

FY 2015 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

**NORTH CAROLINA DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH DIVISION**



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I. Executive Summary

A. State Plan Activities, Trends, and Progress

The Fiscal Year (FY) 2015 North Carolina Department of Labor, Occupational Safety and Health Division (OSHNC) Federal Annual Monitoring Evaluation (FAME) resulted in a comprehensive FAME Report that focused on the State Plan's overall performance in their enforcement, cooperative programs, and compliance assistance activities. This report is also based on the results of quarterly onsite monitoring visits, the FY 2015 State Office Annual Report (SOAR), the State Activity Mandated Measures (SAMM) Report, as well as OSHA Express reports ending September 30, 2015.

A five-person OSHA team was assembled to conduct the onsite evaluation in Raleigh, North Carolina, during January 2015. The OSHA team's evaluation consisted of case file reviews, a review of OSHNC's performance statistics, staff interviews, and observations of OSHNC's Strategic Management Plan Committee meetings.

Staffing issues continue to be reviewed with OSHNC. There has been a decrease in inspectors over the last two years. Although steps are being taken to fill positions, there are still a significant numbers of field compliance staff vacancies, which has significantly impacted inspection activity over the last two years. Specifically, a policy was expanded to financially reward OSHNC safety and health professionals who attained work-related certification and licenses. Also, the NC General Assembly provided funds to bring salaries closer to those of the private sector.

OSHA identified two findings and seven observations for OSHNC for this FY 2105 evaluation. There were no findings that remained from the FY 2014 FAME. A detailed account of the findings and observations are discussed in this report, and the findings and observations are related to: deficiencies not identified on the OSHA-300 logs, grouping non-serious to serious violations, abatement documentation for violations corrected during the inspection, failure to obtain written interview statements, and state and local government sector consultation program documentation.

OSHNC continues its outreach to employers and workers with hazard alerts, industry guides and posters, as well as focused training. The state's latest injury and illness rate for private industry achieved an all-time low of 2.7 per 100 full-time workers in 2014. The U.S. Bureau of Labor Statistics (BLS) compiles the injury and illness rate data. Based on the most recent data released by BLS, North Carolina was one of 12 states with a total recordable case rate statistically lower than the national average of 3.4.

Total Recordable Cases (TRC) and Days Away Restricted and Transferred (DART) Rate Comparison*

CY 2014**	North Carolina		National Average		Comparison
TRC Rate	2.7	2.9*	3.2	3.4	% Lower Than National Average*

<i>DART Rate</i>	1.4	1.5*	1.7	1.8*	<i>% Lower Than National Average*</i>
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**All industries, including state and local government.*

***CY = Calendar Year*

Temporary Workers

In response to the unique issues facing temporary workers and OSHA’s temporary worker initiative policy, the State Plan developed their own Temporary Worker Inspection Activity policy document. Operational Procedure Notice (OPN) 146 provides guidance on conducting inspections and issuing citations associated with the temporary workforce.

OPN 146 also outlines the scope of temporary worker inspection activity and provides specific guidance on opening and expanding inspections. The OPN includes a questionnaire that may be used during an inspection to determine the employment structure and delegation of responsibilities. An example of a hazard alert letter and reference document made available by OSHA are also included in the OPN.

Worker Misclassification

On December 18, 2015, Governor Pat McCrory issued Executive Order #83, entitled the “Employee and Employer Fairness Initiative”. This Executive Order addresses the issue of businesses that engage in worker misclassification by improperly classifying their workers as independent contractors, which enables businesses to avoid the liabilities and obligations imposed by state and federal law. The order also establishes an Employee Classification Section within the North Carolina Industrial Commission to investigate complaints and referrals associated with worker misclassification.

The Executive Order encourages the Commissioner of Labor and other agencies to designate workers to serve as a liaison to this new Industrial Commission Section. It has been requested that the designated NCDOL liaison provide referrals associated with potential instances of worker misclassification to the Industrial Commission on a monthly basis. NCDOL will make such referrals when they become aware of a potential worker misclassification. A new state “S” code has been created in OSHA Express for compliance officers to identify inspections where an issue of potential worker misclassification has arisen.

In FY 2015, the State Plan worked with OSHA to ensure consistent training with the OSHNC compliance staff. The North Carolina Special Deputy Attorney General participated in the OSHA Training Institute’s course, Misclassification of Workers and Advanced Legal Aspects. In addition, the OSHNC East Bureau Chief and supervisors attended an internal Region IV training course which covered the topics, such as temporary workers and worker misclassification.

B. State Plan Introduction

The North Carolina Occupational Safety and Health State Plan received final approval under Section 18(e) of the OSH Act on December 18, 1996. The official designated as responsible for administering the program under the Occupational Safety and Health Act of North Carolina is the Commissioner of Labor, who, as a constitutional officer, is an elected official. The Commissioner of Labor currently and during the period covered by this evaluation is Cherie K. Berry. Within the North Carolina Department of Labor, the Occupational Safety and Health Division has responsibility for carrying out the requirements of the State Plan. Allen McNeely serves as Deputy Commissioner/Director of the Occupational Safety and Health (OSH) Division, and Kevin Beauregard serves as Assistant Deputy Commissioner/Assistant Director of the OSH Division.

The OSH Division is organized into the following operating units: East and West Compliance Bureaus; Bureau of Education, Training, and Technical Assistance (ETTA); Bureau of Consultative Services; Bureau of Planning, Statistics, and Information Management (PSIM), and the Agricultural Safety and Health (ASH) Bureau. The main office and a district office are located in Raleigh, with four additional offices located in Asheville, Charlotte, Winston-Salem, and Wilmington. There are a total of 231 positions funded under the 23(g) grant, with 98 of those positions being 100% state-funded. This includes 64 safety compliance officers and 47 health compliance officers assigned to district offices throughout the state. Additional safety and health professionals work in ETTA with responsibilities related to training, development of outreach materials and standards, and the Carolina Star Program [Voluntary Protection Program (VPP)]. The worker population in North Carolina consists of approximately 4,279,385 workers, and there are approximately 261,977 establishments.

Worker protection from discrimination related to occupational safety and health is administered by the Employment Discrimination Bureau, which falls under the Deputy Commissioner for Standards and Inspections in the North Carolina Department of Labor. This bureau covers several types of employment-related discrimination in addition to discrimination that falls under jurisdiction of the State Plan.

Private sector onsite consultative services are provided through a 21(d) grant with the North Carolina Department of Labor. There are 20.6 positions funded under the 21(d) grant, including consultants, administrative staff, and managerial workers. Three of the 21(d) personnel are 100% state-funded. State and local government sector 23(g) grant consultative services, enforcement, and compliance assistance activities are carried out by the same staff, following the same procedures as the private sector.

C. Data and Methodology

This report was prepared under the direction of Kurt A. Petermeyer, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2014 through September 30, 2015. It was compiled using information gained from the FY 2015 SOAR, interviews with the OSHNC staff, OSHA Express reports, case file review, as well as the SAMM Report for FY 2015. In addition, information collected during the routine monitoring of the OSHNC by OSHA's Regional and Raleigh Area Offices was

also used as a basis for this evaluation.

OSHA has established a two-year cycle for the FAME process. This is the comprehensive year, and as such, OSHA performed on-site case file reviews. The sample size for the onsite case file review was derived in accordance with Chapter 7 of the State Plan Policies and Procedures Manual, FAME and Annual Reports. The total population was the number of programmed inspections, un-programmed inspections, complaint and referral investigations and inspections, and whistleblower investigations opened and closed during FY 2015. A percentage of the total population for programmed inspections, un-programmed inspections, and complaints and referrals was calculated accordingly and applied to the sample size to determine the number of case files to be reviewed. Inspections were selected resulting in 38 programmed inspections, 20 un-programmed inspections, 20 complaint and referral investigations, and 22 fatality inspections. Sixteen discrimination cases were chosen based on the types of investigator cases and the age of the case, with respect to variable lapse times. In addition, 10 state and local government sector consultation case files were reviewed for a total of 126 case files. Finally, interviews were conducted with compliance safety and health officers (CSHOs), managers, and whistleblower investigators. Information regarding debt collection was also obtained from interviews and a debt collection presentation by the Budget Division.

