
 - No LoTo program
 - No HazCom program
- SK-17 All citations:
- None of the citations contained prima facie information. The CSHO did not document employer knowledge, existence of a hazard covered by the standard, or employee exposure. There were no worksheets or equivalent.
 - None of the citation AVDs specified when the violation occurred.
- MS-01 thru MS-28
- The cases in which there were citations lacked employee interview notes, employee exposure and minimal employer knowledge (in few cases) documented to support violations.
 - CSHOs did not document the frequency and the severity of the exposure to the employee, making it impossible to determine the correct classification of the citation and the appropriateness of the penalty.

- MS-15, MS-16, MS-17, MS-19, MS-24, & MS-25. All citations. The basic requirements of a prima facie case, (i.e. employer knowledge and employee exposure) was not documented.

- KC-001 thru KC-016
 - None of the cases reviewed had employee interview notes.
 - Cases with citations lacked documentation of employee exposure and employer knowledge documented to support violations. The frequency and the severity of the exposure to the employee was not documented making it impossible to determine the correct classification of the citation. Specific examples follow:

- KC-007
 - The AVD on citation 1 item 1 - an asbestos violation - notes the employer's efforts to comply with the standard; it should only focus on the non-compliance. "The employer did not ensure that all employees were informed about the location of asbestos containing materials in their work area."
 - The citation does not give dates as to when the conditions were observed.
 - Employee exposure and employer knowledge was not determined. Employer knowledge just mentions reasonable diligence.
 - There was no employee contact information or proof of employee exposure.
 - The OSHA 1a was not present in the case file. Citation 2 item 1 is not the correct standard for this violation. The employee exposure record is a monitoring record which shows what the personal exposure was for a particular employee at a particular time. The AVD references an accident report.

- KC-008
 - Citations issued for confined space violations of a contractor that was on site, however the information in the file only mentions exposure to employees. There is no mention of confined space program review of employer regarding contractor responsibilities. In citation 01 item 002 they do not identify when work was conducted, it only mentions "in the past". ■ Based on the information it appears that the violation was cited under the wrong paragraph of the standard. 146.(c)(8)(i)

- KC-009
 - Citations issued for confined space violations. It is difficult to ascertain if appropriate standard cited; there are no photos, drawings, field notes in the file to accurately describe the space. When the compliance officer requested confined space procedures, the employer gave them maintenance and cleaning procedures, which appears to satisfy the confined space procedures based on the information in the file.

- The only employees noted to go into the confined space were employees who “sometimes go into the hoppers to retrieve their keys or other personal items that they drop in”. This appears to be a training issue or an employee misconduct issue and not a confined space entry issue.
 - There is no employee exposure listed, no information on respiratory hazards that justifies the type of respiratory program citations that are issued.
- KC-012
 - There were 16 serious violations cited and 4 Other than Serious cited including portable metal ladders, exit routes, fire extinguishers, and numerous electrical violations, however, there is no information in the file to validate the violations. No photos, notes, exposure information, interviews. This case file does not contain Prima Facie evidence required.
- TH-8
 - Cited for means of egress, LoTo, machine guarding, electrical, and HazCom.
 - For all violations, there is no exposure identified. There were no interviews in the file. The Serious violations for the electrical violations did not indicate the appropriate injury/illness or appropriate supporting information; i.e. reverse polarity had death or severe burns, cracked outlet cover had death or severe burns, portable light hanging by its cord had death or severe burns.
 - None of the violations identified the hazard, the equipment, the location, measurements, or employer knowledge. Employer knowledge for all items was there generic statement; “the existence of this hazardous condition should have been known through reasonable diligence.”
- TH-9
 - Cited for PPE, machine guarding, fire extinguishers, and electrical violations.
 - All citations - inadequate evidence to support the violation. There was no information on the 1Bs to validate classification of violations. Employee’s exposure cannot be proven because of the lack of information on the 1Bs. There is no evidence of any measurements. There were no photographs.
- TH-10
 - There were two Serious (PPE and Fire Extinguishers) and one Other -Than-Serious violation (walking surfaces not maintained in a safe condition) with no information on the 1Bs to support the violations, i.e., who was exposed, how they were exposed and what the likely injury/illness would be. There were no dates on the citations as to when the condition existed. There were no field notes which might have mentioned any employee names or the size or any measurements of the roof.
- TH-11

- There were nine serious violations in this file, including improper storage of flammable liquid, trench violations, lack of barricades and lack of traffic control signage and none of the 1Bs contain any information such as employee exposure, measurements, any comments or any injury/illness information. The only information contained on the 1Bs was the standard violated with the SAVE and the AVD.
 - There were no dates as to when the violations occurred. The dates for abatement are not appropriate for the types of violations, i.e., 1926.201(a)(1) for traffic control should have been abated immediately, ladder for trench, spoil bank, daily inspections of a trench. Abatement period of 25 days for these typically very serious items is quite excessive. The trench was eight feet deep and was in a high traffic area. Additionally, there were no employee interviews. The Crew Supervisor was noted as the competent person, yet there was a citation for no competent person. No “Willful” questions were asked.
- TH-12 – LoTo violations issued. Insufficient information on the 1Bs, i.e., lack of knowledge of the employer, location of the violation, date of the violation.
 - TH-13 – There were no field notes and no interviews. No photographs of items that could have been photographed. Citations were issued for walking surfaces, LoTo, welding, electrical, and HazCom. There were no dates on the AVD for when violation occurred. The employer knowledge was not described, nor were the exposures to hazards described.
 - TH-14 – Citations were issued for walking surfaces, LoTo, welding, electrical, and HazCom. Employer knowledge not described on 1Bs. Dates when violation was observed not noted. How employees were exposed to the hazards was not described.
 - TH-17 – Citations were issued for lack of eyewash station and electrical hazards. Employer knowledge not adequately described (described as “plain view”). How employees are exposed to hazard is not described. Can’t tell from the file whether interviews were conducted or not.
 - TH-19 – Citations issued for machine guarding. Employer knowledge was not described. Exposure was not documented.
 - TH-21 – No employer knowledge was documented, there were no field notes to support the three serious citations for means of exit path, direction, and signage violations.

- TH-22 – Citations were issued for PPE, respiratory protection, machine guarding, and electrical hazards, No employer knowledge was documented. There were no field notes in the file and no photographs in the file.
- TH-24 – Citations were issued for PPE, machine guarding, fire extinguisher, and electrical hazards. Employer knowledge not documented. No exposure information is provided.
- SK-13
 - Copies of the Notice of Violation (NOV) were not included in the case file – thus it was impossible evaluate what information was actually send to the employer in the NOV.
 - Auditor could not determine abatement dates, or whether the ER was giving sufficient notice to correct the cited condition.
- MS-06
 - Documentation of employee exposure and employer knowledge was not provided.
 - The 1B's in the case file were incomplete and did not contain an AVD, penalty calculations, or adjustment factors.
 - There were no dates provided on the citation indicating when the violation occurred.
 - The field notes appear to express information provided by the employer only, and not the employee.
- MS-08
 - The citation does not give a date as to when the condition was observed (i.e. on or about....)
 - Employee exposure and employer knowledge was not documented.
 - All citations - employer knowledge notes "reasonable diligence."
- MS-11
 - The OSHA 1B worksheets were only filled out for the Serious violations and the information was minimal. For all 1Bs employer knowledge was noted as "Reasonable Diligence".
 - The 1B documentation for Non-Serious violations did not contain a worksheet. There were no dates noted on the AVD's for the violations (i.e. on or about dates...)
- MS-12
 - Citations were issued for 1910.1030(g)(2)(ii)(c) – annual bloodborne pathogen training not provided and (h)(3)(i) – training records were not

provided when requested, a citation for not providing training followed by not providing the training records does not make sense.

- Employer knowledge for citations issued was not documented.

Recommendation 20: 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.

Recommendation 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

Recommendation 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.

Appropriateness of Penalties

PESH does not issue first instance sanctions - however the PESH FOM requires that penalties be calculated. None of the citations reviewed included penalty calculations. PESH penalties are not calculated until FTA violations exist.

See Recommendation 4

Average Serious Penalties

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

Abatement

PESH has indicated that abatement periods for public sector employers must be longer than for the private sector as they must deal with issues including: part time supervisors; obtaining purchase offers; seasonal employees; volunteers (FD), etc.. Also PESH discusses abatement dates during closing conferences with employers and employee representatives to settle on reasonable time frames for abatement dates.

We recognize the need for establishing a reasonable time frame for abatement, as well as the differences between the private and public sectors.

Notwithstanding the above, the study team asserts that 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 one case (SK-8) the abatement date noted was "immediately upon receipt" - which is impossible to measure. In several cases the abatement periods were 3 or more months 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.

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.

Excessive Abatement Periods

- SK-8
Citations issued 5/29/09
 - 1926.651(c)(1)(ii) – runways made of 2 pieces of road-plate were not connected – Abatement date – 7/16/2009 – 30+ days; excessive.
 - 1926.651(c)(2) – means of egress for trench – Abatement date – 6/17/09 – 19 days - excessive.
 - 1926.652(k)(1) – competent person – Abatement date – 8/6/09 60+ days - excessive
 - 1926.651(l) – walkways were not provided for access over excavations – Abatement date – "Immediately upon receipt" – this is impossible to measure.
 - 1926.652(a)(1) – unprotected trench – Abatement date – "Immediately upon receipt" – this is impossible to measure.

Given the nature of the hazards and imminent danger; the CSHO should have stayed on site to ensure abatement or stayed to verify that EEs were removed from the hazards.

- SK-10
 - Non-current carrying parts found to be not grounded - the case for a refrigerator tested "hot – given 16 days to correct. That could have been CDI (unplug the refrigerator).

- Working space around electrical panels not kept clear was given more than 30 days to abate. Excessive
- ▣ SK-11
 - Partially Blocked exit – Had a 10 day abatement date – this is imminent danger – should have been CDI.
- ▣ SK-12

Citation Issuance date 10/20/08

 - Unguarded hatchway – abatement date of 2/2/09 – 15 weeks later. Excessive
 - Unguarded floor hole (missing cover) – abatement date 12/17/08 – 8 weeks later. Excessive
 - Unguarded floor hole (missing chain) - Same standard as to Citation 1 Item 2 and should have been instance “b” of Citation 1 Item 2 – abatement date 2/2/09 – 15 weeks later. Excessive
 - Fixed ladder rails did not extend 3’ onto landing – abatement date 2/2/09 – 15 weeks later. Excessive
 - Fixed ladders not safe – rungs were not secured – abatement date 2/2/09 – 15 weeks later. Excessive
 - Workplace Hazard Assessment – AVD does not describe what hazards EEs were exposed to.
- ▣ MS-07:
 - 120+ days for a HazCom program.
 - 120+ days for LoTo program.
 - 45+ days for labeling circuit breakers
 - 120+ days for hazard assessment
 - 45+ days for lit exit signs
 - 45+ days for labeling exit doors
 - 45+ days for damaged electrical cords
 - 45+ days for installing covers on outlet boxes
 - 45+ days to separate oxygen and acetylene
 - 120+ days for written Permit Required Confined Space program
 - 45+ days for medical evaluation for respirator use.
- ▣ MS-10:
 - 90 days for hazard communication training
 - 90 days for hazard communication program
- ▣ MS-11:
 - 90 days for hazard communication program
 - 60 days for MSDS