D. Findings and Observations

The FY 2014 Follow-up FAME Report contained no findings or observations. During the FY 2015 evaluation period a total of two findings and seven observations were identified. One finding is related to deficiencies not identified on the OSHA-300 logs, and the other finding is related to process safety management (PSM) documentation. The enforcement observations relate to grouping non-serious to serious violations, obtaining written interview statements, abatement documentation for violations corrected during the inspection, and informal conference notes. The two observations related to the discrimination program include docketing cases in IMIS and non-litigated merit cases. Specific details of the findings and recommendations are provided in Appendix A and observations in Appendix B.

II. Major New Issues

The FY 2015 SOAR documented that the State Plan did not meet its state-initiated activity goal for compliance inspections in FY 2015. This is not a new issue. A decrease in the number of compliance inspections began in FY 2014. This reduction in compliance activity has not had a negative impact on the State Plan's outcome-based goal of reducing injury and illness rates and fatality rates. However, it is a program area which the State Plan continues to monitor. Analysis has determined that there were a number of underlying reasons for the decline in the number of compliance inspections. These factors include:

- Budget uncertainty - the State Plan has had to freeze CSHO positions for various lengths of time during the year.
- The State Plan also lost experienced and productive CSHOs as a result of OSHNC salaries that were not competitive with other safety and health employers.
- Less experienced CSHOs require more time to complete inspections, especially more complicated investigations.

The State Plan took specific action during FY 2014 and continued in FY 2015 to try to address the retention issue. A policy was expanded to financially reward OSHNC safety and health professionals who attained work-related certifications and licenses. The designations qualifying for a pay increase have increased significantly and are listed in the program policy document. In 2015, 80 of the division's safety and health professionals received salary increases as a result of attaining specific certifications. In 2016, a certification preparatory course was offered to help additional workers to receive certification. A total of 29 workers attended this course. Exam preparation software is also available electronically for use by all workers. It is envisioned that these salary adjustments will work to improve the division's retention rate.

The State Plan also continues to pursue additional funding sources at both the state and federal levels. This includes action by the Commissioner of Labor to communicate these salary issues directly with members of the North Carolina General Assembly. In 2016, the General Assembly provided specific funding to compensate safety and health professionals whose salaries were below the private sector salary market value. NCDOL workers had previously received these funds. In 2015, a one-time payment of \$750 was provided to all workers. There is also some indication that across the board salary increases will be proposed for all state workers in 2016.

Funding amounts also continues to be an issue at the federal level. The state is currently providing 71% of the total North Carolina State Plan program budget. A federal allocation of funds that would put the state closer to a 50/50 budget amount could have a positive impact on program activity. The state continues to share this issue with OSHA.

While overall inspection goals were not reached, inspection goals in most of the areas of emphasis were attained. This included activity in construction, grocery and related product wholesalers, long-term care, and food manufacturing. The State Plan also met consultative services intervention goals and training goals. This specific activity in areas of emphasis should minimize any negative effect from a reduction in the total number of compliance inspections.

III. Assessment of State Plan Performance

A. STATE PLAN ADMINISTRATION

1. Training

ETTA is responsible for training OSHNC personnel and employers across the state. ETTA conducted 296 training sessions to outside interests and trained a total of 10,227 employers and workers, including 4,438 trained in areas of emphasis in the Strategic Plan. The 10 most frequently taught topics were fire prevention; laboratory standards; noise; hazardous waste operations and emergency response; powered industrial trucks; chainsaw safety; the Health Hazards Special Emphasis Program (SEP); electrical safety (general industry); fall protection; and respiratory protection. In addition to the larger courses, OSHNC provided 79 webinars, nine OSH workshops, and six training events using the Labor One mobile training unit. ETTA staff also exhibited at 21 safety and health fairs, industrial conferences, and workshops.

In FY 2015, 63,531 publications were distributed in support of the division's outreach and regulatory goals to promote a safe and secure work environment across the state of North Carolina. Also, during FY 2015, two new industry guides were developed: OSHA Shipyard Employment Standards and OSHA Marine Terminal Standards.

In addition, five industry guides were reviewed and revised, including: A Guide to Safety in Confined Spaces, OSHA General Industry Standards, OSHA Construction Standards, OSHA Agriculture Standards, and Occupational Safety and Health Specific Standards for Agriculture.

Seven brochures on green tobacco sickness, manager of environmental safety and health, NCDOL (Spanish), Labor One, the Long-Term Care SEP, the Hazardous Chemicals Right to Know Act, and the Construction Topics Toolbox Review Booklet were revised, along with two Quick Cards on carbon monoxide (English and Spanish) and new reporting requirements. Two Hazard Alerts were updated: Tobacco Harvester Safety (English and Spanish) and Mower Safety.

ETTA conducts OSHA Training Institute (OTI) equivalent training for OSH Division compliance staff. The North Carolina OSH Division directive, Operational Procedure Notice (OPN) 64E, establishes the policies and procedures for the initial training of compliance staff and with few exceptions mirrors OSHA's TED-01-00-019. By conducting internal training, ETTA trains its workers at the appointed times and at a lower cost. They utilize their senior compliance officers to augment the ETTA staff to conduct the training. They also hire outside subject matter experts to conduct specialized training as needed.

A review of selected training records revealed that newly hired compliance officers are on pace to complete all their required initial training courses within the specified three-year period as outlined in the OSHA TED-01-00-019 and OPN 64E. Senior compliance officers also receive formal training on a regular basis. Interviews with the staff also indicated that the OPN is being followed. They also referenced Field Operations Manual (FOM) procedures and were provided training on the State Plan's policies and procedures. The review of the North Carolina State Plan's training programs reveal a well-implemented and well-run program with no deficiencies noted.

2. Funding

The last financial audit of the OSHNC 23(g) grant conducted by the OSHA Regional Office was focused on FY 2011. During that period, total 23(g) grant authorized funding was \$17,658,822 (federal funds amounted to \$6,000,093, and non-federal funds equaled \$11,658,729). For the quarter ending December 30, 2011, the actual federal expenditures reported in the Health and Human Services Payment Management System (HHSPMS) and recorded on the Certified Closeout Financial Status Report were \$6,000,093. Review of the 23(g) grant revealed the grantee expended 100% of authorized federal funds for the period ending December 30, 2011. There were no issues to report.

The table below shows OSHNC's funding levels from FY 2012 through FY 2015.

FY 2012-2015 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% of State Plan Contribution
2015	5,326,000	5,326,000	7,609,103	18,261,103	70.83
2014	5,302,500	5,302,500	8,043,163	18,648,163	71.57
2013	5,272,000	5,272,000	7,300,194	17,844,194	70.46
2012	5,501,500	5,501,500	6,838,216	17,841,216	69.16

3. Staffing

Because of funding uncertainty, the State Plan operated with 15 vacancies as of October 1, 2014. During this period, the OSHNC's staffing levels were below the established benchmarks for the program, but at an acceptable level based on the benchmark criteria. However, the State Plan remains committed to staffing its program to the appropriate level within the current budgetary constraints.

		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Safety	Benchmark	64	64	64	64	64
	Positions Allocated	64	64	64	64	64
	Positions Filled	50	61	51	56	51
	Vacancies	14	3	13	8	13
	Percent of Benchmarks Filled	78.1	95	80	87.5	80
Health	Benchmark	50	50	50	50	50
	Positions Allocated	51	48	48	46	46
	Positions Filled	44	44	41	38	36
	Vacancies	6	3	6	7	9
	Percent of Benchmarks Filled	88	88	87	84	80

The table below shows the number of OSHNC's full-time and part-time staff as of the end of FY 2015.