- 60 days for Appendix D of the Respirator Standard
 - 60 days for PPE training and hazard assessment
 - 90 days for Exposure Control Plan
 - 90 days for an eyewash station
 - 60 days for Med. Eval. For resp. usage
- ▣ MS-12
 - 90 days to conduct BBP exposure determination
 - 90 days for develop schedule of Hepatitis B Vaccination and Post exposure evaluation & follow up.
 - 90 days to develop procedures to evaluate circumstances following an exposure incident
 - 90 days to implement eye and face protection
 - 90 days to provide training.
- ▣ MS-15 - 60 days for 1910.1030 (f)(1)(ii)(A) and (g)(2)(i).
- ▣ MS-16 - 30 days to address a locked exit
- ▣ MS-24
 - 3 Work Place Violence violations had 90 day abatement dates before they were withdrawn.
- ▣ MS-26
 - 90 days for 1910.1025(d)(2) – initial lead determination
 - 90 days for 1910.1052(d)(2), initial methylene chloride determination
 - 90 days for 1910.132 (d)(2) PPE hazard assessment
- ▣ TH-13 The abatement period to abate mechanic pit was over 5 months which is excessive.
- ▣ TH-14 The abatement period of 60 days seems excessive for uncovered mechanic pit. Abatement period of 60 days seems excessive for lack of lockout tagout program.
- ▣ TH-19 30 days for anchoring a grinder, adjusting the tongue and work rest seems excessive.
- ▣ TH-20 45 days to abate providing Appendix D of respiratory protection standard is excessive. 60 days to install eye wash excessive. 60 days to abate hazard communication program and training excessive.
- ▣ TH-24
 - Abatement dates appear to be excessive for all violations. Inspection was opened 1/20/09 and was issued 4/29/09 and abatement dates are either

6/16/09 or 7/29/09 for relatively simple PPE violations. Violation for anchoring machinery was give 90 days. Simple electrical violations were given 60 days to abate. Violations 1-8 and 1-10 did not have any abatement date.

- A follow-up inspection was conducted and resulted in 2 FTA violations according to the file.

Adequate Verification/Evidence of Abatement

Most of the files reviewed contained adequate evidence of abatement. In 6 of 65 cases (9%) with citations adequate abatement is not documented in the file.

- SK-2 (fatality)
 - There is a general statement that abatement was received in advance of the abatement date and that case was ok to close.
 - A monitoring inspection was done after abatement was received and accepted as adequate by PESH. Justification for the follow-up is not noted in the file.
 - No specific description of how the items were abated is documented.
- SK-7
 - No ladder in trench
 - Material could fall into the trench
 - No competent person
 - Unprotected Trench
 - Follow up was not done – all items were given 1 day abatement and noted in the file as abated, however it does not appear that a follow up was done nor was the manner of abatement described (the trench had already been filled in).

This is an issue for the trench “competent person” violation - as there is no proof that there is a competent person or that the appropriate training was done as abatement. It does not appear that PESH got adequate abatement for the competent person violation

- MS-20, There was one violation for rodent harborage. There was no evidence that abatement was received or a follow up was scheduled. The case was incomplete and there was no evidence in the case file that the case was closed. IMIS search revealed the opening and closing conferences were held on 6/8/09; NOV was issued on 7/20/09; abatement occurred on 7/30/09 and the case was closed on 10/15/09.

Files Reviewed ONLY for Violation Abatement

- ✓ All files had a brief narrative that described the abatement measures that the CSHO observed. All files had either a printed copy of the O-166E or O-166I that showed that abatement status was entered into (at least) the local IMIS.

Policy Reference:

OSHA

OSHA Firm Chapter IV Post-Inspection Procedures

Abatement. 1. Period. The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement date shall be set forth in the citation as a specific date, not a number of days. When the abatement period is very short (i.e., 5 working days or less) and it is uncertain when the employer will receive the citation, the abatement date shall be set so as to allow for a mail delay and the agreed-upon abatement time. When abatement has been witnessed by the CSHO during the inspection, the abatement period shall be "Corrected During Inspection" on the citation.

2. Reasonable Abatement Date. The establishment of the shortest practicable abatement date requires the exercise of professional judgment on the part of the CSHO.

NOTE: Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an initial abatement date is granted that is in excess of 30 calendar days, the reason, if not self-evident, shall be documented in the case file.

PESH

PESH FOM Chapter III E. 3 Abatement Periods Exceeding 30 Calendar Days. Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. Initial abatement

dates in excess of one year from the citation issuance date may not be granted without approval from the Program Manager's Office.

Recommendation 23: 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.

Recommendation 24: Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including:

- **Ensure appropriate abatement periods are assigned for unabated violations.**
- **Ensure that all abatement information accepted satisfies the order to comply prior to closing the case.**
- **For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.**

Follow up/Monitoring Inspections When Indicated

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 followup inspections regardless of whether acceptable abatement certification is received from employers.

- SK-17 The employer sent in abatement certification. There was one monitoring inspection, but no narrative describing the conditions of the facility during the monitoring inspection. It is unclear why the monitoring inspection was conducted.
- MS-15 A follow up inspection was conducted nearly two months after PESH received and accepted abatement verification from the employer. The employer sent in abatement verification on 3/25/09 and a follow up inspection was conducted on 5/13/09.

Recommendation 25: 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.

PMA's Improperly Managed

- TH-23 – This inspection was opened on 3/24/09 and a notice of violation for respiratory protection wasn't issued until 9/28/09. There was a PMA in the file that was incomplete - in that items in the PMA letter (items 5a, 5b and 7) reference attachments that were not included in the file, and are not explained. The union wrote a letter objecting to PMA request and asked that their objections be forwarded to the IBA. The file was still open at the time of the review. The violation was finally documented as abated almost one year after the opening conference.

- BC-06
 - CSHO cited 29 CFR 1910.134(a)(2) Respiratory Program. CSHO provided a sample Respiratory Program to the employer 02/06/09.
 - CSHO returned for a Monitoring Inspection on 03/27/09.
 - PESH received a PMA Request letter 04/21/09. The PMA was granted on 05/11/09 abatement date 05/22/09.
 - Another PMA request from employer was received 06/09/09 and extension granted to 06/30/09.
 - Another PMA request letter was received 07/28/09 and on 08/13/09 the PMA was granted with a new abatement date of 8/30/09.

There was no rationale for granting multiple PMA's.

- SK-19 (File was reviewed on March 3, 2010.)
 - A monitoring inspection was conducted in 12/3/2009 – according to the file; the item had not yet been abated (abatement date was 1/08/2010)
 - On 1/13/2010 (after the abatement date - a PMA request was made – but was incomplete – the PMA notes “see attached statement” for an explanation of why the PMA was needed etc., there is no attached statement evident in the file.
 - There is nothing in the file noting PESH's disposition towards the PMA request.

Recommendation 26: Implement internal controls to ensure that all Petitions for Modification of Abatement Dates (PMA's) 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.

Cases Where FTA and/or Penalties May Have Been Appropriate

- SK-19 (File was reviewed on March 3, 2010.)
 - A monitoring inspection was conducted in 12/3/2009 – according to the file; the item had not yet been abated (abatement date was 1/08/2010)
 - On 1/13/2010 (after the abatement date - a PMA request was made – but is incomplete – the PMA notes “see attached statement” for an explanation of why the PMA was needed etc., there is no attached statement evident in the file.
 - There is nothing in the file noting PESH’s disposition towards the PMA request.
 - On 1/15/2010 there is a note in the diary sheet that a Follow Up inspection was conducted. There is no O-1 for the Follow Up. WebIMIS shows a Follow Up (313943722) was opened on 1/15/2010.
 - There is no narrative describing the follow up inspection, whether the violation was abated, whether an FTA was appropriate/issued, or whether additional violations were issued. The final diary is the word “OK” without context on 1/28/2010.

- MS-07 Citation 1 Item 5 – extension cords damaged, attached to scissor lift. The abatement date was 6/10/09. A monitoring inspection was performed on 6/17/09, item was not abated. CSHO returned for another monitoring inspection on 9/2/09 and abatement for item was observed. A FTA was not issued for the hazardous condition which was unabated on 6/17/09. No PMA was received/granted and no FTA was issued for this item.

Cases Where FTA Does Not Appear To Have Been Administered Correctly

- KC-010
 - No dates noted on AVD’s
 - No abatement received from initial citation issuance for a violation of 1910.141(c)(i); follow up conducted and Failure to Abate issued on 4/29/09 with an abatement date extended to 7/29/2009
 - A penalty of \$30/day was assessed starting on 7/30/2009 until abatement is completed.
 - No abatement to date noted in file case appears to remain open.
 - No follow up conducted to date (2/2010)

- TH- 24 – Diary sheet and OSHA 1 state that the case is closed but there is no abatement information for the two FTA violations.

Recommendation 27: Implement internal controls including supervisory oversight to ensure that Failure To Abate notices are issued where appropriate and administered in accordance with PESH policy.

Review Procedures

There were no supervisory notes documenting what had transpired during the informal settlement conference meetings.

Informal Conferences

Informal conferences are not documented sufficiently

- SK-2 Informal conference – Note to file says that an IFC was held, there are no notes as to whether any amendments were made to the file.
- S-24 An inspection was conducted and 3 WPV violations were issued and then withdrawn without any justification in the file.

Recommendation 28: 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.

Information Management

Reviewers interviewed the IMIS System Administrator regarding information management procedures. End-of-Day/Start-of-Day (EOD/SOD) processing to transmit data to the host computer and receive messages and error listings is conducted periodically. The frequency ranges from daily to 3 times weekly depending on the district offices in question. The draft forms listing is reviewed periodically to ensure appropriate forms are finalized and transmitted.

The master list of the latest error listing and draft forms list were reviewed and both had very few entries.

PESH uses NCR and Micro-to-Host management reports appropriate to the program, to manage enforcement activities at district offices and management levels. The reports are set to run automatically overnight every Friday, and are printed on Mondays. Review of the reports indicated that the State Compliance Program Manager uses the appropriate the reports to manage the enforcement program.

PESH Compliance Officers and IMIS staff members enter data in a timely and accurate manner, with the exception of case file updates for logging status of informal conferences and status of contested cases.

The Compliance Program Manager is addressing the problem of delayed data entry in some cases, with individual Compliance Officers. Case file reviews found that updates on abatement and penalty payments are timely documented in the files, and the review of the IMIS reports showed that these updates are also entered into the IMIS.

The micro Debt Collection Tracking reports are designed for Federal OSHA and do not facilitate the State's debt collection process. The IMIS System Administrator uses the Open Inspections Report to track cases.

The State uses the standard IMIS form letters, modified for State use, for addressing some referrals that are not inspected, communicating inspection results to complainants, etc.

Recommendation 29: 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.

VII. FEDERAL PROGRAM/STATE INITIATED CHANGES, STANDARDS AND PLAN CHANGES, AND VARIANCES

**Federal Program Change
Summary for NY Report**

During FY 2009 a total of six Federal Program Changes that required a notice of intent to adopt during FY 2009. PESH responded timely with their intent to adopt the six FPC's (see table below).