*FTE=Full-Time Equivalent

23(g) Grant Positions	FY 2015 Staffing						
	Allocated FTE* Funded 50/50	Allocated FTE 100% State Plan Funded	Allocated FTE 100% Federal Plan Funded	Total	50/50 Funded FTE On Board as of 01/1/15	100% State Plan Funded FTE On Board as of 01/1/15	100% Federal Plan Funded FTE On Board as of 01/1/15
Managers/ Supervisors (Administrative)	3.2	0	0	3.2	3.2	0	0
First-Line Supervisors (Program)	9.4	8.8	.5	18.7	8.2	8.8	.5
Safety Compliance Officers	39	29	0	68	34	22	0
Health Compliance Officers	9	34	2	45	8	27	2
Discrimination Investigator	0	3	0	3	0	3	0
State and Local Government Sector Safety Consultants	1.6	.7	0	2.3	1.4	.7	0
State and Local Government Sector Health Consultants	.8	.7	0	1.5	.8	.7	0
Compliance Assistance Specialist	0	0	1	1	0	0	1
Trainers	2	4	1	7	1	4	1
Clerical	12.6	10	2	24.6	12.4	10	2
Other (all positions not counted elsewhere)	12.1	10	4	16.1	11.1	10	4
Total 23(g) FTEs	89.7	100.2	10.5	200.4	80.1	86.2	10.5

4. Information Management: OSHA Information System and OSHA Express

The State Plan has consistently used various IMIS and OSHA Express reports to manage the program and track OSH Division activity. This includes both mandated activity and activity goals and outcome goals included in the Strategic Management Plan. The reports are utilized by all levels of management from senior management to bureau chiefs and district supervisors. The reports are used not only to track program activity but to also assess activity by individual CSHOs. The frequency of report runs can vary from weekly

to quarterly as conditions dictate. By tracking activity, a potential outlier can be detected before it becomes a real issue. In FY 2013, OSHNC contracted with Assured Consulting Services, Inc. to develop an NCR replacement system. In FY 2014, OSHNC began utilizing OSHA Express for consultation and compliance. OSHA Express is set-up to interface with OIS and transfer data to the federal system.

5. State Internal Evaluation Program (SIEP) Report

OSHNC has an effective internal audit procedure, documented in Administrative Procedure Notice 14. The Director's Office staff conducts regular comprehensive assessments of bureaus within the OSH Division, including case file reviews. OSHNC's internal audits are consistent with a third party audit. During FY 2015, a comprehensive audit was conducted of the Consultative Services Bureau, including case file review. In addition, a total of 11 action requests were processed by the OSH Division to address opportunities for improvement identified by customers and division workers and as a result of internal and OSHA audits. Action requests are completed for observed non-conformities and opportunities for improvement. Action requests are submitted to the affected bureau's management representative and reviewed during a quarterly management meeting with the bureau chiefs and Assistant Director. Action requests often result in changes to the FOM.

B. ENFORCEMENT

1. Complaints

OSHNC's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of OSHA. These procedures are covered in Chapter IX of the State Plan's FOM. The OSH Division Complaint Desk processed 1,834 complaints and 709 referrals in FY 2015. This was a significant increase over the 1,527 complaints and 190 referrals in FY 2014. Over 2,500 contacts were made with the public that did not result in a valid complaint.

Inspection data indicates that OSHNC handled 455 complaint investigations in FY 2015 and conducted 764 complaint inspections. According to the OSHA Express SAMM Report, OSHNC responds timely to complaints. Complaint investigations were initiated within an average of 2.72 days, and complaint inspections were initiated within an average of 6.09 days. A review of the OSHA Express reports showed that during FY 2015, approximately 10% of their complaint inspections were in compliance.

OSHNC handles the intake of complaints with a central Complaint Desk processing model. CSHOs work at a specified location with computers to receive electronic complaints and with dedicated phone and fax lines to also receive complaints. Complaints can be filed by using the OSHNC internet complaint form, the OSHA internet complaint form, mail, email, phone, or fax. After the complaint is received, the

Complaint Desk CSHO provides the complaint information to the appropriate district office for evaluation by the district supervisor.

Twenty-two complaints and eighteen referrals were reviewed to determine if they were processed in accordance with FOM Chapter IX, Complaints, Referrals, and Accidents Policies and Procedures. Complaints were handled timely and, in most cases, following the requirements of the FOM. Abatement documentation was adequate and complaint allegations were tracked to ensure that corrective action was completed and workers were protected from unsafe and unhealthful working conditions. Letters were sent to the complainants 100% of the time with the results of the inspection. No deficiencies were identified.

2. Fatalities

OSHNC's procedures for investigation of occupational fatalities are effectively the same as those of OSHA. A review of the fatality inspection files showed that fatality inspection procedures were followed. The North Carolina Office of the Attorney General works closely with the CSHO when a fatality case file is being prepared to ensure that the case documentation is legally sufficient. Contacts between the CSHO and the attorney were documented in the case files. Fatality investigations are required by Administrative Procedure Notice (APN) 16 to go through a review by a Citation Review Committee, made up of senior management and legal staff prior to issuance of citations or determination of an in-compliance investigation. The determination must be reviewed and signed by the OSH Director. Informal settlement agreements related to fatality cases also receive a higher level review.

As shown below, fatalities rose in North Carolina from 40 in FY 2014 to 42 in FY 2015. Fatality figures for FY 2015 show 15 construction fatalities, which is two less than the same time period last year. Manufacturing and agriculture have the second highest number of work-related deaths with seven each. There were two fewer fatalities in manufacturing from FY 2014 and four more fatalities in agriculture, forestry, and fishing.

FY 2014		FY 2015	
By Industry:	#	By Industry:	#
Construction	17	Construction	15
Manufacturing	9	Manufacturing	7
Transportation & Public Utilities	3	Transportation & Public Utilities	2
Wholesale Trade	1	Wholesale Trade	1
Retail Trade	0	Retail Trade	3
Services	5	Services	5
Agriculture, Forestry, Fishing	3	Agriculture, Forestry, Fishing	7
Government	1	Government	2
Finance: Insurance & Real Est.	1	Finance: Insurance & Real Est.	0
Other	0	Other	0
Total	40	Total	42

The OSH Division has identified four hazards known as “the big four” that have caused 80% of the work-related deaths in North Carolina during the past decade. The leading cause of the work-related fatalities in FY 2015 was struck-by events, which caused 15 fatalities. Thirteen workers died in falls from elevations, four workers died after being caught in between objects, and eight were electrocuted.

SAMM data indicated that OSHNC responded to 86% of fatalities within one day. A review of each case indicated that all but one was inspected within one day of the accident report date that was established after securing all the information required to initiate an inspection. The one exception was a farm where ASH was informed by the Chief Office of the Medical Examiner three months after the fatality. The notification was received on Friday, and the case was opened on Monday. The State Plan took additional steps to develop procedures for entering and processing fatalities, catastrophes, and accidents into OSHA Express to assist with the data entry inconsistencies.

A new next-of-kin notification function was also added to OSHA Express. This function helped to ensure that contact was made with the next-of-kin during the inspection process. All the next-of-kin letters were identified in the case file review. Files reviewed contained sufficient documentation that supported the violations cited, and the causes of the accidents were clearly explained. All the fatality files contained very detailed narratives providing a clear picture of the accident and the process involved in reaching a conclusion. No problems were noted in the fatality investigation files reviewed.

3. Targeting and Programmed Inspections

OSHNC has a variety of SEPs, some of which are associated with their strategic goals and some of which are National Emphasis Programs (NEPs). The State Plan’s general industry programmed safety targeting schedule includes establishments based on their injury and illness rates and number of serious safety violations per inspection for each high-hazard industry. The criteria for the general industry programmed health targeting schedule includes establishments based on the number of serious health violations per inspection. OSHNC also conducts a high number of programmed inspections in the construction sector, particularly under their SEP for high emphasis counties. These are associated with the State Plan’s strategic goal to reduce construction fatalities. Many programmed construction inspections are partial in scope, in accordance with their focused inspection procedure. OSHNC conducts an annual State and Local Government Sector Injury and Illness Survey, and the data collected is utilized to generate inspection assignments for each category of employers. Agricultural assignments are made using the pre-occupancy requirements as criteria for selection. Other specific targeting schedules within their entire targeting system include assignments for food manufacturing, long-term care, health hazards, communication towers, and fatality re-inspections. All targeting schedules are designed to provide inspection assignments to maximize the State Plan’s impact on safety and health in the workplace.