**Federal Program Changes
(Excluding Standards)**

Date of Directive	Date of Intent due	Date of State Response	Directive Number	Display Title
09/30/2009	11/30/2009	12/22/2009	CPL-02-09-08 2010 355	Injury and Illness Recordkeeping National Emphasis Program
09/30/2009	11/30/2009	10/13/2009	CPL-02-01-046 2010 354	Rescission of OSHAs de minimis policies relating to floors/nets and shear connectors
08/18/2009	10/30/2009	08/31/2009	CPL-03-00-010 2009 353	NEP Petroleum Refineries - Extension of Time
07/27/2009	09/28/2009	07/30/2009	CPL-02(09-06) 2009 334	NEP-PSM Covered Chemical Facilities
07/20/2009	09/21/2009	07/28/2009	CPL-2(09-05) 2009 333	Site-Specific Targeting 2009 (SST-09)
03/26/2009	06/01/2009	04/03/2009	CPL-02-00-148 2009 332	Field Operations Manual

Standards Adoption

Four Federal standards were issued during FY 2009. The notice of intent to adopt was timely in all four standards. In that - Longshoring and Maritime Terminals; Vertical Tandem Lifts standard was not applicable to PESH, actual adoption was not timely in 2 of 3 applicable standards - detailed below:

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

Notice of Intent Due Date: 11/20/2009

Notice of Intent received: 11/05/2009

Adoption Due Date: 03/09/2010

Adoption Completed: Waiting for state adoption to be placed in registry.

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

Notice of Intent Due Date: 11/20/2009
Notice of Intent Received: 11/05/2009
Adoption Due Date: 4/29/2009
Adoption Completed: 11/05/2009

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

Notice of Intent Due Date: 02/17/2008
Notice of Intent Received: 02/14/2009
Adoption Due Date: 06/10/2009
Adoption Completed: Not Applicable

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

Notice of Intent due date: 02/17/2009
Notice of Intent received: 11/05/2009
Adoption due date: 06/12/2009
Adoption Completed: Waiting for state adoption to be placed in registry.

Recommendation 30: Standards adoption should be carefully reviewed and response to adoption be timely according to the Automated Tracking System request response date.

Variances

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

VIII. PUBLIC SECTOR CONSULTATION ACTIVITIES

PESH has an on-going 23(g) Public Sector Consultation program. During FY 2009 PESH public-sector consultation conducted a total of 402 public-sector consultation visits in FY09 which is 61% greater than their projected goal of 250 visits outlined in their FY2009 Annual Performance Plan.

Special Study Findings

A total of 28 Consultation case files were reviewed - 15 Safety and 13 Health consultation files.

Written Report Evaluation (WRE) to the Employer:

All 28 case files had evidence that the employer was notified of the consultation visit. All cases contained Written Report Evaluation required documentation as per CPPM Chapter 6 such as an executive summary, employers' obligations and rights, hazard identification etc. was included in all case files.

Consultation Forms:

All case files reviewed were organized however, none of the file reviewed had employer and employee interview documentation or sampling forms (93, 98, etc.). With the exception of sampling forms, the files included all the other forms required for consultation case files - such as Form 20, 30, 40, etc.).

Field Notes: None of the files reviewed contained evidence of Observations, Analyses, photos, OSHA-300 logs/SH-900 logs and/or other written documentation. Note information was complete in narratives, but no hand written contemporaneous were in the files. Per the CPPM field notes must be maintained in the files.

The majority of the case files reviewed lacked documentation such as field notes, and photos. None of the health case files with sampling included complete OSHA 92, 93 and 98 air sampling and direct reading forms in some cases the forms were missing.

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 below:

In the health case files reviewed where Noise exposure was documented no noise screening nor sampling had been conducted, the consultant left it to the employer to perform their own monitoring. The consultant noted 1910.95(g)(1) not providing audiometric testing, but consultant did address noise monitoring, or whether PPE and/or training was required. Consultant cited 1910.134(a)(2) respirator program

however no mention of chemicals and no sampling had been conducted. The consultant did not document whether PPE and/or training was required. These potential hazards were not identified in the consultants Written Evaluation Report to the employer and appear to not have been addressed.

Another health case file reviewed documented that there was "inadequate ventilation" but the consultant did not do air sampling. Also the consultant noted unsafe walking working surfaces, rusty handrails, and inadequate lighting, unguarded machinery, damaged exit door to open/close properly. These hazards were neither cited nor was there a referral to a safety consultant.

Another health case file reviewed included photos of a conveyor belt system reveals in-running nip points an obvious missed violation for 1910.219, also stairways obstructed with debris (such as paint cans, several buckets with cleaning supplies, wire cages shovel and two large rolled rugs obstructing door), fire extinguisher mounted not labeled, electrical outlet missing plate all these missed violations could have been referred to safety or cited.

In one of the safety case file the consultant could have cited a 5(a)(1) for PVC used to transfer liquids.

There was a written evaluation report found in all safety and health case files reviewed however, none of the safety and health case files had OSHA 300/PESH logs, and there was no indication whether the employers' 300/PESH logs had been reviewed by the Consultant. Potential hazards could have been missed due to the lack of review of the recordable injuries on the 300/PESH logs.

The monitoring equipment used in health case files was TSI-Q Track. There was no documentation that this equipment was calibrated either pre or post use.

Hazards found in 11 of the 13 Health files reviewed were documented as abated in a timely manner. In 1 health case file an extension request was received however no interim protection was noted in employer's request and extension was granted.

In all of the case files where sampling had been performed the OSHA 91 form was entered and completed however the OSHA 93 had not.

Hazards found in 11 of the 15 Safety case files reviewed were documented as abated in a timely manner.

All case files reviewed had a complete diary sheet completed by either Consultant and/or Supervisor as appropriate.

All of the case files reviewed had some evidence (check boxes on Consultation Form #20) that union representatives were present during opening conference, walkaround and closing conference however, no other written notes were found in case files addressing the level of involvement.

Recommendation 31: 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.

Recommendation 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.

IX. DISCRIMINATION PROGRAM

Discrimination Program Special Study

Three Regional Discrimination Investigators conducted a Special Study of the PESH Discrimination Program on site between January 13, 2010 and February 10, 2010.

The PESH Program and its implementing regulations were reviewed by the study team. Overall; the program appears to be effective, however, several areas of concern were found by the Special Study Team. The areas of concern and recommendations to resolve the issues follow.

The PESH Discrimination program was previously reviewed in 2001. PESH has made substantial improvements since the last review in 2001 though there are areas where the program could be further improved.

Since 2001, program materials and training have improved, procedures are more standardized and the investigative files are better organized. Additionally in response to this current study the NYS Department of Labor is instituting a new settlement policy that empowers investigators to settle cases.

Regarding areas in which PESH's discrimination program can be improved:

- 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.

The team reviewed 24 cases to determine 1) the appropriateness of findings and decisions, 2) the timeliness of investigation and response and 3) the outcome of referrals. We also discussed the program with 4 of the State's 5 investigators, one district supervisor, the PESH Program Manager and the attorney who is assigned to work with the program. The purpose of these interviews was to determine current procedures as they are understood as well as to resolve questions about the case files.

Of the 24 cases reviewed 9 (37.5%) of the cases reviewed were over age. Of those, 3 were over a year old.

5 (20.8%) of all Complainants were not informed of their appeal rights.

6 cases that had been referred were reviewed. 5 had been investigated and one is pending.

In addition during the course of this investigation, PESH began developing a settlement policy that will permit investigators to settle cases rather than have them withdrawn as is the case at the time of the review. Currently, in cases where both sides agree to settle, the Complainant will often withdraw the complaint and in return the Respondent promises to make the Complainant whole. However, absent some enforceable written agreement between the parties, once a case is withdrawn the Complainant no longer has the same degree of protection if Respondent decides not to follow through on its promise.

Permitting the investigators to settle cases may have three positive effects:

1. It may help reduce over age cases;
2. It may provide Complainants with an enforceable written agreement making it harder for Respondents to renege;
3. Settled cases are often the only way to resolve a case and this may improve "customer satisfaction" with PESH;

The credibility and transparency of an investigation is dependent upon the ability of outside parties to examine the files and understand how a particular decision was reached. Thus, one of the objectives of this review was to determine whether or not OSHA would have arrived at the same conclusion as PESH.

Although OSHA may have reached the same conclusions in many of the cases, due to the lack of documentation in case files it was not possible to definitively make this determination in 17 of the 24 cases.

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. The OSHA Whistleblower Investigations Manual states: "Even the most thorough investigation is of little value unless the results are clearly and succinctly communicated to others."⁴

Case file documentation was lacking. 18 of the 24 cases did not contain a table of contents. There were tables of contents for cases that were extensively investigated but not for cases that appeared to have required less investigation.

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.

Counsel's office confirmed that investigators do not need to wait for their review in order to continue the investigation.

Recommendation 33: PESH should test respondent's position statements without waiting for a response from department counsel.

Recommendation 34: Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainants' prima facie allegations.

Recommendation 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.

Recommendation 36: 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).

⁴ DIS 0-0.9, page 5-1

Recommendation 37: PESH should provide pertinent, such as Basic Whistleblowing Training 1420, for discrimination investigators', discrimination investigators' direct supervisors, and all program managers.

X. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPAS)

No CASPAs were received relating to PESH's program in FY2009.

In April 2010 a CASPA was submitted to OSHA alleging; inadequacies in PESH's Discrimination Program procedures, practices, and the adequacy of discrimination complaint investigations, untimely referrals from the New York State DOL Counsel's Office to the Attorney General's office resulting in delays of filing civil law proceedings, and New York State DOL Counsel's Office failing to enforce the anti-discrimination statute.

As of this writing the CASPA is under investigation.

XI. VOLUNTARY COMPLIANCE PROGRAMS

PESH does not have a Voluntary Compliance Program

XII. PROGRAM ADMINISTRATION

Furloughs and hiring freezes

PESH did not experience furloughs or hiring freezes in FY09.

CSHO Training

PESH adopted the Initial Training Program for OSHA Compliance Personnel OSHA Instruction TED-01-00-018 effective date 08/06/08.

TED-01-00-018 provides guidance and direction to those entities who adopt it concerning OSHA's policies, procedures, and mandatory training requirements for CSHOs.

PESH has indicated that CSHO training is a very important part of developing competent compliance officers. Given fiscal challenges, it is apparent that PESH cannot bring their entire enforcement staff up to the requirements of the TED within a short period of time. PESH is making a concerted effort to provide as much mandatory training for their personnel as possible, though they have acknowledged that they have not met the requirements for mandatory training for their staff. PESH

has indicated other issues also work against them fulfilling the requirements of the TED including the limited number of openings in OSHA Training Institute mandatory training classes. In addition, PESH has indicated they would be interested in bringing OTI courses to the region to control travel costs, however, given OTI's limited resources, this option has very limited viability at this time.

In addition, two of the mandatory training courses (Course # 1310, Investigative Interviewing Techniques, and course # 2450 Evaluation of Safety and Health Management Systems) are relatively new courses which also have limited availability due to high demand.

The following is the status of PESH's training status relative to the TED Mandatory Training Requirements based on the training records submitted to the study team for review. It should be noted that PESH has indicated that the training records forwarded to the study team may be incomplete.

During the first year of employment, each CSHO must take the OSHA Initial Compliance Course (#1000) and at least one OSHA Standards Courses (#1050, #1250 or #2000) as described below:

- a. Course #1050 Introduction to Safety Standards for Safety Officers (safety career path/safety specialists).
- b. Course #1250 Introduction to Health Standards for Industrial Hygienists (health career path/industrial hygienists).
- c. Course #2000 Construction Standards (construction career path/construction specialists).