According to inspection statistics run for this report, OSHNC conducted 2,891 inspections in FY 2015, 1,375 (47%) of which were programmed. A total of 705 programmed inspections were conducted in the construction sector. OSHA Express data

indicates that an average of 2.26 violations were cited per inspection and that 69% of safety violations and 31% of health violations were classified as serious, repeat, or willful.

The following tables outline the total number of violations for programmed activity.

General Industry Programmed Inspections	OSHNC
Average Number of Violations	2.9
In-Compliance Rate	27%
% Violations Classified as Serious, Repeat, and Willful	33%

Construction Programmed Inspections	OSHNC
Average Number of Violations	1.7
In-Compliance Rate	29%
% Violations Classified as Serious, Repeat, and Willful	82%

In addition, targeting schedules were also updated, and assignments were released for: the state and local government sector schedule, general industry schedules (safety and health), ASH schedule, health hazards schedules (asbestos, lead, and isocyanates), fatality re-inspection schedule, and communication tower schedule.

4. Citations and Penalties

OSHNC’s average current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$1,380.44 in FY 2015. The further review level (FRL) is +/-25% of the national average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are, therefore, required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in the FOM, which was revised on October 1, 2015, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the consumer price index each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

In FY 2015, the 2,891 inspections conducted resulted in an average of 1.90 violations per inspection, with 52.9% of violations classified as serious. OSHNC routinely places an emphasis on keeping citation lapse times low. The following table outlines the average lapse time (in days) from opening conference to citation issuance.

Average Lapse Time	OSHNC	OSHA
Safety	40	45
Health	41	59
Total Average	40	48

A focus of the review regarding citations and penalties was the grouping of violations. OSHNC's policy for grouping is very similar to that of OSHA. Items that are related hazards, items in which a single abatement would correct both violations and hazards, and items that when grouped together would create a serious hazard can be grouped. During the review, case files were identified where grouping non-serious violations could have resulted in a serious violation. Grouping or combining non-serious violations noted on an inspection could have an impact on the percent serious rate.

During the review, it was noted that several of the case files did not include OSHA's Form 300 Log of Work-Related Injuries and Illnesses or an analysis of the data. Chapter III of OSHNC's FOM requires that injury and illness records be examined and verified on all inspections where the employer is required to keep records. It is important to document the number and type of any recordable injuries or illnesses, particularly in cases where the company was targeted for inspection due to high industry rates. During the review, it was noted that possible trends and recordkeeping deficiencies were not identified by compliance officers while reviewing OSHA's Form 300 Log. In addition, citations were not issued to the employer for recordkeeping deficiencies.

Most case files reviewed included adequate documentation to support the violations. The case files that were reviewed were well-documented with very detailed narratives explaining the inspection process, the employer's business and processes, findings, and any other issues. However, signed interview statements were not included in several files. Proper documentation of worker interviews to determine employer knowledge, exposure to hazards, and the length of time hazardous conditions existed should be obtained in a signed statement. The OSHNC FOM does have similar policies on how to conduct worker interviews in comparison to OSHA policies.

The following table outlines the average current penalty per serious, repeat, and willful violations for private sector inspections for FY 2015.

Classification	OSHNC	OSHA
Willful	\$37,222	\$40,494
Repeat	\$3,274	\$7,711
Serious	\$1,450	\$2,190

In FY 2015, OSHNC issued 11 willful violations, 121 repeat violations, and two failure-to-abate violations. All willful violations were reviewed by the Bureau Chief and the Attorney General's Office prior to issuance. According to the State Plan's OSHA Express data, OSHNC's percent serious/willful/repeat/unclassified was 55% in FY 2015, compared to OSHA serious/willful/repeat/unclassified at 79%.

OSHNC also conducted two inspections as a result of referrals from OSHA under the Severe Violator's Enforcement Program. In addition, there were a total of eight inspections classified as PSM conducted in FY 2015.

As noted, there were 2,891 enforcement inspections (1,169 construction and 1,722 general industry) conducted during FY 2015, resulting in 5,484 violations. OSHNC enforcement issued three significant inspections in FY 2015. A highly publicized case involving an employer being cited for violations resulted from three workers who were killed as a result of mast climber work platform collapse. OSHNC issued \$151,900 in fines after three workers fell to their deaths at a Raleigh worksite. Inspectors found that scaffolding was not tied to the building according to the manufacturer's recommendations and that too much weight was placed on the scaffolding when it was being dismantled.

Finding FY 2015-01: Some case files were either missing copies of the OSHA-300 logs, or an analysis of the data found on the OSHA-300 log was not adequately reviewed. In addition, citations were not issued to the employer for OSHA-300 log deficiencies.

Recommendation FY 2015-01: OSHNC should ensure that compliance officers request and include copies of the OSHA-300 log in the case file for each inspection for the last three years and review trends and hazards recorded on the logs. OSHNC should also ensure that case files are reviewed to ensure that citations are issued to employers for OSHA-300 log deficiencies.

Observation FY 2015-OB-01: In 14.4% (13 of 90) of cases reviewed, similar non-serious violations were not grouped as a serious violation, as referenced in Chapter 5 of the OSHNC FOM.

Federal Monitoring Plan FY 2015-OB-01: During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

Observation FY 2015-OB-02: Interview statements were not always obtained to document an apparent violation.

Federal Monitoring Plan FY 2015-OB-02: During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

5. Abatement

Available procedures and inspection data indicate that OSHNC obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. The bureau chiefs run a weekly past due abatement report that is shared with supervisors and is sorted by CSHOs. Confirmation of abatement is also a measure in the work plan for each CSHO.

OSHNC conducted follow-up inspections according to their policy and procedures. Supervisors assigned follow-up inspections to CSHOs based on the criteria listed in the FOM. Follow-up inspections accounted for 5% of the total inspections in North Carolina for FY 2015. Follow-up inspections are useful to ensure abatement if there is a problem with abatement verification.

The majority of case files reviewed contained written documentation, photographs, work orders, or employer's certification of abatement. Petitions for Modification of Abatement were appropriately provided when the employer requested an extension for their corrective action timeframe. Interim protection information was provided in the case file.

However, in several of the case files reviewed where serious hazards were identified and the abatement was classified as "corrected during inspection," the files did not contain the specific information outlining the corrective action observed by the compliance officer. A violation can be considered corrected during the inspection when the compliance officer witnesses the correction to the specific violation while onsite. OSHNC requires that the worksheet must contain information on how the violation was abated.

Observation FY 2015-OB-03: When abatements were classified as "corrected during inspection" for serious hazards identified, the compliance officer did not document in the case file the specific corrective actions taken by the employer to abate the hazard.

Federal Monitoring Plan FY 2015-03: During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

6. Worker and Union Involvement

North Carolina's procedures for worker and union involvement are identical to those of OSHA. Case files reviewed disclosed that workers were included during fatality investigations and other inspections. All of OSHNC's initial inspections were conducted with worker walk around representation or worker interviews. OSHNC continued ongoing participation in meetings with advocacy groups and worker representatives. This included groups, such as the North Carolina Justice Center, AFL-CIO, Farm Labor Organizing Committee, General Consulate of Mexico, Farm Worker Action Network, United Food and Commercial Workers Union, Western North Carolina Workers Center and Farmworker Advocacy Network. Dialogue will continue in FY 2016.

C. REVIEW PROCEDURES

1. Informal Conferences

OSHNC has procedures in place for conducting informal conferences and proposing informal settlement agreements, and these procedures appear to be followed consistently

by district supervisors. For citations that were resolved by means of an informal settlement agreement, the percent of penalty reduction was approximately 33.5%. Informal settlements for cases that are required to go through the Citation Review Committee process prior to the issuance of citations must also go through a review procedure prior to settling the case.