According to PESH's records:

- 11 Safety CSHOs, 5 Safety Supervisors, 13 Health CSHOs, and 1 Consultant had not received the Initial Compliance (#1000) course. PESH has indicated that all of their compliance officers have attended the 1000 course.
- The required OSHA Standards course (Safety or Health as appropriate) was not provided to 19 Safety CSHOs, 6 Safety Supervisors, 21 Health CSHOs, and 1 Health Supervisor. PESH has indicated all of their compliance officers have attended the standards courses.
- The following courses are required to be taken after the CSHO has completed one of the Standards courses.
 - a. Course #1310 Investigative Interviewing Techniques. There were 29 Safety CSHOs, 7 (100%) Safety Supervisors, 21 Health CSHOs, and 1 Health Supervisor that were not provided the training.

- b. Course #1410 Inspection Techniques and Legal Aspects. There were 15 Safety CSHOs, 6 Safety Supervisors, 16 Health CSHOs, and 1 Health Supervisor that were not provided the training.
- c. Course #2450 Evaluation of Safety and Health Management Systems. There were 32 (100%) Safety CSHOs, 7 (100%) Safety Supervisors, 26 Health CSHOs, and 1 Health Supervisor that were not provided the training.
- d. Course #1230 Accident Investigation. There were 24 Safety CSHOs, 6 Safety Supervisors, and 28 Health CSHOs that were not provided the training.

At least one of the following courses is required to be taken during a CSHO's initial three year period to enhance multi-disciplinary competence.

Safety career path CSHOs will take at least one of the following:

- a. Course #1080 Health Hazard Awareness for Safety Officers
- b. Course #1250 Introduction to Health Standards for Industrial Hygienists
- c. Course #2000 Construction Standards

Health career path CSHOs will take at least one of the following:

- a. Course #1280 Safety Hazard Awareness for Industrial Hygienists
- b. Course #1050 Introduction to Safety Standards for Safety Officers
- c. Course #2000 Construction Standards

Construction career path CSHOs will take at least one of the following:

- a. Course #1280 Safety Hazard Awareness for Industrial Hygienists
- b. Course #1050 Introduction to Safety Standards for Safety Officers
- c. Course #1080 Health Hazard Awareness for Safety Officers
- d. Course #1250 Introduction to Health Standards for Industrial Hygienists

Course #8200 Incident Command System I-200 courses or equivalent training (i.e., course conducted by other governmental agencies or web-based course) must be taken during the initial three years of training; however, the specific sequence is not critical.

There are multiple instances where PESH's records indicated CSHOs did not receive mandatory training. It is likely PESH's records are incomplete. Because PESH cannot verify the accuracy of their training records, this report does not contain an instance-by-instance account of the staff training status. .

Recommendation 38: 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".

Appendices

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

Appendix A
FY 2009 New York State Plan (PESH)
Enhanced FAME Report

Findings and Recommendations Summary Chart

FY 2009 New York Public Employee Only State Plan (PESH) Enhance FAME Report
Summary of Findings and Recommendations

	Findings	Recommendations
1	<p>19 health complaint case files were reviewed 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	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.
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.
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.
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.
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	Provide additional training to all field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including: <ul style="list-style-type: none"> • Ensure appropriate abatement periods are assigned for unabated violations.

	review; and PESH does not appear to be pursuing abatement.	<ul style="list-style-type: none"> • 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	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.
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.
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.
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.
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.
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	Internal controls should be implemented to ensure that all required consultation forms are completed, that field

32	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.	notes are maintained in case files, the employee involvement is documented, and that referrals to PESH enforcement are made as appropriate. 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	PESH should test respondent’s position statements without waiting for a response from department counsel.
34	complainants have made a prima facie allegation of discrimination. In many cases the investigation then halts while the investigators wait for a	Overall timeliness can likely be improved by issuing clear guidance to investigators with respect to complainants’ prima facie allegations.
35	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.	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 ⁵ 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”.

Appendix B
FY 2009 New York State Plan (PESH)
Enhanced FAME Report

Enforcement Comparison Summary Chart

New York PESH FY 2009 Enforcement Activity

	New York (PEO)	State Plan Total	Federal OSHA
Total Inspections	2,342	61,016	39,004
Safety	1,618	48,002	33,221
<i>% Safety</i>	69%	79%	85%
Health	724	13,014	5,783
<i>% Health</i>	31%	21%	15%
Construction	682	26,103	23,935
<i>% Construction</i>	29%	43%	61%
Public Sector	2,342	7,749	N/A
<i>% Public Sector</i>	100%	13%	N/A
Programmed	992	39,538	24,316
<i>% Programmed</i>	42%	65%	62%
Complaint	347	8,573	6,661
<i>% Complaint</i>	15%	14%	17%
Accident	22	3,098	836
Insp w/ Viols Cited	917	37,978	27,165
<i>% Insp w/ Viols Cited (NIC)</i>	39%	62%	70%
<i>% NIC w/ Serious Violations</i>	84%	62%	87%
Total Violations	6,047	129,363	87,663
Serious	3,480	55,309	67,668
<i>% Serious</i>	58%	43%	77%
Willful	11	171	401
Repeat	12	2,040	2,762
Serious/Willful/Repeat	3,503	57,520	70,831
<i>% S/W/R</i>	58%	44%	81%
Failure to Abate	22	494	207
Other than Serious	2,522	71,336	16,615
<i>% Other</i>	42%	55%	19%
Avg # Violations/ Initial Inspection	6.3	3.3	3.1
Total Penalties	\$ 20,537	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ -	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	-	\$ 934.70	\$ 977.50
% Penalty Reduced	0.0%	51.9%	43.7%
% Insp w/ Contested Viols	0.0%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	13.1	15.7	17.7
Avg Case Hrs/Insp- Health	17.2	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	25.3	31.6	34.3
Lapse Days Insp to Citation Issued- Health	45.8	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	55	2,010	2,234