While the informal conference sheet was primarily used to express the reason for the changes to the violations, it did not always contain enough detail to be clear as to why reductions were done. Several case files reviewed did not document modifications to the violations.

Observation FY 2015-OB-04: Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files.

Federal Monitoring Plan FY 2015-OB-04: During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

2. Formal Review of Citations

In FY 2015, 4.1% of inspections were contested. The OSH Division is represented by attorneys in the North Carolina Office of the Attorney General. The attorneys are assigned exclusively to represent the division, and they receive specific training on legal issues relating to occupational safety and health.

The attorneys participate in organizations, such as the State OSHA Litigators Organization, where state and federal high profile cases and cases with special legal issues are shared and discussed. The division also utilizes the Department of Labor's in-house attorneys who advise on various legal issues. All fatalities and high profile cases are considered by the Citation Review Committee before citations are issued. This committee is made up of OSH Division management, staff attorneys, and attorneys in the Office of the Attorney General.

The North Carolina Review Commission is an independent body that hears and issues decisions on appeals relating to the issuance of citations and the assessment of penalties by the OSH Division. Commission members are appointed by the governor for terms that usually run for six years. All commission hearings are open to the public, and decisions are available for public review on the commission's web page.

The OSH Division can request judicial review of decisions made by the Review Commission. The division is advised on these matters by the Office of the Attorney General, with input from the Commissioner of Labor's Office. The Review Commission provides a copy of each decision to the OSHA Area Director. No negative trends or problems were noted.

An additional level of case file review for high profile cases was created in FY 2015 with

the establishment of the position of OSH reviewer and program analyst. This position reports to the OSHNC Assistant Director.

D. STANDARDS AND FEDERAL PROGRAM CHANGES ADOPTION

1. Standards Adoption

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, OSHNC adopted all of the federal directives or "as effective as" procedures and OSHA-initiated standards which required action in a timely manner. The tables below provide a complete list of the federal directives and standards which required action during this period.

Standards Adopted in FY 2014 and FY 2015

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Final Rule for Confined Spaces in Construction	05/04/2015	Yes	11/03/2015
Cranes and Derricks in Construction - Operator Certification Final Rule	09/26/2014	Yes	11/10/2014
Occupational Injury and Illness Recording and Reporting Requirements NACIS Update and Reporting Revisions	09/18/2014	Yes	1/1/2015
Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment	04/11/2014	Yes	7/1/2014

Federal Program Changes and State-Initiated Changes in FY 2014 and FY 2015

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Adoption Date
Inspection Procedures for the Hazard Communication Standard (HCS 2012), CPL 02-02-079	07/09/2015	Yes	09/08/2015
Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, CPL 02-02-078	06/30/2015	Yes	09/08/2015
Whistleblower Investigations Manual, CPL 02-03-005	04/21/2015	Under Review	
REVISION - National Emphasis Program – Primary Metal Industries	10/20/2014	Yes	01/05/2015
Compliance Directive for the Cranes and	10/17/2014	Yes	02/06/2015

Derricks in Construction Standard, CPL-02-01-057			
Mandatory Training Program for OSHA Compliance Personnel TED 01-00-019	7/21/2014	No APN 15/OPN 64	Equivalent 10/30/2014
Inspection Procedures for Accessing Communication Towers by Hoist, CPL 02-01-056	7/17/2014	No State-Specific Std.	Equivalent 11/02/14
Inspection Procedures for the Respiratory Protection Standard	6/26/2014	Yes	9/1/14
Shipyard Employment Tool Bag Directive, CPL 02-00-157	02//6/2014	Yes	3/17/2014
Site-Specific Targeting 2014 (SST-14)	02/02/2014	No	Equivalent 01/01/2014
OSHA Strategic Partnership Program for Worker Safety and Health, CSP 03-02-003	11/06/2013	No APN 18	Equivalent 1/2/2014
Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	09/30/2013	Yes	11/18/2013

E. VARIANCES

OSHNC currently has 13 permanent variances, seven of which are multi-state variances approved by OSHA. No variances were issued by the State Plan in FY 2015. OSHNC does not have any temporary variances, and the State Plan appropriately shares variance requests with federal monitors.

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

OSHNC’s State and Local Government Worker Program operates identically as the private sector. As with the private sector, state and local government sector employers can be cited with monetary penalties. The penalty structure for both sectors is the same. OSHNC conducted 128 state and local government sector inspections in FY 2015, which accounted for 4.43% of all inspections. In FY 2015, there were a total of 3,218 surveys mailed to state and local government sector employers by the PSIM Bureau to collect 2014 injury and illness data. As of the end of FY 2015, 3,210 survey responses have been received, and the data as provided can be used to calculate injury and illness rates and for targeting purposes.

The following table outlines the total number of violations for programmed activity, as well as the in-compliance rate and the percentage serious, willful, and repeat violations for the state and local government sector.

General Industry Programmed Inspections	OSHNC
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Average Number of Violations	2.9
In-Compliance Rate	27%
% Violations Classified as Serious, Repeat, and Willful	33%

G. WORKPLACE RETALIATION PROGRAM

The Employment Discrimination Bureau (EDB) of the North Carolina Department of Labor is responsible for enforcing the North Carolina Retaliatory Employment Discrimination Act (REDA) (N.C.G.S. § 95-240 through § 95-245). REDA prohibits discrimination against workers who engage in protected activities as defined by North Carolina law, including the Occupational Safety and Health Act of North Carolina (§ 95-151, Chapter 95, Article 16 of the General Statutes). This is comparable to OSHA protection from discrimination under Section 11(c) of the OSHA Act. This evaluation included a thorough review of North Carolina’s discrimination program to determine whether EDB is following its own policy and procedures and whether EDB is operating at least as effectively as OSHA. Organizationally, EDB falls under the Standards and Inspections Division of the Department of Labor, not within the Occupational Safety and Health Division. The OSHNC Director is responsible for ensuring OSHA grant support and effective coordination between EDB and OSHNC. The organizational structure has not had a detrimental effect on the ability of the State Plan to carry out their responsibilities related to safety and health discrimination protection effectively.

The EDB currently employs five investigators and one information officer. Four of the investigators report to work at the EDB office in Raleigh, North Carolina; the other one works from an assigned flexiplace location in Charlotte, North Carolina. The information officer is assigned to the Raleigh office. The program is supervised by an Administrator/Bureau Chief. Four of the five investigators and the Bureau Chief have completed the OSHA 1420 course. The EDB previously had seven investigators. Two positions were moved to another department when investigators retired. Two additional investigators departed and were replaced since the last FAME. The EDB Discrimination Manual was updated June 4, 2015, and established procedures that are as effective as the federal ones.

During FY 2015, EDB received and opened 51 Section 11(c) discrimination complaints, and 49 cases were closed October 1, 2014 through September 30, 2015. The table below outlines the status of the Section 11(c) cases and the percentages of total cases they represent.

Status	Number of Cases	Percentage
Dismissed Non-Merit	35	71%
Settlement/Merit	10	21% (national rate was 25%)

		for the same time period)
Withdrawn	4	8%
Prosecution by Attorney General	0	0%

Twelve percent of 11(c) whistleblower cases were completed within 90 days in FY 2015, which was below the national average of 28%. However, the average number of calendar days to complete an 11(c) investigation was 175 days compared to a national average of 274 days. Timeliness was considered for a potential observation. However, considering the turnover of investigators and that average length of investigation is less than the national average, timeliness was not addressed further.

After reviewing 16 files selected for the evaluation and five investigators interviewed, two observations were identified:

Observation FY 2015-OB-05: Cases were not docketed in IMIS when notification letters were sent to the parties. Where complainants requested a “Right-to-Sue (RTS)” letter prior to a determination being issued, the cases were not recorded in IMIS as “withdrawn”.

Federal Monitoring Plan FY 2015-OB-05: During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

Observation FY 2015-OB-06: Three cases determined as “merit/litigation” resulted in complainants being provided a merit RTS letter for North Carolina courts, but litigation did not occur.

Federal Monitoring Plan FY 2015-OB-06: During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

H. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

Since the comprehensive FAME in 2013, the State Plan received two CASPAs filed with the OSHA Area Office in Raleigh, North Carolina. The Region concurred with the State Plan’s determinations in the FY 2014 case. In the 2015 case, an investigation of a complaint about the safety and health of farmworkers is still pending a final determination by OSHA.

State (OSH Discrimination) CASPA Number	Date of Acknowledgement	Date of Final Report to State Plan	Corrective Action Required
2015-NC-26	4/9/2015	Pending	Pending
2014-NC-25	3/5/2014	5/22/2014	No

I. VOLUNTARY COMPLIANCE PROGRAM

The Education, Training, and Technical Assistance (ETTA) and the Compliance Bureaus are responsible for the administration of cooperative agreements. Administrative Procedure Notice (APN) 18I addresses the cooperative agreement programs and makes clear the distinction between Alliances and Partnerships. APN 18I, Cooperative Agreement, is the document used to establish the procedures to be followed for Alliance and Partnership agreements and is designed to enhance the ability of the OSH Division to meet its strategic goals. The primary focus of Alliances and Partnerships is toward SEPs identified in North Carolina.

1. Alliances

The Alliance team leader is responsible for coordinating the Alliance Program. With two exceptions, the procedures defined in APN 18I are the same as OSHA procedures. Those exceptions are that in most instances, OSHNC will only renew an Alliance one time. This is due to limited resources and to afford opportunities for other groups to participate in Alliances. The other exception is that OSHNC has Alliances with certain safety and health groups within the state that have an indefinite time period. However, a standard 30-day termination clause, which can be exercised by either party, is contained in these Alliances. The audit revealed that having an indefinite expiration period for these alliances is in the best interest of the OSH Division.

OSHNC currently has nine active Alliances focusing on SEPs. A randomly selected number of Alliances were reviewed and found to contain the necessary information in the files.

Active Alliances	
North Carolina Home Builders Association	Carolinas Associated General Contractors
Forestry Mutual Insurance Company	Lamar Advertising Company
North Carolina Forestry Association	Safety and Health Council of North Carolina
North Carolina State University Industrial Expansion Solutions	Mexican Consulate
North Carolina Utility Contractors Association of North Carolina	

2. Partnerships

A team leader is responsible for coordinating the Partnership Program activity in North Carolina. The only deviations from the OSHA Partnership requirements defined in APN 18I are that OSHNC's current Partnerships only include the construction industry and a particular company is limited to two Partnerships within a ten-year period unless a third Partnership is approved at the Director or Commissioner level. This limit is set to allow

other companies the opportunity to participate in a Partnership and to allow OSHNC to have Partnerships with varying types of construction projects.

OSHNC's Partnership Program includes a provision that Partnership participants will not be subject to programmed inspections. This Partnership program element has been added to the Partnership policy document in consideration of the most efficient use of limited compliance resources. The Partnership Program includes a quarterly verification inspection of the partnership site. Serious violations observed during the verification inspection must be abated immediately. With this much attention given to companies on the site, it would not be the best use of program resources to conduct any programmed inspections.

The quarterly on-site verification inspections are conducted by a team of OSHNC safety and health workers that include compliance personnel. During the duration of the Partnership, the verification team becomes more familiar with the Partnership site than would normally be expected on routine programmed inspection.

As well as intervention inspections, OSHNC and site partners are also required to meet quarterly to assess the Partnership progress. The Partnership must also maintain a DART rate 20% below the national DART rate for the industry. With this level of commitment already assigned to the Partnership site, any additional programmed inspections would not be an efficient use of State Plan resources.

The State Plan's current Partnership policy has been developed over nearly ten years of actual Partnership experience. The process is continuously reviewed, and unprogrammed inspections are still conducted as a result of formal complaints or job site accidents resulting in hospitalization or death.

In FY 2015, OSHNC had three active partnerships. A review of the completed Partnership agreements were found to contain the necessary information in the files, including the quarterly technical assistance visits and monthly reports.

3. Carolina Star

The ETTA Bureau is responsible for administering the Carolina Star Program in North Carolina, which has been in existence since 1994 and has grown to over 151 companies. The OSHNC program requirements are as effective and in some cases more stringent than OSHA's VPP. The Carolina Star sites must have injury and illness rates and lost time rates at least 50% below the national average for that industry. Their provisional status (conditional) allows for participants to be placed in a provisional membership status for a rate increase (even if below the national BLS average), lack of management commitment, or other program elements falling below Carolina Star quality. Star Consultant Employees conduct the onsite evaluations. Teams are augmented with Special Star Team Members (the equivalent to the Special Government Employee Program) when conducting onsite evaluations. The Special Star Team Members are trained to conduct the evaluations by OSHNC. They are required to attend this training every 36 months in order to maintain their status.

The review of selected files revealed that evaluations are conducted in accordance with the Carolina Star Program’s policies and procedures. All required documentation was in the files reviewed. During the review, it was determined that OSHNC is actively evaluating incentive programs during the application process, at on-site evaluations, and annual self-evaluations. Applications are maintained for all sites until their first re-evaluation.

J. STATE AND LOCAL GOVERNMENT SECTOR 23(g) ON-SITE CONSULTATION PROGRAM

The North Carolina Department of Labor OSH Division Consultative Services Bureau provided safety and health assistance to 202 state and local government sector employers in 2015. These 202 clients included several longstanding consultative relationships and a growing number of state and local government sector Safety and Health Achievement Recognition Program (SHARP) sites. There were 11 new state and local government sector SHARP sites recognized in 2015. OSHNC consultants also conducted 14 follow-up visits, 13 training and assistance visits, and 71 interventions in the state and local government sector in FY 2015. These state and local government sector visits resulted in the identification, evaluation, and abatement of 920 serious hazards.

OSHNC consultants are especially committed to state and local government sector surveys and services since some smaller state and local government employers have very limited resources, including staffing, to address safety and health programs in their organizations. OSHNC consultants can quickly assist state and local government sector clients with safety and health program development and expert hazard evaluation. As a result of the number of state and local government sites with similar operations, OSHNC consultants are very familiar with program needs in this sector and continue to build on their consultative experience base to offer expert service to state and local government sector clients.

The number of hazards abated during on-site consultation state and local government sector visits are listed in the following chart.

Serious Hazards Confirmed Abated		Other Hazards Confirmed Abated	
Public Safety	526	Public Safety	23
Public Health	394	Public Health	22
Total Public	920	Total Public	45

Ten state and local government sector safety and health case files were randomly selected for review by the Area Director. The files represented surveys related to OSHA’s initiatives, OSHA’s Strategic Plan, and employers participating in SHARP.

1. File Review

Files were evaluated to determine quality of services provided as it relates to safety and health program assistance, identification and classification of hazards, recommendations for hazard correction and control, relationship of hazards found to be deficient in the employers' safety and health management system, training and education, recognition program evaluations, and written reports to employers. Reports to the employers were thorough and included appendices with specific information, such as hazards found and program recommendations. Time periods for abatement of hazards were appropriate. Tracking of abatement was conducted, and documentation of abatement was contained in the files. Adequate company feedback, such as abatement reports, was included in the case files.

Files contained a copy of the employers' OSHA-300 logs, along with proper documentation in the files indicating a review or analysis of the injuries and/or illnesses. One worksite had a quantity of highly hazardous chemicals sufficient to fall under the requirements of the PSM Standard. However, the report did not thoroughly document the elements under PSM. Specifically, the files did not note whether the list of dynamic questions were utilized. In addition, the specific elements of the standard were not discussed.

Finding FY 2015-02: Thorough PSM evaluations, as referenced under OSHA's CPL 03-00-014- PSM Covered Chemical Facilities NEP, were not conducted by Consultative Services.

Recommendation FY 2015-02: OSHNC should implement a system to ensure that OSHA's CPL 03-00-014- PSM Covered Chemical Facilities NEP is utilized.

OSHA Form 33

All the files reviewed were found to have the evaluation of the employer's safety and health program using the OSHA Form 33. However, some sections on the assessments were not evaluated. In addition, files reviewed contained field notes with limited information describing hazards, number of workers exposed, worker interviews, interim protection, and measurements.

Observation FY 2015-OB-07: Field notes in some of the state and local government consultation files did not provide detailed descriptions of hazards observed or evidence that workers were interviewed.

Federal Monitoring Plan FY 2015-OB-07: During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

Performance Goals

The FY 2015 SOAR documents activity during the second year of the current five-year strategic planning cycle, which began on October 1, 2013, and ends on September 30, 2018. As well as overall outcome goals, the plan includes activity and outcome goals for specific areas of emphasis. OSHNC’s strategy for reducing injury, illness, and fatality rates is based on addressing specific areas that have the greatest impact on the overall rates. The areas of emphasis in the current Strategic Management Plan include: Construction, Logging and Arboriculture, Grocery and Related Product Wholesalers, Long-Term Care, Exposures for Health Hazards (asbestos, lead, isocyanates, silica, hexavalent chromium), Food Manufacturing, and Accommodation.

1.1 Reduce the construction industry fatality rate statewide by 2% by the end of FY 2018.

Significant safety and health strides have been made in reducing the fatality rate in the construction industry. During the last strategic planning cycle, the Construction fatality rate fell by 60%. Even with these reductions, the construction industry continues to have a high number of workplace accidents compared to other industries, and this can have a significant impact on the State Plan’s overall outcome goals of reducing injury, illness and fatality rates.

Outcome	Baseline	2014	2015	2016	2017	2018
Fatalities	30	17	15			
Fatality Rate	.0089	.0093	.0084			
Hispanic	N/A	9	6			

Construction	2014	2015	2016	2017	2018	Total
Inspections	1,255	1,173				
Goal	1,075	1,075				
Consultation	221	273				
Goal	150	150				
Trained	1,619	2,504				
Goal	2,500	2,500				

1.2 Decrease the fatality rate in Logging and Arboriculture by 2% by the end of FY 2018.

The State Plan has had success in reducing the number of fatalities in logging and arboriculture. A SEP for Logging was initiated in FY 1994. This was in response to 13 logging fatalities in FY 1993. Experience has shown that a reduction in OSH Division activity can translate into an increase in the number of injuries and fatalities in this industry. In three of the five years of the previous Strategic Management Plan, the total number of fatalities was below the baseline number, but the final fatality rate did not meet the established goal. For this reason and because of the industry’s fatality history, Logging (NAICS 11331) and Arboriculture (NAICS 56173) remain in the Strategic Management Plan.

Outcome	Baseline	2014	2015	2016	2017	2018
Fatalities	3	2	6			
Rate	.02644	.0172	.0177			

Logging	2014	2015	2016	2017	2018	Total
Inspections	61	54				
Goal	75	75				
Consultation	15	15				
Goal	15	15				
Trained	280	232				
Goal	25	150				

2.1 Reduce the DART rate in Grocery and Related Product Wholesalers (NAICS 4244) by 10% by the end of FY 2018.

The State Plan’s strategic planning process includes statistical analysis to determine which industry groups have high injury and illness rates that could affect the State Plan’s goal of reducing the overall injury and illness rate. The baseline rate for Grocery and Related Product Wholesalers is 4.1, which was more than twice the overall DART rate of 1.6. For this reason, this industry has been added as an area of emphasis in the current Strategic Management Plan.

The first year of any new addition to the Strategic Management Plan is designated as a planning year. FY 2014 was a planning year for Grocery and Related Product Wholesalers. A Strategic Management Plan Committee was established to manage the planning process. This includes developing strategies to achieve established goals and determining the appropriate activity level for department intervention, including compliance activity, consultation, and training. In FY 2015, OPN145 was developed to provide guidance in identifying hazards and completing inspections in the grocery industry. The most recent industry DART rate is less than the baseline.

Outcome	Baseline	2014	2015	2016	2017	2018
DART	4.1	2.7	n/a			

Grocery	2014	2015	2016	2017	2018
Inspections	planning year	47			
Goal	planning year	20			
Consultation	planning year	6			
Goal	planning year	4			
Trained	planning year	2			
Goal	planning year	25			

2.2 Reduce the DART rate in Long-Term Care by 10% by the end of FY 2018.

While progress has been made in this industry group during previous planning cycles, the

baseline rate of 4.7 was still more than twice the overall DART rate. For this reason, the Long-TermCare (NAICS 623) Emphasis Area has been carried over from the previous Strategic Management Plan. The most recent DART rate is below the baseline.

Outcome	Baseline	2014	2015	2016	2017	2018
DART	4.7	4.2	n/a			

Long-Term Care	2014	2015	2016	2017	2018	Total
Inspections	93	64				
Goal	60	60				
Consultation	45	67				
Goal	25	25				
Trained	123	45				
Goal	75	50				

2.3 Conduct emphasis inspections, training, and consultation activity in establishments where workers might be exposed to health hazards, such as lead, silica, asbestos, hexavalent chromium, and isocyanates.

The State Plan has established a SEP to address health hazards in the workplace. The current health hazards include lead, silica, asbestos, hexavalent chromium, and isocyanates. Tracking mechanisms have not been developed to allow for the establishment of specific outcome measures in this area of emphasis. The State Plan will continue to monitor the progress of OSHA in developing reliable outcome measures for these health issues. A reduction in illnesses relating to the emphasis health hazards identified could influence the primary outcome goal of reducing the overall injury and illness rate by 10% during the five-year cycle of the Strategic Management Plan.

Health Hazards	2014	2015	2016	2017	2018	Total
Inspections	165	142				
Goal	200	180				
Consultation	139	181				
Goal	100	100				
Trained	441	395				
Goal	700	400				

Inspections with Detectable Results and Total Surveys for Specific Health Hazards

Hazard	Inspections	Samples	Overexposures	Total Surveys
Silica	22	40	6	55
Lead	2	5	4	44
Asbestos	0	0	0	28
Hex Chromium	7	10	0	29
Isocyanates	5	7	0	25
Totals	36	62	10	181

2.4 Reduce the DART Rate in establishments in Food Manufacturing (NAICS 311) by 10% by the end of FY 2018.

The strategic planning process is intended to allocate the most resources in those areas of emphasis with above average injury and illness rates in an attempt to impact the overall state injury and illness rate. The Food Manufacturing DART rate was 2.6 in FY 2012, which was more than the overall DART rate of 1.6. For this reason, food manufacturing was carried over to the current five-year Strategic Management Plan. The baseline rate for this industry is 3.3, which is the five-year average DART rate for the period 2007-2011. OPN 140 was developed to establish a SEP for food manufacturing and provide specific inspection guidelines. The most recent DART rate is below the baseline.

Outcome	Baseline	2014	2015	2016	2017	2018
DART	3.3	2.5	n/a			

Food	2014	2015	2016	2017	2018	Total
Inspections	32	78				
Goal	50	50				
Consultation	18	15				
Goal	10	10				
Trained	26	18				
Goals	25	25				

2.5 Reduce the DART Rate for establishments in the accommodation industry by 10% by the end of FY 2018.

A review of injury and illness statistics identified the accommodation industry (NAICS 721) as an industry group to be added to the State Plan’s Strategic Management Plan for FY 2014-2018. This employment sector not only had a high DART rate of 3.6 but includes over 2,000 active sites. The first year of the Accommodation Area of Emphasis was designated as a planning year. A Strategic Management Plan Committee, representing the entire OSH Division, was established to manage the planning process. This included developing strategies to achieve established goals and determining the appropriate activity level for division intervention, including compliance activity, consultation, and training. However, the most recent DART rate is below the baseline. For this reason, the committee recommended that the Accommodation Area of Emphasis be placed in the maintenance mode for FY 2016. Continued statistical review will determine if the industry should remain in the maintenance mode. This will be predicated on the DART rate continuing to trend downward.

Strategy for Achieving Specific Outcome Goal

A SEP will not be advanced in FY 2016. The committee will monitor the industry DART rate to make sure that it continues to trend below the baseline rate. Activity will be limited to the State Plan’s usual intervention strategy. This will still result in inspections, consultation,

and training.

Outcome	Baseline	2014	2015	2016	2017	2018
DART	2.3	1.5	n/a			

Accommodation	2014	2015	2016	2017	2018
Inspections	planning year	18			
Goal	planning year	20			
Consultation	planning year	4			
Goal	planning year	4			
Trained	planning year	40			
Goal	planning year	25			

V. Other Special Measures of Effectiveness and Areas of Note

OSHNC has procedures for receipt of payments and handling past due penalties. The North Carolina Department of Labor’s Budget Office processes payments and collections and sends past due penalties to a collection agency as part of the process. OSHNC uses departmental reports to track the status of penalty collections. Hyland OnBase is an enterprise content management and business process management platform used by NCDOL. OnBase is being used to automate the collections process for overdue invoices of OSH citations. At the highest level, the process includes these functions:

- Invoice information is brought automatically into OnBase from OSHA Express via an interface that returns new and updated invoice data daily. Contested cases do not begin collections until resolved.
- Upon confirmation by OSHNC as ready for collections (after invoices pass the 30-day due date), invoices are moved into an automated collections workflow, consisting of the following steps, which progress until such time as the invoice is paid:
 - A reminder letter (second notice) is mailed thirty days after the citation final date.
 - A dunning letter (final notice) is mailed thirty days later.
 - The invoice is forwarded to the North Carolina Office of the Attorney General thirty days later for a collections letter from the attorney general.
 - A judgment is filed with the Clerk of Court in the county of the citation thirty days after being processed by the attorney general.
 - The invoice is forwarded to an external collection agency for collection thirty days after mailing the judgment to the employer.
 - Finally, the invoice is evaluated for write-off thirty days after being processed by the external collection agency.
- The system also fully supports installment plans, which can be initiated at any stage of collections.

NCDOL is in the process of implementing state-mandated 5% annual interest, 8% judgment interest, and 10% late payment penalties on overdue invoices, which will be automatically applied by the system.

Appendix A – New and Continued Findings and Recommendations

FY 2015 North Carolina Comprehensive FAME Report

FY 2015-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2015-01	Some case files were either missing copies of the OSHA-300 logs, or an analysis of the data found on the OSHA-300 log was not adequately reviewed. In addition, citations were not issued to the employer for OSHA-300 log deficiencies.	OSHNC should ensure that compliance officers request and include copies of the OSHA-300 log in the case file for each inspection for the last three years and review trends and hazards recorded on the logs. OSHNC should also ensure that case files are reviewed to ensure that citations are issued to employers for OSHA-300 log deficiencies.	New
FY 2015-02	Thorough process safety management (PSM) evaluations, as referenced under OSHA’s CPL 03-00-014- PSM Covered Chemical Facilities National Emphasis Program (NEP), were not conducted by Consultative Services.	OSHNC should implement a system to ensure that OSHA’s CPL 03-00-014- PSM Covered Chemical Facilities NEP is utilized.	New

Appendix B – Observations Subject to New and Continued Monitoring

FY 2015 North Carolina Comprehensive FAME Report

Observation # FY 2015-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-01		In 14.4% (13 of 90) case files reviewed, similar non-serious violations were not grouped as a serious violation, as referenced in Chapter 5 of the OSHNC Field Operations Manual.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New
FY 2015-OB-02		Interview statements were not always obtained to document an apparent violation.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New
FY 2015-OB-03		When abatements were classified as “corrected during inspection” for serious hazards identified, the compliance officer did not document in the case file the specific corrective actions taken by the employer to abate the hazard.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New
FY 2015-OB-04		Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New
FY 2015-OB-05		Cases were not docketed in IMIS when notification letters were sent to the parties. When complainants requested a Right to Sue (RTS) letter prior to a determination being issued, the cases were not recorded in IMIS as “withdrawn”.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New
FY 2015-OB-06		Three cases determined as “merit/litigation” resulted in complainants being provided a merit RTS letter for North Carolina courts, but litigation did not occur.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New
FY 2015-OB-07		Field notes in some of the state and local government consultation files did not provide detailed descriptions of hazards observed or evidence that workers were interviewed.	During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects a trend.	New

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 North Carolina Comprehensive FAME Report

FY 2014-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
NONE					

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 North Carolina Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year's report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and Federal whistleblower data is captured directly in OSHA's WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

Most of the North Carolina State Plan's enforcement data was captured in the NCR during FY 2015. The North Carolina State Plan opened 2,890 enforcement inspections in FY 2015. Of those, 2,638 were captured in the NCR while 252 were captured in OIS.

Measures 1, 2, 8, 9, 11, 12: State Plan data is solely from the NCR. Data from OIS cannot be manually combined due to irregularities in the algorithms between OIS and the NCR.

Measures 3, 4, 5, 6, 7, 10, 13, 17: State Plan data is manually tabulated to include both OIS and NCR data.

Measures 14, 15, 16: State Plan data is from WebIMIS.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 North Carolina Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: North Carolina - OSHNC			FY 2015	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	6.09	10	State Plan data is pulled only from the NCR. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6.09	N/A	State Plan data is pulled only from the NCR. This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	2.72	4	State Plan data is pulled only from the NCR. Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	2.72	N/A	State Plan data is pulled only from the NCR. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans. NA – The State Plan did not receive any imminent danger complaints and referrals in FY 2015.
4	Number of denials where entry not obtained	0	0	State Plan data is manually tabulated to include both OIS and NCR data.

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				Further review level is fixed for every State Plan.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.71	+/- 20% of SWRU: 1.92	State Plan data is manually tabulated to include both OIS and NCR data.
		Other: 1.39	+/- 20% of Other: .87	Further review level is based on a one-year national rate, pulled only from OIS.
6	Percent of total inspections in state and local government workplaces	4.43%	+/- 5% of 5.03%	State Plan data is manually tabulated to include both OIS and NCR data. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 1,791	+/- 5% of S: 1,994	State Plan data is manually tabulated to include both OIS and NCR data.
		H: 1,099	+/- 5% of H: 1,446	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,380.44	+/- 25% of \$2,002.86	State Plan data is pulled only from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	\$968.62	+/- 25% of \$1,402.49	State Plan data is pulled only from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,139.18	+/- 25% of \$2,263.31	State Plan data is pulled only from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 North Carolina Comprehensive FAME Report

	c. Average current serious penalty in private sector (101-250 workers)	\$2,003.96	+/- 25% of \$3,108.46	State Plan data is pulled only from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,846.02	+/- 25% of \$3,796.75	State Plan data is pulled only from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 34.29%	+/- 20% of S: 28.47%	State Plan data is pulled only from the NCR.
		H: 40.04%	+/- 20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	86%	100%	State Plan data is manually tabulated to include both OIS and NCR data. Further review level is fixed for every State Plan.
11	Average lapse time	S: 29.59	+/- 20% of S: 42.78	State Plan data is pulled only from the NCR.
		H: 35.75	+/- 20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	76.59%	+/- 15% of 67.96%	State Plan data is pulled only from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	State Plan data is manually tabulated to include both OIS and NCR data. Further review level is fixed for every State Plan.
14	Percent of 11(c) investigations completed within 90 days	12%	100%	State Plan data is pulled from WebIMIS. Further review level is fixed for every State Plan.

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15	Percent of 11(c) complaints that are meritorious	21%	+/- 20% of 24%	<p>State Plan data is pulled from WebIMIS.</p> <p>Further review level is based on a three-year national average pulled from WebIMIS.</p>
16	Average number of calendar days to complete an 11(c) investigation	175	90	<p>State Plan data is pulled from WebIMIS.</p> <p>Further review level is fixed for every State Plan.</p>
17	Percent of enforcement presence	1.66%	+/- 25% of 1.35%	<p>State Plan data is manually tabulated to include both OIS and NCR data.</p> <p>Further review level is based on a one-year national rate, pulled only from OIS.</p>