Source:

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

Appendix C
FY 2009 New York State Plan (PESH)
Enhanced FAME Report

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

Appendix D
FY 2009 New York State Plan (PESH)
Enhanced FAME Report

FY 2009 State Activity Mandated Measures (SAMM)

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

MAY 06, 2010
 PAGE 1 OF 2

New York

State: NEW YORK

RID: 0253600

MEASURE	From: 10/01/2008		CURRENT	REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE	
1. Average number of days to initiate Complaint Inspections	9656		4044	Negotiated fixed number for each State
	28.56		21.74	
	338		186	
2. Average number of days to initiate Complaint Investigations	0		0	Negotiated fixed number for each State
	0		0	
3. Percent of Complaints where Complainants were notified on time	322		197	100%
	96.12		99.49	
	335		198	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	11		2	100%
	100.00		100.00	
	11		2	
5. Number of Denials where entry not obtained	0		2	0
6. Percent of S/W/R Violations verified				
	0		0	100%
	0		0	
Private				
	3037		1246	
	93.27		87.44	100%
Public	3256		1425	
7. Average number of calendar days from Opening Conference to Citation Issue				

	34027	14712	2490399	
Safety	48.40	43.52	43.7	National Data (1 year)
	703	338	56938	
	20595	12728	693557	
Health	76.56	90.26	57.3	National Data (1 year)
	269	141	12106	

*SAMMNY

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

MAY 06, 2010
 PAGE 2 OF 2

State: NEW YORK

RID: 0253600

MEASURE	From: 10/01/2008	CURRENT	REFERENCE/STANDARD
	To: 09/30/2009	FY-TO-DATE	
8. Percent of Programmed Inspections with S/W/R Violations			
	560	255	92284
Safety	75.88	81.47	58.5 National Data (3 years)
	738	313	157874
	123	79	11008
Health	51.25	63.71	51.1 National Data (3 years)
	240	124	21554
9. Average Violations per Inspection with Vioations			
	3487	2014	421099
S/W/R	3.58	4.20	2.1 National Data (3 years)
	972	479	201260
	2511	1139	243733
Other	2.58	2.37	1.2 National Data (3 years)
	972	479	201260
10. Average Initial Penalty per Serious Violation (Private Sector Only)			
	0	0	493310477
			1337.1 National Data (3 years)
	0	0	368954
11. Percent of Total Inspections in Public Sector			
	2350	1142	5794
	100.00	100.00	100.0 Data for this State (3 years)
	2350	1142	5795
12. Average lapse time from receipt of Contest to first level decision			
	0	0	4285387
			235.8 National Data (3 years)
	0	0	18174
13. Percent of 11c Investigations			
	14	14	100%

Completed within 90 days	60.87	73.68		
	23	19		
14. Percent of 11c Complaints that are Meritorious	0	0	1472	
	.00	.00	20.8	National Data (3 years)
	23	19	7079	
15. Percent of Meritorious 11c Complaints that are Settled	0	0	1271	
			86.3	National Data (3 years)
	0	0	1472	

*SAMMNY

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E
FY 2009 New York State Plan (PESH)
Enhanced FAME Report

FY 2009 State Inspection Report (SIR)

OSHA REPORT
(RSGCOVER)

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

2010-05-06

New York

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

TYPE OF REPORT: INSPECTION

USER SELECTION NAME: INSP08NY

DATE OF REPORT: 2010-05-06

REQUESTOR: OSH311

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

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

OPENING CONFERENCE DATE: 01 OCT 2008 THRU 30 SEP 2009

REGION: 02 - N.Y. CENTRAL

LAPSE DAYS INSP TO CIT ISSUED

AVG LAPSE SAFETY INSP	14.3	15.2	41.7	20.9	56.3	67.9	12.9	19.5	26.6	25.3
AVG LAPSE HEALTH INSP	49.9	39.8	39.3	72.0	98.7	49.9	23.4	27.4	53.4	45.3
AVG LAPSE ALL INSP	18.0	18.6	41.0	47.9	63.2	63.3	15.6	22.2	30.9	30.1

Appendix F
FY 2009 New York State Plan (PESH)
Enhanced FAME Report

FY 2009 Mandated Activities Report for Consultation (MARC)

PROJECT NAME: New York

PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	105	402	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	57	253	
Percent	91.94	94.76	
Number of Initial Visits	62	267	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	62	267	
Visits <= 250 Employees in Estab	53	249	
Percent	85.48	93.26	
Visits <= 500 Employees CB by Empr	38	197	
Percent	61.29	73.78	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	59	259	
Percent	95.16	97.00	
Number of Initial Visits	62	267	
Follow-Up	7	17	
Number with Empe Conferences	100.00	100.00	
Percent	7	17	
Number of Follow-Up Visits			
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	5	21	
Percent	100.00	100.00	
Number of T&A Visits	5	21	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: New York PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	116	196	
Percent	100.00	95.61	
Total Serious Hazards	116	205	
Number of Serious Hazards Verified Corrected:	116	196	
On-Site	3	6	
Within Original Time Frame	78	138	
Within Extension Time Frame	14	26	
Within 14 Days of Latest Correction Due Date	21	26	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	9	
Percent	.00	4.39	
Total Serious Hazards	116	205	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent	.00	.00	
Total Serious Hazards	116	205	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	81	144	
Percent	69.83	70.24	
Total Serious Hazards	116	205	

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	81	144	
On-Site	3	6	
Within Original Time Frame	78	138	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

****PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION**