## FY 2024 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

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



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# I. Executive Summary

The purpose of this report is to assess the New York (NY) Public Employee Safety and Health (PESH) State Plan’s performance for Fiscal Year (FY) 2024, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports.

NY PESH is responsible for protecting the health and safety of more than two million state and local government (SLG) workers in New York. During the performance period, NY PESH was responsive to OSHA, including providing requested information in a timely manner, actively participating in the regular quarterly meetings, and adopting required federal program changes (FPCs). Thirty-eight compliance safety and health officers (CSHOs) conducted 1,032 inspections. When compared to the 870 inspections conducted in FY 2023 by 39 CSHOs, this represented an 18.6% increase, which significantly exceeded the corollary projected from the number of CSHOs.

In 2023, OSHA received four petitions to decertify NY PESH from employees of the New York Metropolitan Transit Authority (MTA). In 2024, after an extensive and time-consuming review regarding the allegations, OSHA decided not to initiate decertification and the petitions were denied. However, OSHA investigated multiple CASPAs raising similar concerns to those in the petitions and in response to OSHA’s findings and recommendations related to the CASPAs, NY PESH developed new directives, created a centralized intake unit, and conducted trainings to staff to improve daily work processes.

During FY 2024, there was a total of 11 CASPAs received in FY 2024. NY PESH received and responded to five new Complaints About State Program Administration (CASPAs) that were not identified as significant but required an investigation. NY PESH worked with OSHA to evaluate each of these CASPAs, with three of the five cases closed by the end of the fiscal year. Where applicable, NY PESH used these CASPAs to identify areas for process improvement (NY SOAR, FY 2024).

As of the date this report was developed, OSHA received 19 CASPA requests in FY 2025. Two of these requests were accepted for investigation and three were being evaluated. Fourteen CASPA requests were not accepted for investigation for a variety of reasons, but predominately because the requestor had not exhausted all their administrative remedies. Prior to FY 2025, there were 10 open CASPAs still under investigation.

Due to the volume of CASPAs received, numerous findings and observations identified in the NY Special Study and the FY 2023 Comprehensive FAME, as well as multiple inquiries received from stakeholders regarding specific inspection files, OSHA’s New York City Regional Office conducted a limited case file review to evaluate NY PESH’s progress in correcting the action items. NY PESH made substantial progress to address the previous 22 findings and eight observations from the FY 2023 Comprehensive FAME Report. Eight findings were completed, and two observations were closed. There were no new findings, but four new observations were added to the report. In summary, this report contains a total of 14 findings and 10 observations.

# State Plan Background

The New York Department of Labor administers the New York State Plan. Roberta Reardon, Commissioner of Labor, has full authority to enforce and administer all laws and rules protecting the safety and health of all SLG workers in the state and its political subdivisions. In addition to the State Plan’s enforcement responsibilities, NY PESH provides free on-site consultation and training services to SLG agencies, upon request.

NY PESH consists of one central office in Albany, New York, and eight district offices located in Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City, and New York City (Manhattan). The NY State Plan applies to all SLG employers in the state, including state, county, town, and village governments, as well as public authorities, school districts, and paid and volunteer fire departments.

Private sector enforcement is retained under federal jurisdiction while private sector consultative services are provided by the New York State Department of Labor-Division of Safety and Health (NYSDOL-DOSH) Consultation Services Bureau under Section 21(d) of the OSH Act. NY PESH did not adopt the adjustments to OSHA Penalties in 2022 because the PESH Act does not allow for the issuance of “first instance” monetary penalties for SLG employers found in violation of NY PESH standards. Per-dem penalties can be assessed when failure-to-abate (FTA) notices are issued.

There were 21 contested cases in FY 2024, 15 in FY 2023, 14 in FY 2022, and 13 in FY 2021, representing a steady increase each year. These cases are heard by the New York State Industrial Board of Appeals which was created by the Legislature in 1975 as an independent review and appeals board charged under the Labor Law with providing an impartial administrative review of the validity or reasonableness of rules, regulations or orders issued by the Commissioner of Labor. An employer, affected employee, or a union representative can file a written notice to contest the violations with the NYS Industrial Board of Appeals within 60 days of receipt of the violations and notification of penalties.

The Board consists of five members, each appointed by the governor and confirmed by the New York State Senate, at least one of whom must be an attorney. The governor designates one member of the board to serve as Chairperson. The Chair and Deputy Counsel are compensated annually, and the other board members are paid per diem. The board will hear the case, make a written decision on the merits of the violations, can affirm, modify or delete violations based on the hearing. During FY 2024, 17 informal conferences were conducted. PESH penalties billed during FY 2023 totaled $264,098 and penalty collection for the year totaled $55,822 (NY SOAR, FY 2024).

NY PESH began FY 2024 with a federal base award of $4,295,600 and in May 2024, the federal base award was reduced by $155,000 to $4,140,600. The State Plan absorbed the reduced funding by adding state overmatch funds to the grant to avoid budget cuts. The total operating budget for FY 2024 with the reduction in funding was $10,661,256. With the required match and the overmatch, the New York State Plan is contributing $6,520,656 to the operating budget for this program. NY PESH did not deobligate or lapse funds in FY 2024.

**New Issues**

Federal Transit Administration (FTA)

On August 14, 2024, Bloomberg Law reported FTA’s conclusions after investigating two incidents where Metropolitan Transportation Authority (MTA) workers were struck by trains while flagging in subway work zones at night. After investigating these two incidents, the FTA issued a directive to MTA to reassess its roadway worker protection programs and develop corrective action plans to reduce the risk of workers being struck by trains when working on the tracks. The FTA also instructed NY’s Public Transportation Safety Board to boost its oversight of the MTA’s safety programs with additional monitoring and monthly reports to the FTA for review. These actions were taken because FTA determined that a combination of unsafe conditions and practices existed which increased the substantial risk of death or personal injury to workers performing this flagging work. In addition to the investigation conducted by FTA, NY PESH also inspected both incidents. NY PESH closed the fatality inspection on February 24, 2025, and issued no violations.

# Assessment of State Plan Progress and Performance

## Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2024 is a follow-up year and as such, OSHA was not required to perform an on-site evaluation and case file review. However, due to the volume of CASPAs received in FY 2024 and FY 2025 to date, the number of CASPAs remaining open, the numerous findings and observations from the NY Special Study and the FY 2023 Comprehensive FAME, and multiple inquiries received from stakeholders regarding specific inspection files, OSHA’s New York City Regional Office made the decision to conduct a limited case file review to evaluate the progress NY PESH is making to resolve the previous findings and observations.

The enforcement and consultation focused case file review was conducted remotely during the timeframe of January 31 to March 7, 2025. A total of 19 enforcement cases, three SLG consultation files, and sixteen unprogrammed activities were reviewed. The safety and health enforcement inspection files were selected from closed inspections conducted during the evaluation period (October 1, 2023, through September 30, 2024). The consultation files were selected from closed files during this same evaluation period. The selected population included the following:

* + - Three safety follow-up inspections
    - Five health complaint inspections
    - Four safety complaint inspections
    - Two safety programmed inspections
    - Four safety fatality inspections
    - One health fatality inspection
    - Three consultation files
    - 18 Unprogrammed Activities

The analysis and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* + - State Activity Mandated Measures (SAMM) Report
    - State Information Report (SIR)
    - Mandated Activities Report for Consultation (MARC)
    - State OSHA Annual Report (SOAR)
    - OSHA Information System (OIS)
    - State Plan Annual Performance Plan (APP)
    - State Plan Grant Application
    - Quarterly monitoring meetings between OSHA and the State Plan
    - FY 2023 Corrective Action Plan (CAP)
    - OSHA New York City Regional Whistleblower Dashboard
    - Payment Management System

## Findings and Observations

**Findings (Status of Previous and New Items)**

The State Plan made progress to address the previous 22 findings and eight observations from the FY 2023 Comprehensive FAME Report. This follow-up FAME report contains 14 findings and 10 observations (six continued, four new). There were eight findings completed and two observations closed. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2023 finding and recommendation in detail.

**Completed Findings**

**Finding FY 2023-05 (Special Study Finding #18, FY 2022-04, FY 2021-04, FY 2020-03): *Staffing***

NY PESH contributed its 62% reduction in consultation visits from FY 2022 to a reduction in consultation staff. NY PESH moved experienced consultation personnel to training roles in FY 2023 to assist enforcement staff in meeting their annual performance goals (FY 2023, NY SOAR).

In FY 2023, NY PESH saw a 29% increase in the number of enforcement inspections conducted, but the annual performance goal of 1,150 enforcement inspections was not met. In addition, the

administrative positions identified as vacant on the FY 2023 and FY 2024 grant applications that had been budgeted for have existed for years.

**Status:** Program staff changes were implemented in January 2024 to prioritize enforcement needs and ensure separation between enforcement and consultation activities. The 3.61% FY 2024 grant reduction announced in May 2024, and continued into FY 2025, has resulted in the State Plan operating with a 22% overmatch of federal funding (NY SOAR, FY 2024). This accounts for approximately 13 positions over the fill level supported by the grant (NY SOAR, FY 2024). Despite the reduced grant funding and the increased overmatch required, PESH is continuing to hire to fill vacant positions and promote staff. In FY 2025, new safety enforcement staff were hired in Buffalo, Rochester and White Plains. This finding is completed.

**Finding FY 2023-06 (Special Study Finding #2, Special Study Finding #15, FY 2022-OB-04, FY 2021- OB-04): Complaint Inspection Letters**

Five of 18 (28%) closed complaint files lacked evidence that the complainant was provided with a complainant letter. In two of 13 (15%) of the complaint letters that were sent to complainants, there was no reason given as to why the complaint was not sustained. There was no evidence in the files that the narratives were forwarded.

**Status:** All nine (100%) of the complaint files reviewed in FY 2024 documented that the complainant was forwarded with a letter and copy of the narrative at the conclusion of the inspection. This finding is completed.

**Finding FY 2023-09 (FY 2022-07, FY 2021-07): Next-of-Kin Letters**

In four of seven (57%) of the closed fatality inspections reviewed, there was no evidence in the files that both the initial notification of the inspection and the results of the inspection next-of-kin letters were sent to the families of the victims.

**Status:** In four of five (80%) of the closed fatality inspection files reviewed, the files contained copies of both the initial notification of the inspection and the results of the inspection next-of-kin letters sent to the families of the victims. One file was missing a copy of the results letter, but the case contact sheet documented that the letter was sent. The case contact sheets for all the five files documented the dates that these letters were sent to the next-of-kin. This finding is completed.

**Finding FY 2023-13: (Special Study Finding #13): Timely Follow-ups**

Three of 22 (14%) follow-up inspections were not conducted within 30 working days of the latest abatement date from the initial inspection (OIS Entries). Special Study Finding #13 found that in six of seven (86%) cases, follow-up inspections were not conducted timely. The follow-up FAME identified improvement in this area.

**Status:** There were three follow-up inspections reviewed for this FAME. The opening conference of these follow-up inspections were compared to the latest abatement due date of the notices of the violations issued on the initial inspection to determine if the follow-ups were opened timely. It was determined that these three follow-up inspections were conducted timely. This finding is completed.

**Finding FY 2023-14 (Special Study Finding #10): Processing Petition for Modifications of Abatement (PMA)**

Four of 12 (33%) of the closed files with an approved PMA reviewed in FY 2023 were missing either adequate protections or the steps taken to comply to date to achieve abatement.

**Status:** One file was reviewed for this FAME that had a PMA approved for a General Duty Clause violation. The request from the employer provided confirmation that the petition was posted, the union was notified of the extension request and the six steps were already taken to abate the hazard. The request did not include any additional steps that were planned between the final original abatement date and the extension request because no additional actions were planned. The employer was given the extension request by PESH to give the State Plan the opportunity to evaluate the actions taken to achieve compliance. This finding is completed.

**Finding FY 2023-17 (FY 2022-08, FY 2021-08, FY 2020-05): Federal Standards Adoption**

NY PESH has not adopted all overdue FPCs.

**Status:** The New York State Plan adopted two overdue federal program changes, both effective on July 31, 2024. These changes comply with 20 CFR §§ 1904.39, Occupational Injury and Illness Recording and Reporting Requirements, and 1904.41, Final Rule to Improve Tracking of Workplace Injuries and Illnesses. The State Plan Application was updated to reflect these adoptions. This finding is completed.

**Finding FY 2023-21 (FY 2022-10, FY 2021-OB-08 FY 2020-OB-04 FY 2019-OB-04 FY 2018-OB-07):**

### Consultation Policies and Procedures Manual (CPPM)

Specific elements must be implemented into NY PESH’s consultation manual of October 2021 to be at least as effective (ALAE) as OSHA’s federal CPPM.

**Status:** The New York State Plan submitted a revised version of the CPPM directive A 24-02 on December 30, 2024. This version of the manual was reviewed and compared to the federal CPPM and determined to be at least as effective as the federal manual. The New York State Plan was notified of concurrence by the Region for this version. A link to the new manual will be created on the public website. This finding is completed.

**Finding FY 2023-22 (Special Study Finding # 11): Confidentially Between Consultation and Enforcement Activities**

The activities of enforcement and consultation are not conducted independently from each other. For example, the NYC Office received a request for consultation services from the MTA East New York Depot in the spring of 2022 to assist with correcting the fire panels alleged to be impaired. The consultant and management met with MTA officials to discuss the consultation visit but a visit was not scheduled. This activity was entered as a compliance assistance activity. The consultant assigned to this consultation is the same person that issued the violations which is a direct conflict of interest.

**Status:** On January 4, 2024, PESH put organizational change plans into action to formally separate enforcement and consultation program functions. Steps taken included amending the

organizational chart, designating a Consultation Program Manager, and partitioning the review process.

This new organizational chart was submitted with NY PESH’s FY 2025 grant application showing that a Program Manager I had been assigned to oversee all the consultants working throughout the state. The new organizational chart identified that consultants are now directly reporting to this manager and not to the enforcement managers in the offices that they were assigned to report to. Only select management staff have dual access accounts in OIS. New dual access accounts in OIS are not being requested by the State Plan preventing enforcement staff from working on consultation reports. This finding is completed.

**Continued Findings**

**Finding FY 2024-01 (2023-01, Special Study Finding #12, FY 20222-01, FY 2021-01, FY 2020-OB-01, FY 2019-OB-01, FY 2018-OB-08): Safety Lapse Time**

In FY 2023, the average safety lapse time (SAMM 11) for citations was calculated at 101.64 days, which was above the further review level (FRL) range of 44.18 to 66.28 days for safety.

**Status:** In FY 2024, the average safety lapse time (SAMM 11) for citations was calculated at 108.55 days which was above the FRL range of 44.82 to 67.23 days for safety and higher than reported in FY 2023. This finding is continued as Finding FY 2024-01, but it will be amended to reflect the new SAMM data from FY 2024.

**Finding FY 2024-02 (FY 2023-02, Special Study Finding #12, FY 2022-02, FY 2021-02, FY 2020-OB-02, FY 2019-OB-02, FY 2018-OB-09): Health Lapse Time**

In FY 2023, the average health lapse time (SAMM 11) for citations was calculated at 110.49 days, which was above the FRL range of 55.78 to 83.66 days for health.

**Status:** In FY 2024, the average health lapse time (SAMM 11) for citations was calculated at 126.52 days, which was above the FRL range of 53.77 to 80.65 days for health. This finding is continued as Finding FY 2024-02, but it will be amended to reflect the new SAMM data from FY 2024.

**Finding FY 2024-03 (FY 2023-03, Special Study Finding #3) OIS Unprogrammed (UPA) Tracking Report**

The OIS UPA Tracking Report run on January 23, 2024, identified 12 UPAs being handled as phone/fax investigations that were overdue for responses from the employer to follow up on the hazards alleged in the complaints. The OIS report shows the last action taken regarding these complaints was to forward a request to the employer to investigate and provide a response after investigating. The oldest two cases on this list date back to the 2022 calendar year.

There were 11 UPAs, including one fatality, identified on the OIS Tracking Report for all PESH offices that were received before the end of the 2023 calendar year that had not been inspected as of January 24, 2024. The oldest UPA was received on June 24, 2020. Fifteen UPAs were received in January 2024 and were awaiting inspection. The special study identified that there were 52 UPAs awaiting inspection in the NYC Office as of December 7, 2023, OIS Tracking Report.

This report also identified 175 cases under the Complaints and Referrals tab that are awaiting other actions. These cases require OIS entries to be updated to ensure that the complaints are effectively managed and appropriate actions taken to resolve.

**Status:** The OIS UPA Tracking Report, run on February 19, 2024, identified no complaints awaiting signature and six recently received complaints that were awaiting an inspection. The number of complaints awaiting an inspection has been significantly reduced from the report run on January 24, 2024. There was one complaint under investigation that was overdue for processing when the report was generated, but as of March 7, 2025, OIS showed the response date had been updated.

There were 48 complaints listed under the tab entitled, Awaiting Responses to the Complaint, which had an action or response date that was listed before January 1, 2024. These complaints are listed under this tab because OIS needs to be updated to reflect either a satisfactory response to the inquiry, that the inspection results were forwarded, or that the complaint was determined to be invalid. The last tab of this report identified all open cases that required OIS entries to be updated but were not included in the other tabs. This finding is continued, but it will be amended to reflect FY 2024 data.

**Finding FY 2024-04, (FY 2023-04, FY 2020-01, FY 2019-01, FY 2018-01, FY 2017-01): OIS Health**

### Sampling Forms

In FY 2023, six out of seven (86%) of the closed health inspections with sampling had either no OIS health forms in the file or incomplete sampling forms in the files to document the sampling performed. The four inspections with incomplete OIS forms were missing information such as the make and model of the instrument used, the pre and post calibration results, and actual sampling times. Two inspections had no OIS sampling forms in the file even though the narrative stated sampling was performed. The missing information on the forms was not present in the field notes.

**Status:** In FY 2024, in one of the two (50%) health files reviewed with sampling, there was missing health sampling information. For the health file reviewed, the pre-printed OIS sheets had the wrong inspection number but the correct name of the site. These sheets had typed values for pre and post calibration flow rates which differed from the flow rates handwritten in the field on the sheets. The end times for the air sampling period were not reported for sampling sheets #5058, # 5059, #5060, #5061, #5052, #5076, #5077 and #5078. The descriptions provided to identify the location that the lead wipes and bulk samples were collected from were vague and non-specific (example-south window, table, northwest corner). This finding is continued. Additional health files with sampling will be reviewed during the next comprehensive FAME review.

**Finding FY 2024-05 (FY 2023-07, Special Study Finding #1): *Evaluating Hazards Raised in Complaints***

In FY 2023, in six of 18 (33%) of the closed complaint files, the inspections did not evaluate all the hazards that were alleged in the complaint.

For example, in one complaint, the source alleged a specific entry into a permit required confined spaces had occurred at a wastewater treatment facility. The inspection did not investigate that entry but determined that no entries were being made. There was no evidence in the file that the complainant was contacted to obtain information about the specific entry. In another complaint, the complainant alleged a foul odor in the workplace on the PESH-7 form but, this information was not transmitted to the OIS unprogrammed activity (UPA) form. Another example was a complaint was received that alleged fire fighters were not being provided with adequate personal protective equipment. The allegation was vague, but an inspection was conducted before securing additional information. The inspection evaluated the availability of respirators and gloves only.

**Status:** In FY 2024, in three of nine (33%) complaint inspections reviewed, the inspection did not evaluate all the hazards that were alleged in the complaint.

For example, in one file, the complainant raised concerns about asbestos exposure to workers in the fan house after an asbestos release. The file did not include any information regarding the presence of suspected asbestos-containing material near the release area, nor did it provide assurance that housekeeping was evaluated. The photos in the file show that some insulation material was identified as asbestos free and other pipe insulation pictured was not identified as either asbestos free or asbestos containing, even though some of the materials appeared original to the building that was constructed before 1970. The file did not contain information about whether an asbestos survey had been conducted in the area that identified the presence of asbestos containing materials, including pipe insulation. The asbestos signs that were posted to notify employees of the existence of asbestos on some materials did not comply with the requirements of OSHA standard 1910.1000 for signage.

The narrative stated that the employees working in the fan house were notified of the asbestos sampling results by postings in the area. The air sampling results showed that asbestos fibers were not detected in the sample. The employer’s compliance with notifying employees working in this area of the hazards related to asbestos as required by the hazard communication standard was not discussed. Picture IMG 2774 showed piles of peeled paint on the floor. Due to the age and condition of the paint, bulk samples should have been collected to determine if the paint contained lead and/or cadmium.

The second allegation on this reviewed complaint form alleged that the employer had not assessed the confined space program or provided confined space training to workers employed in the fan house. The employer, under the requirements of 1910.146 (c)(1), is required to evaluate to determine if permit-required confined spaces exist in the workplace. The information in the file provided by the employer to prove that the required assessment was conducted was not a permit required confined assessment but an assessment of some confined spaces in the fan house. Photos in the file showed numerous access doors and spaces that were not identified in this confined space assessment. There was no information in the file identifying if the fan house contained permit- required confined spaces and, if applicable, the hazards of those spaces. The confined space signs that were posted in the fan house identifying confined spaces did not meet the requirements for signage under 1910.146, if these spaces were designated as permit required confined spaces. The lack of training for employees entering confined spaces was not addressed in the narrative.

In the second complaint inspection reviewed, the written complaint items did not include the allegation that a worker suffered an injury after falling down the set of stairs that was the subject of this complaint. The employer was issued a notice of violation for not painting an unspecific walking/working surface elevation yellow. Painting an elevated walking/working surface yellow will not correct the hazardous condition which caused the employee to fall down the stairs. Based on the review of the photos submitted by the complainant and abatement photos in the casefile, it appears that 1910.25(b), could possibly have been cited due to the proximity of the door swing path to the edge of the stair. There were no field notes or photos in the inspection file provided to OSHA.

In another file reviewed, the narrative does not address all complaint items, such as the reported falling object concerns (ceiling tiles). The narrative does not address the industrial hygiene sampling strategy or specify which employee work areas were sampled for the presence of lead. The complaint specifically referenced conference rooms 802 and 806 as a concern. The inspection file does not reference specific locations where lead wipe samples were taken (i.e. room numbers) and does not include specific locations for observations of peeling paint, etc. There were no photos taken of the sampling locations. This finding is continued and will be a focus of next year’s comprehensive FY 2025 FAME review.

**Finding FY 2024-06 (FY 2023-08, Special Study Finding ##16, FY 2022-OB-03, FY 2021-OB-03):**

### Unprogrammed Activity Documentation (UPA)

In FY 2023, in 11 of 17 (65%) of the UPAs that were not investigated, no contact sheet was included to document the important events of the file.

**Status:** In FY 2024, in four of the 16 (25%) of the UPAs that were not investigated, no case contact sheet was included to document the important events of the file.

The four files referenced with no case contact sheets occurred prior to the implementation of the Centralized Intake Unit (CIU) and Enforcement Case Coordinator (ECC) position. Currently, all intake and processing of complaints and fatality/catastrophic referrals are handled by the CIU and ECC, using established and consistent procedures. This finding is continued but will be amended to reflect the new data.

**Finding FY 2024-07 (FY 2023-10, Special Study Finding #8): Advance Notice**

An OIS Inspection Address Notification Report, run on April 28, 2023, found that advance notice was given 23 times in FY 2022 and 10 times through the end of April 2023. Advance notice was given four times in the closed files reviewed with no explanation provided. The files were not marked in OIS as giving advance notice, but the narratives and case contact sheets documented advanced notice.

**Status:** The OIS Inspection Address Report run on December 16, 2024, for the period October 1, 2023, to September 30, 2024, identified three inspections that were marked in OIS as advanced notice provided. There was no notation in the case contact sheets for these inspections identifying that permission was obtained per the advance notice directive issued effective July 5, 2023. This directive prohibits all advance notice of inspections except in exceptional circumstances, and only with the Commissioner’s approval. PESH is reporting after development of this report that these three entries in OIS were data entry errors and advanced notice was not provided.

Additionally, in three of the five (60%) of the fatality inspections reviewed, advance notice was given to the employer. In all three cases, the case contact sheets indicated that either the Enforcement Case Coordinator or the CSHO assigned to the investigating area office contacted the employer after receipt of the fatality report, via phone. These phone calls were identified as abbreviated conferences that included a discussion of the PESH Act and included the scope and purpose of the inspection. After completing these abbreviated opening conference calls, an onsite visit with another opening conference with both the employer and union present took place between four to 10 calendar days later. In one of these files, there is email correspondence between the CSHO, employer, and union representative scheduling the on-site visit. The management reviewed the email notification to the union representative before it was sent. There is no indication in the files why the employers were contacted via phone before the onsite visit and provided advance notice of the inspection.

OSHA received an email alleging that a union representative was provided with advance notice of an inspection conducted on September 4, 2023. OSHA did not initiate CASPA because NY PESH management agreed to conduct an internal investigation and share the results with OSHA. NY PESH shared copies of phone records, text messages, emails, and field notes related to this investigation with OSHA voluntarily. The field notes provided did not document the times that the CSHOs arrived at the site, conducted the opening conference and the walkaround. The inspection times were also not reported in OIS. As part of a corrective action, PESH is now requiring and ensuring during the supervisory review that times are documented in the field notes and in OIS forms. This finding is continued and will be a focus of next year’s comprehensive FY 2025 FAME review.

**Finding FY 2024-08 (FY 2023-11, Special Study Finding #4): Pending Violations**

An OIS Open Inspection Report run on November 20, 2023, identified NY PESH had 302 open inspections pending issuance. There were 153 inspections or approximately 50% of the open inspections with pending citations that were more than 180 days open. NY PESH does not have a six-month statute of limitations for issuing citations either in their Act or FOM.

**Status:** An OIS Inspection Report run on February 19, 2025, identified NY PESH had 322 open inspections pending issuance. There were 164 inspections or approximately 51% of the open inspections with pending citations that were more than 180 days open. NY PESH does not have a six-month statute of limitations for issuing citations. However, the New York City Regional Office met with NY PESH management on September 6, 2024, and advised NY PESH to adopt a six-month policy for issuing citations from the opening conference date. NY PESH management agreed to revise the FY 2023 Corrective Action Plan that discusses the goal of moving towards a six-month issuance policy but has not committed to a date to implement this policy change. This finding is continued and will be amended to reflect the most recent report data and will be continued.

**Finding FY 2024-09 (FY 2023-12): Employer Knowledge**

In FY 2023, in 16 of 38 (42%) of closed files with citations, the employer knowledge that was documented did not support that the employer had knowledge of the hazard or condition.

**Status:** In three of 13 (23%) of the closed files with citations reviewed in FY 2024, the employer knowledge that was documented did not support that the employer had knowledge of the hazard or condition. This finding is continued and will be amended to reflect the current data.

**Finding FY 2024-10: (FY 2023-15, Special Study Finding #6, Special Study Finding #7, FY 2022-03, FY 2021-03): OIS Open Inspection Report and Overdue Abatement**

The overdue abatement tab on the OIS Open Inspection Report, run on November 20, 2023, showed 86 inspections that had overdue abatement. The oldest file with overdue abatement had abatement that was 2,120 days overdue as of November 20, 2023.

This file was reviewed as part of the FAME to determine if this file remained open due to OIS entry errors or a lack of documented abatement. The employer has proposed an alternative abatement to address the hazard under the Alternative Compliance Agreement procedures in the NY PESH FOM. Upon receipt of this alternative abatement proposal, NY PESH is required to seek the services of their engineering services unit to review and schedule a meeting with the employer, any unions, and NY PESH. There is no indication in the file that the engineering services unit has reviewed any proposal or scheduled a meeting. This violation was issued on September 13, 2017. Abatement is still outstanding.

In addition to this file, eight other files with open overdue abatement that was more than 200 days were reviewed. The file review showed that six of nine (67%) open files lacked abatement to mark all items abated. Two of the files had evidence of abatement in the file but were not marked as abated and closed in OIS.

One case (Inspection #1390753) was settled by an Industrial Board of Appeals settlement on December 30, 2019. The settlement withdrew two citations, but OIS was not updated to reflect these two citations were withdrawn and consultation services were required as part of the settlement. The contest was also not noted in OIS which hindered tracking of this file. The file was not followed up until August 2023 when a follow-up inspection was conducted. The follow-up found that all violations, except for the two lockout/tagout citations that were withdrawn, were abated. The follow-up inspection documented new exposures of the lockout/tagout standard, but new citations were not proposed before closing the follow-up.

Inspection #1227926, a fatality inspection, was settled during an informal settlement agreement in December 2019. There was no evidence in the file that the two serious citations issued were abated with documentation from the employer or a follow-up inspection.

Additionally, under the tab Citations not Received, on the OIS Open Inspection Report, there were 10 inspections with violations issued that were not updated in OIS to identify the citations received. If OIS is not updated to reflect receipt of violations, abatement will not be tracked in the system and included in reports.

**Status:** The overdue abatement tab on the OIS Open Inspection Report, run on February 19, 2025, showed 34 inspections that had overdue abatement. The oldest file had an abatement overdue by 1,916 days. This finding is continued and will be amended to reflect on the most recent data.

**Finding FY 2024-11 (FY 2023-16, Special Study Finding #9): *Documenting Employee Interviews***

In FY 2023, in 57 of 88 (65%) of the closed files reviewed, the field notes did not document which employees were interviewed and the information obtained during these interviews to evaluate the working conditions and support any violations issued. OIS entries were made to indicate that employees were interviewed in these files, but the field notes did not provide details of these interviews.

**Status:** In six of 19 (32%) of the files reviewed in FY 2024, the files were either missing field notes or evidence to document that employees were interviewed to evaluate the working conditions and/or support any violations issued. This finding is continued and will be amended to reflect the latest file review.

**Finding FY 2024-12 (FY 2023-18, FY 2022-09, FY 2021-09): Responding to Worker Retaliation Cases Timely**

During the audit periods of FY 2022 and FY 2023, NY PESH’s averaged days to screen a case was 55 days. There is a case currently pending intake from April of 2022 (669 days) and a total of four cases pending intake from FY 2022. OSHA has a goal of 10 days or less to screen a case.

For the 15 cases reviewed in the Intake/Screening Pending status, OSHA determined that 100% of the complaints had excessive time in this status. This should be the shortest phase in the processing of complaints. A determination should be made quickly if a case can be administratively closed or needs to be docketed.

As of January 30, 2024, NY PESH had a total of 64 open complaints with 46 open docketed cases. On average, a case is 954 days old by the time it is closed. The age of the docketed cases is currently from 244 days to 2051 days, with an average day pending at 902 days, and the average age to close a case is 959 days.

**Status:** The New York State Plan received 82 discrimination claims in FY 2024, compared to 37 discrimination claims in FY 2023. Sixty of these cases were dismissed as non-merit and no cases were settled or determined to have merit (NY SOAR, FY 2024).

To evaluate performance related to the whistleblower program, the New York City Regional Whistleblower staff generated a dashboard on February 19, 2025, for discussion at the first quarter meeting that was held on February 20, 2025. This dashboard pulls the data for whistleblower activity for the report from the OIS information entered by the users. This dashboard identified that there were 72 open docketed whistleblower cases. Of these open docketed whistleblower cases, 46 cases were identified as open over 500 days, five opened more than 400 days, six opened more than 320 days and 15 opened less than 320 days. The report identified that the average number of days to close a whistleblower case was 1771 days. The average number of days to screen a whistleblower case was 7.8 days which was a significant reduction from FY 2023. This finding is continued because the New York State Plan still has a backlog of open whistleblower cases awaiting final resolution and closure.

**Finding FY 2024-13 (FY 2023-19): Case File Documentation in Whistleblower Files**

Case file documentation was missing in the case files reviewed as documented in the narrative of the FAME.

**Status:** A retaliation unit with dedicated staff members was established in FY 2024. Four whistleblower staff attended the OSHA Training Institute course 1421 Whistleblower Investigative Techniques (NY SOAR, FY 2024). There is a dedicated program manager that directly supervises and oversees this unit.

Case files are now being managed in accordance with PESH’s Field Operation Manual Chapter X, Section G, Contents of Case Files. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding is continued and will be the focus of next year’s on-site case file review during the FY 2025 comprehensive FAME.

**Finding FY 2024-14 (FY 2023-20): *Lack of Investigative Steps***

In FY 2023, in 11 of 15 (73%) case files in the Intake/Screening Pending phase lacked substantial investigative steps. They ranged from never contacting the complainant, not sending docket letters, administrative closing letters or following up with supervisors.

In FY 2023, in nine of 11 (82%) of the full field investigation files reviewed, the files lacked substantial investigative steps taken on a regular basis.

**Status:** A retaliation unit with dedicated staff was established. Weekly case management meetings are held to ensure case files include all required investigative steps. Case statuses are tracked using a tracking sheet and OIS reports. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding is continued and will be a focus of next year’s on-site case file review during the FY 2025 comprehensive FAME.

**New FY 2024 Findings**

None

**Observations**

**Closed FY 2023 Observations**

**Observation FY 2023-OB-01 (FY 2022-OB-08): Timely Response to Complaints Requiring an Inspection**

SAMM #1a, average number of workdays to initiate complaint inspections (state formula) was reported at 22.7 workdays in FY 2023. The negotiated number of workdays to respond to complaints with an inspection was 10 days.

**Status:** SAMM #1a, average number of workdays to initiate complaint inspections (state formula) was reported at 8.30 workdays which was below the negotiated number of 10 workdays in FY 2024. This observation is closed.

**Observation FY 2023-OB-06: Mailing Violations to Unions**

In FY 2023, twenty-three of 35 (65%) of the closed files lacked an entry in the case contact sheet or other file notes that confirmed that the union received the citations. The case contact entries would state violations sent but did not specify to which individuals.

**Status:** Duringthe FY 2024 file review, inspection case files that identified unions at the workplace documented that the union was mailed a copy of the notices of violations. This documentation included an email to the union, specific entry in the case contact sheet, or a list of addresses for mailing forwarded to the support staff mailing the notices of violations. This observation is closed.

**Continued FY 2023 Observations**

**Observation FY 2024-OB-01 (FY 2023-OB-02, FY 2022-OB-02, FY 2021-OB-02): Timely Response to Complaints Requiring an Investigation**

SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 7.62 workdays in FY 2023. The negotiated number of days to respond to complaints with an investigation was one workday.

**Status:** SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 6.39 workdays in FY 2024. The negotiated number of workdays to respond to complaints with an investigation was one workday. This observation will remain open and be amended to reﬂect the new SAMM data for FY 2024. This observation is not being converted to a ﬁnding because new and updated SAMM measures became eﬀective in FY 2025. This observation is continued and will be reevaluated in FY 2025.

**Observation FY 2024-OB-02 (FY 2023-OB-03): Advising Complainants of Right to Appeal Decision on Invalid Complaint**

In FY 2023, in two of 10 (20%) of the complaint ﬁles reviewed that the complaint was determined not to be valid, the correspondence to the complainant did not provide the complainant’s appeal rights.

Additionally, the letter did not provide a copy of this appeals procedure. The information that must be included in the letter to the complainant when NY PESH decides not to act on a complaint is outlined in the PESH FOM.

**Status:** In FY 2024, in seven of seven (100%) of the complaint files reviewed where the complaint was determined to be invalid, either no letter was forwarded to the complainant, or the correspondence did not inform the complainant of their appeal rights. Additionally, the letter did not provide a copy of this appeals procedure. The information that must be included in the letter to the complainant when NY PESH decides not to act on a complaint is outlined in the PESH FOM. This observation is continued.

**Observation FY 2024-OB-03 (FY 2023-OB-04): Dismissing Complaints**

In FY 2023, two of the 10 (20%) of the complaint ﬁles reviewed that dismissed the complaint, the complaint was incorrectly determined not to be valid, even though it was a signed complaint from an employee or union representative. In one instance, a written signed complaint form was received from a union representative, alleging that upon request, injury and illnesses records were not provided. The reason given that the complaint was invalid was that this workplace condition did not have a direct relationship to safety and health protections. This exclusion is documented in the PESH FOM (page 257).

The purpose of maintaining these records is to track trends in injuries and illnesses to institute administrative and engineering controls to prevent future injuries and illnesses. These records are required to be maintained under Part 801, Recording and Reporting Public Employees’ Occupational Injuries and Illnesses.

Part 801.35, Employee Involvement, requires that union representatives be provided with copies of injury and illness records upon request. NY PESH has an obligation to enforce this standard and investigate alleged violations of this regulation. This complaint should have been investigated and the FOM revised.

In the second instance, the complaint was determined to be invalid because there was an open inspection on the same subject as rats and rodents present in the facility. A review of the open inspection revealed that two notices of violations had been issued about this complaint and an abatement for one of these notices was documented before this new complaint was received. Since the abatement was documented before this new complaint was received, NY PESH should have followed up with the employer to determine the status of the outstanding violations and the completed abatement relevant to rat feces, and the establishment of a pest control program. This could have been accomplished by using the phone/fax investigation procedure.

**Status:** There were eight complaints reviewed for the FY 2024 FAME that were received by NY PESH and dismissed. In four of eight (50%) of these complaints, the complaint was incorrectly dismissed when serious safety and health hazards were alleged. In one complaint received, a public citizen reported observing and taking pictures of employees of a town highway department, exposed to numerous safety and health hazards, including fall hazards while trimming trees in the community.

The complaint was dismissed because the complainant was a citizen and not a public employee.

The complainant was not contacted to obtain additional information and review the pictures of these hazards that were referenced in the complaint. NY PESH promised in a letter to the complainant that a future inspection would be conducted to investigate these hazards but there is

no record in OIS that an inspection was conducted in FY 2024. NY PESH could have inspected for fall hazards under the guidelines of the National Emphasis Program for Falls that PESH adopted on July 3, 2023.

In the second dismissed complaint, the supervisor determined that there were no airborne exposure hazards to employees working in a library that was undergoing a roof replacement. This determination was made after the supervisor contacted the complainant, conﬁrmed that contractors were working outside replacing the roof on the library, and that debris was falling from the ceiling into the work area. The supervisor concluded that the debris falling into the work area was “general” construction debris and did not create an airborne hazard to employees based on this phone conversation.

In the third example of dismissing complaints, a complaint was received at a juvenile detention center, after staﬀ members were assaulted, and became trapped in a corridor because their keys were taken from them by a combative resident. The complaint was dismissed because NY PESH determined that the complainant had not previously raised concerns in a written notice to the employer that a serious violation of the employer’s workplace violence protection program existed, and had not aﬀorded the employer a reasonable opportunity to correct such activity, policy, or practice, as required by 12 CRR-NY 800.6, Public Employer Workplace Violence Prevention Programs. This complaint, in addition to workplace violence hazards, raised concerns about exit egress hazards which are covered by OSHA standards.

In the ﬁnal instance, the complainant raised concerns about water intrusion in the ceiling of a building causing mold to grow on ceiling tiles causing employees to feel ill. The complaint was dismissed because there are no OSHA mold standards. There are no OSHA standards speciﬁcally for indoor air or mold; however, mold can be addressed under OSHA Standard 1910.141, Sanitation to address water leaks. If the source of the water leak is corrected, mold growth will be reduced.

OSHA has a Safety and Health Topics page regarding mold on its webpage. This observation is continued.

**Observation FY 2024-OB-04 (FY 2023-OB-05) Case File Documentation for Fatalities Not Inspected**In FY 2023, NY PESH received notiﬁcation of 10 fatalities that were closed without an inspection being conducted. All 10 of the ﬁles reviewed lacked an autopsy report or other documented medical evidence such as a death certiﬁcate that conﬁrmed that the death was medically related and not occupationally related. In one ﬁle reviewed, UPA #2084640, there was a mention of obtaining an autopsy report, but none was obtained before closing the ﬁle. The following three examples illustrate the importance of obtaining autopsy reports or other medical documentation to conﬁrm the verbal information being received from the employer and conducting inspections when additional information is needed.

For UPA #2044038, a young ﬁreﬁghter collapsed while directing traﬃc on the evening of June 10,

2023, at a ﬁre scene. The ﬁle was closed based on a death-related to a sudden cardiac event. The possibility that heat may have caused this sudden heart event was not fully investigated. It is unknown from the ﬁle if the victim was wearing full turnout gear or not. An autopsy report would have conﬁrmed the actual cause of death and ruled out heat as the cause of the sudden cardiac event.

Another example for UPA 1965657, a cleaner working in a hospital was found unresponsive in a hallway before work. The ﬁle was closed out based on the employer reporting that the death was related to a medical event. A copy of the employer’s investigation was not obtained before determining the death was not occupationally related. The actual medical event that caused the victim’s death was not identiﬁed in the ﬁle. The employer did not provide this information even though PESH did inquire.

The third example, UPA #2041251, involves a track worker that was found unresponsive in a parking lot. The worker was assigned to sweep the parking lot and repaint parking lines. The employer reported that a medical event caused the death. The actual medical event that caused the death was not identiﬁed in the ﬁle. A clear description of what the employee was doing right before collapsing was not obtained.

**Status:** OIS reports found only one fatality that was reported in FY 2024 that was not investigated. This file was reviewed and found that even though an inspection was not conducted, PESH inquired with the employer and asked relevant questions before closing. However, due to the limited review, this observation is continued and will be reevaluated during the next comprehensive FAME review.

**Observation FY 2024-OB-05 (FY 2023-OB-07): Adoption of Federal Whistleblower Manual**

NY PESH is overdue in adopting an ALAE Whistleblower Manual.

**Status:** NY PESH has not provided OSHA with a draft Whistleblower Manual for review. This observation will be continued.

**Observation FY 2024-OB-06 (FY 2023-OB-08, FY 2022-OB-07, FY 2021-OB-07): Consultation Case File Documentation**

Speciﬁcally, the FY 2023 consultation ﬁle review noted the following:

* Five out of 10 (50%) of the ﬁles reviewed had no evidence that a supervisor reviewed the

ﬁle before it was closed.

* One of 10 (10%) of the ﬁles reviewed were incorrectly classiﬁed as an initial visit rather than a training and education visit. The consultant provided only training assistance during the visit.
* One of seven (14%) of initial visits did not issue a hazard notice to the employer for serious hazards noted in the report.
* Three of seven (42%) of initial visits lacked evidence that the serious hazards noted were corrected.
* Two of four (50%) visits with sampling had either no sampling forms in the ﬁle or incomplete sampling forms.
* Two of seven (29%) of the initial visits were missing from a report to the employer. The employer received an email from the consultant only, acknowledging that a visit was conducted.
* One of one (100%) of the ﬁles reviewed that requested an extension did not have an updated list of hazards issued to the employer after the extension was approved.
* Five of seven (71%) of the initial visits were missing evidence that the three previous years and the current year of 300 logs were reviewed.
* One of three (33%) of training and education visits were missing conﬁrmation of a hazard assessment being conducted within the last 12 months.
* One of three (33%) of training and education visits were missing a copy of the training program presented.

**Status:** Three consultation files were selected for the FY 2024 FAME review. These three consultation files included one training and education and two initial visits. All three consultation visits issued reports to the employer timely. The training and education visit included a copy of the training presentation provided for hazard communication, had evidence of a hazard assessment prior to the training, and included a list of attendees.

The supervisor reviewed each of the three files before the reports were issued to the employer. However, the supervisor did not review all three consultation files prior to closing the files in OIS.

In one of two (50%) of the initial visits reviewed, an extension was requested by the employer. An updated list of hazards was not issued to the employer after the extension of correction dates was approved. In two of the two (100%) of the initial visits reviewed, adequate abatement documentation of the serious hazards found was not obtained prior to closing the file. In one consultation file, the employer submitted the hazard abatement form but did not note the date that the hazard was corrected for each of the five serious hazards. In the other file, the hazard abatement form was not submitted to document correction. The employer provided email confirmation on the correction of the three serious hazards. One of these three serious hazards stated the hazard was fixed but did not explain how it was fixed.

During this evaluation period, PESH was using a previous version of the Consultation Policies and Procedures Manual (CPPM) that was not determined to be at least as effective as the federal CPPM. In response to this finding identified as Finding 2023-21, the New York State Plan submitted a revised version of the CPPM directive A 24-02 on December 30, 2024. This version of the manual was reviewed and compared to the federal CPPM and determined to be at least as effective. The New York State Plan was notified of concurrence by the Region for this version. This version of the CPPM was adopted and implemented in the second quarter of FY 2025. Due to ongoing consultation case file review concerns, this observation is continued.

**New FY 2024 Observations**

**Observation FY 2024-OB-07: Documenting Contests in OIS**

PESH is not entering contest information into OIS for appeals being received from affected employees or union representatives at sites that have received notices of violations. These

inspection files are marked final order and closed in OIS before a decision has been issued by the NYS Industrial Board of Appeals.

**Federal Monitoring Plan:** OSHA will work with the New York State Plan to identify these inspections appealed, reopen the inspections, document the contest information, and provide any other OIS support necessary to document and track these contests.

**Observation FY 2024-OB-08: Obtaining Injury/Illness Records During Inspections**

In FY 2024 in six of 16 (38%) of the inspections reviewed, the files lacked evidence that the SH-900, Log of Work-Related Injuries and Illnesses and SH 900.1, Summary of Work-Related Injuries and Illnesses, for the previous three years were reviewed. Additionally, the files did not identify that the Days Away, Restricted or Transferred (DART) rates were calculated as required by the NY PESH FOM.

**Federal Monitoring Plan:** OSHA will review more files during the next comprehensive FY 2025 FAME to determine if this is a trend requiring further evaluation.

**Observation 2024-OB-09: Case File Documentation for Fatalities Inspected**

In one of the five (20%) of closed fatality inspections reviewed, it was determined by NY PESH that the victim died of natural causes but there was no medical evidence to support this conclusion.

A transit worker died on July 13, 2024; while inspecting a train to make sure it was fit for customer service as part of a yard practical test and collapsed in front of his supervisor. The file does not obtain copies of emergency medical services reports, a death certificate, an autopsy, or medical examiners report to document the cause of the death. There is no notation in the case contact sheet that a request was made for these reports. The narrative stated that the nature of the injury was death by cardiac arrest. This report was prepared as an in- compliance inspection.

**Federal Monitoring Plan:** OSHA will review more files during the next comprehensive FY 2025 FAME to determine if this is a trend requiring further evaluation.

**Observation 2024-OB-10: Dismissing Referrals**

In three of six (50%) referrals received due to the in-patient hospitalization of an employee, NY PESH dismissed the referral based on the initial phone report without conducting an inspection or investigation. A referral report of an in-patient hospitalization of a state trooper seriously injured after being struck by a car while assisting a disabled driver was dismissed because it was determined, based on the phone report, that there no OSHA violations. The NY PESH Five-Year Strategic Plan has a goal of reducing injuries/illnesses among police officers by targeting resources towards this employment sector because of the high rates of injuries/illnesses reported.

The two other reports of in-patient hospitalizations, dismissed without an inspection or investigation, involved a maintenance worker suffering chest pain while working outside in August, painting parking lot lines, and another work having trouble breathing conducting unknown work for the Department of Transportation. The case contact sheets, and the contents of the file did not explain how NY PESH officials determined that these events were not occupationally related. Both incidents were medically related, but contributing factors in the workplace, such as heat, were not considered for investigation.

**Federal Monitoring Plan:** OSHA will review more files during the next comprehensive FY 2025 FAME to determine if this is a trend requiring further evaluation.

## State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2024 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is transitioning to new SAMM measures in FY 2025. Therefore, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2024.

NY PESH was outside the FRL on the following SAMMs:

**SAMM 2a-Average Number of Workdays to Initiate Complaint Investigations (State Formula)**

**Discussion of State Plan Data and FRL**: The FRL for average number of workdays to initiate complaint investigations was one (1) day. The New York State Plan’s average number of workdays to initiate complaint investigations in FY 2024 was 6.39 days. This was above the FRL.

**Explanation:** See Observation FY 2024-OB-01

**SAMM 5-Average Number of Violations Per Inspection with Violations by Violation Type SWRU**

**Discussion of the State Plan Data and FRL:** The FRL for the average number of SWRU violations issued per inspection is +/- 5% of 1.74 which equals a range of 1.39 to 2.08. NY PESH issued 3.87 SWRU violations per inspection which significantly exceeded the FRL.

**Explanation:** CSHOs conducting enforcement inspections for NY PESH are writing more serious, willful and repeat violations than the FRL. Exceeding the FRL is positive for SAMM 5a.

**SAMM 7-Planned v. Actual Inspections-Safety**

**Discussion of the State Plan Data and FRL:** The FRL for planned vs actual inspections is +/- 5% of the negotiated number of 600 safety inspections, which equals a range of 570 to 630 for safety. The New York State Plan’s safety staff conducted 673 inspections.

**Explanation:** The New York State Plan exceeded their safety inspection goal by 12%. In FY 2023, the New York State Plan conducted 555 safety inspections and had a goal of 700 inspections. The safety projections were reduced from 700 to 600 inspections in the FY 2024 grant.

**SAMM 9-Percent Incompliance-Safety**

**Discussion of the State Plan Data and FRL:** The FRL for the percent in-compliance for safety (SAMM 9a) is +/- of 32.83% which equals a range of 26.27% to 39.40% for safety. NY PESH had a percent incompliance of 24.90% which was below the FRL.

**Explanation:** A percent in-compliance for safety below the FRL range indicated that the safety staff was issuing a lower percentage of in-compliance inspections than the three-year national average. This is a positive and not a negative metric of performance.

**SAMM 10-Percent of Work-Related Fatalities Responded to In One Workday**

**Discussion of the State Plan Data and FRL:** The FRL for the percentage of work-related fatalities responded to in one workday was 100%. NY PESH responded 90% of the time to work-related fatalities in one workday. This report identified that NY PESH received nine reports of work- related fatalities and responded to eight reports within one day below the FRL.

**Explanation:** This SAMM measure indicates that 10% of the fatality reports received were not responded to within one day. NY PESH is reporting that the outlier is due to an OIS date entry error.

During the review of the SOAR for FY 2024, it was discovered that the number of work-related fatalities reported on the cumulative year-end SAMM report run by the National Office on November 12, 2024, reported a significantly lower number of work-related fatalities than NY PESH identified in their SOAR report. A review of the data on OIS identified that NY PESH was marking fatalities that were work-related as not work-related. This resulted in fewer fatalities being reported in this SAMM measure.

A new SAMM report run for the New York State Plan on March 7, 2025, identified 28 fatalities that were inspected and responded to within one workday. The number of work-related

fatalities that were investigated is more accurately reflected in this SAMM report. However, the practice of conducting abbreviated opening conferences via phone is inflating the percentage rates because an entry date based on the abbreviated opening conference is being entered as the entry date. This practice is discussed under Finding FY 2024-10.

**SAMM 11-Average Lapse Time (Safety) and Average Lapse Time (Health)**

**Discussion of the State Plan Data and FRL:** In FY 2024, the average safety lapse time (SAMM 11) for citations was calculated at 108.55 days which was above the FRL range of 44.82 to

67.23 days for safety and higher than FY 2023.

In FY 2024, the average health lapse time (SAMM 11) for citations was calculated at 126.52 days which is above the FRL range of 55.78 to 83.66 days for health.

**Explanation:** See Finding FY 2024-01 and Finding FY 2024-02.

## Appendix A – New and Continued Findings and Recommendations

FY 2024 NY PESH Follow-up FAME Report

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| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2023-# or**  **FY 2023-OB-#** |
| FY 2024-01 | **Safety Lapse Time**  In FY 2024, the average safety lapse time (SAMM 11) for citations was calculated at  108.55 days which was above the FRL range  of 44.82 to 67.23 days for safety and higher than FY 2023. | NY PESH should utilize the OIS report system and the SAMM Report to track lapse time and manage the program to minimize this metric. | FY 2023-01  FY 2022-01  FY 2021-01  FY 2020-OB-01 FY 2019-OB-01 FY 2018-OB-08 |
| FY 2024-02 | **Health Lapse Time**  In FY 2024, the average health lapse time (SAMM 11) for citations was calculated at  126.52 days which is above the FRL range of  55.78 to 83.66 days for health. | NY PESH should utilize the OIS report system and the SAMM Report to track lapse time and manage the program to minimize this metric. | FY 2023-02  FY 2022-02  FY 2021-01  FY 2020-OB-02  FY 2019-OB-02 FY 2018-OB-09 |
| FY 2024-03 | **OIS Unprogrammed Tracking Reports**  NY PESH does not have procedures in place to ensure that complaints are being entered into OIS correctly and to document that they are evaluated appropriately by managers and opened and completed in a timely manner. | NY PESH should develop and implement procedures to ensure that complaints are entered correctly into OIS, evaluated by managers, and opened and completed timely to ensure adequate and timely abatement of hazards. | FY 2023-03  Special Study Finding #3 |

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| FY 2024-04 | **OIS Health Sampling Forms**  In both (100%) health files reviewed, there was missing health sampling information. | NY PESH should ensure that when sampling is performed complete data is entered in the OIS system and on the appropriate forms. | FY 2023-04  FY 2020-01  FY 2019-01  FY 2018-01  FY 2017-01 |
| FY 2024-05 | **Evaluating Hazards Raised in Complaints**  In three of nine (33%) of the complaint inspections reviewed, the inspection did not evaluate all the hazards that were alleged in the complaint. | NY PESH should develop and implement a strategy to ensure that all alleged and identified hazards are adequately addressed, and where apparent violations are not cited, an explanation should be included in the case file. Field staff should receive hazard recognition training, and managers should review files to ensure all apparent hazards are addressed. Inspectors should be encouraged to document site conditions with digital  photographs. | FY 2023-07  Special Study Finding #1 |
| FY 2024-06 | **Unprogrammed Activity Documentation (UPA)**  In four of 16 (25%) of the UPAs not investigated, no case contact sheet was included to document the important events of the file. | NY PESH should follow the PESH FOM by developing and completing contact sheets for all case files. | FY 2023-08  Special Study Finding #16  FY 2022-OB-03 FY 2021-OB-03 |
| FY 2024-07 | **Advanced Notice**  NY PESH is providing advanced notice of inspections to both the employer and the union representatives. | NY PESH has implemented a new advanced notice directive (effective on July 5, 2023) that prohibits advanced notice without written approval and under limited circumstances. NY PESH needs to ensure that the directive is  followed during all inspections. | FY 2023-10  Special Study Finding #8 |

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| FY 2024-08 | **Pending Violations**  An OIS Inspection Report, run on February 19, 2025, identified NY PESH had 322 open inspections pending issuance. There were 164 inspections or approximately 51% of the open  inspections with pending citations that were more than 180 days open. | To be more closely aligned with OSHA, NY PESH should strive to ensure that violations are issued within six months of the opening conference or violative condition. | FY 2023-11  Special Study Finding #4 |
| FY 2024-09 | **Employer Knowledge**  In three of 13 (23%) of the closed files with citations reviewed in FY 2024, the employer knowledge that was documented did not support that the employer had knowledge of the hazard or condition. | NY PESH should ensure that the employer knowledge documented on the violation worksheet supports that the employer had knowledge of the hazard or condition. Refrain from relying on using “plain indifference” or “should have known” for employer knowledge. Also, consider utilizing NY PESH’s legal staff to provide retraining to CSHOs on what constitutes documentation of prima facie employer knowledge. | FY 2023-12 |
| FY 2024-10 | **OIS Open Inspection Report and Overdue Abatement**  The overdue abatement tab on the OIS Open Inspection Report, run on February 19, 2025, showed 34 inspections that had overdue abatement. The oldest file with overdue abatement had abatement that was 1,916 days overdue as of February 19, 2025. | NY PESH should enter all required data into OIS including contests and better utilize OIS reports to ensure timely tracking and abatement of all hazards. The open files identified in this review and on the OIS Open Inspection Report that still have open abatement need to be reviewed, the employer contacted to secure abatement and follow-ups scheduled as appropriate. | FY 2023-15  Special Study Finding #6 Special Study Finding #7  FY 2022-03  FY 2021-03 |

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| FY 2024-11 | **Documenting Employee Interviews**  In six of 19 (32%) of the files reviewed in FY 2024, the files were either missing field notes or evidence to document that employees were interviewed to evaluate the working  conditions and/or support any violations issued. | NY PESH should train CSHOs on the importance of documenting employee interviews in field notes and ensure that supervisors check for documentation of employee interviews during the case file review. | FY 2023-16  Special Study Finding #9 |
| FY 2024-12 | **Responding to Worker Retaliation Cases Timely**  As of February 19, 2025, 57 of 72 (79%) of open docketed whistleblower cases were open more than 320 days. The average number of days for PESH to close whistleblower cases is 1,771 days. | NY PESH should ensure that investigators continue to screen the cases upon receipt, properly record the cases in OIS, work to reduce the backlog of open cases, and work with the counsel’s office to close cases timely. | FY 2023-18 |
| FY 2024-13 | **Case File Documentation in Whistleblower Files**  Case file documentation was missing in the case files reviewed. | NY PESH should follow their FOM or adopt OSHA’s WIM as necessary. Standardization of  forms and the information contained in those forms would also help in ensuring consistent investigations and meeting critical metrics. | FY 2023-19 |
| FY 2024-14 | **Lack of Investigative Steps**  In 11 of 15 (73%) case files in the Intake/Screening Pending phase lacked substantial investigative steps. They ranged from never contacting the complainant, not sending docket letters, administrative closing letters or following up with supervisors.  In nine of 11 (82%) of the full field investigation files reviewed, the files lacked substantial investigative steps taken on a  regular basis. | NY PESH should follow its FOM to process whistleblower complaints effectively. | FY 2023-20 |

## Appendix B – Observations Subject to Continued Monitoring

FY 2024 NY PESH Follow-up FAME Report

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| **Observation # FY 2024-OB-#** | **Observation#**  **FY 2023-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
|  | FY 2022-OB-08 | **Timely Response to** | OSHA will monitor NY | Closed |
| FY 2023-OB-01 | **Complaints Requiring** | PESH during FY 2024 to |  |
|  | **Inspections** | identify possible causes |  |
|  | SAMM #1a, average | of this disparity to |  |
|  | number of workdays to | ensure that complaint |  |
|  | initiate complaint | inspections are initiated |  |
|  | inspections (state | within the negotiated |  |
|  | formula) was reported | review level. OSHA will |  |
|  | 22.7 days in FY 2023. | gather information |  |
|  | The negotiated number | during quarterly |  |
|  | of days to respond to | meetings about the |  |
|  | complaints with an inspection is 10 days. | progress of the central intake unit in  responding to  complaints and  streamlining complaint  intake process. |  |

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| FY 2024-OB-01 | FY 2023-OB-02 FY 2022-OB-02 FY 2021-OB-02 | **Timely Response to Complaints Requiring Investigations**  SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 6.39 workdays in FY 2024. The negotiated number of workdays to respond to complaints with an investigation is one workday. | OSHA will monitor NY PESH during FY 2024 to identify possible causes of this disparity to ensure that complaint inspections are initiated within the negotiated review level. OSHA will gather information during quarterly meetings about the progress of the central intake unit in responding to complaints and streamlining the complaint intake  process. | Continued |

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| FY 2024-OB-02 | FY 2023-OB-03 | **Complainant Rights**  In seven of seven (100%) of the complaint files reviewed that the complaint was determined not to be valid, either the complainant was not forwarded a letter, or the correspondence to the complainant did not provide the  complainant’s appeal rights. | OSHA will monitor the progress that NY PESH is making to standardize the complaint processing procedures during quarterly meetings. | Continued |
| FY 2024-OB-03 | FY 2023-OB-04 | **Dismissing Complaints**There were eight complaints reviewed for the FY 2024 FAME that were received by NY PESH and dismissed. In four of eight (50%) of these complaints, the complaint was incorrectly dismissed when serious safety and health hazards were  alleged. | OSHA will monitor NY PESH’s progress to standardize the complaint processing procedures during quarterly meetings.  OSHA will monitor NY PESH’s progress in updating its FOM. | Continued |

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| FY 2024-OB-04 | FY 2023-OB-05 | **Case File Documentation**  NY PESH received notification of ten fatalities that were closed without an inspection being conducted. All 10 of the files reviewed lacked an autopsy report or other documented medical evidence such as a death certificate that confirmed that the death was medically related and not occupationally-related. | OSHA will monitor NY PESH’s progress in developing written procedures on evaluating and documenting reports of fatalities that are not inspected. | Continued |
|  | FY 2023-OB-06 | **Mailing Violations to Unions**  Twenty-three of 35 (65%) of the closed files lacked an entry in the case contact sheet or other file notes that confirmed that the union received the citations. The case contact entries would state violations sent but did not specify to which  individuals. | OSHA will monitor through discussions at quarterly meetings. | Closed |

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| FY 2024-OB-05 | FY 2023-OB-07 | **Federal Whistleblower Manual**  NY PESH is overdue in adopting an ALAE Whistleblower Manual. | OSHA will monitor the progress of revising the whistleblower chapter in the NY PESH FOM during quarterly meetings. | Continued |
| FY 2024-OB-06 | FY 2023-OB-08 FY 2022-OB-07 FY 2021-OB-07 | **Consultation Case File Documentation**Consultation documentation was lacking. | OSHA will monitor during quarterly meetings and by utilizing OIS reports. | Continued |
| FY 2024-OB-07 |  | **Documenting Contests in OIS**  PESH is not entering contest information into OIS for appeals being received only from affected employees or union representatives at sites that have received notices of violations.  These inspection files are being marked final order and closed in OIS before a decision has been issued by the NYS Industrial Board of  Appeals. | OSHA will work with the New York State Plan to identify these inspections, reopen the inspections, document the contest information and provide any other OIS support necessary to document and track these contests. | New |

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| FY 2024-OB-08 |  | **Injury and Illnesses Records**  In six of 16 (38%) of the inspections reviewed, the files lacked evidence that the SH-900, Log of Work-Related Injuries and Illnesses and the SH-900.1, Summary of Work-Related Injuries and Illnesses, for the previous three years were reviewed.  Additionally, the files did not identify that the Days Away, Restricted or Transferred (DART) rates were calculated as required by the NY PESH FOM. | OSHA will review more files during the next comprehensive FY 2025 FAME to determine if this is a trend requiring further evaluation. | New |
| FY 2024-OB-09 |  | **Case File Documentation****for Fatalities Inspected**  In one of five (20%) of the closed fatality inspections reviewed, it was determined by NY PESH that the victim died of natural causes but there was no medical evidence to support this conclusion. | OSHA will review more files during the next comprehensive FY 2025 FAME to determine if this is a trend requiring further evaluation. | New |
| FY 2024-OB-10 |  | **Dismissing Referrals**  In three of six (50%) referrals received due to the in-patient hospitalization of an employee, NY PESH dismissed the referral based on the initial phone report without conducting an inspection or investigation. A referral report of an in-patient hospitalization of a state trooper seriously injured after being struck by a car while assisting a disabled driver was dismissed because it was determined, based on the phone report, that there no OSHA violations. The NY PESH Five-Year Strategic Plan has a goal of reducing injuries/illnesses among police officers by targeting resources towards this employment sector because of the high rates of injuries/illnesses reported. | OSHA will review more files during the next comprehensive FY 2025 FAME to determine if this is a trend requiring further evaluation. | New |

## Appendix C - Status of FY 2023 Findings and Recommendations

FY 2024 NY PESH Follow-up FAME Report

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| **FY 2023-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | | **Completion Date** | **Current Status and Date** | |
| FY 2023-01 | **Safety Lapse Time**In FY 2023, the average safety lapse time (SAMM 11) for citations was calculated at  101.64 days which was above the FRL range of 44.18 to  66.28 days for safety. | NY PESH should utilize the OIS reports including the SAMM report to track lapse time and encourage CSHOs to issue simple inspections rapidly as soon as practical to average out the lapse time associated with more complex inspections. In addition, NY PESH needs to fill both vacant CSHO and administrative positions to provide additional resources. | The Associate Administrative Analyst position was filled in July 2023. Duties include producing Internal “weekly action reports,” open inspection reports, lapse time per inspector, and other OIS data which are distributed to supervisors and management weekly. Filling vacant CSHO positions and maintaining existing staff is an ongoing effort. Effective July 14, 2023, PESH implemented an all-staff directive on case management which ensures proper tracking and completion of case work. Supervisors are directed to review open cases with inspectors weekly, ensuring timely progress, and appropriate direction. Inspectors are required to maintain a “case management inventory” to inform supervisors and managers of case status. Focused case monitoring will ensure timely completion of case work, abatement tracking, timely follow up, and case completion. Supervisors discuss lapse time and assist with case direction and prioritization at weekly one-on-one case management meetings with Inspectors. PESH continues to work on streamlining the case review process as well as providing staff with training and resources to improve lapse times and improve the quality of inspections. Additionally, a supervisor has been assigned as an Enforcement Case Coordinator to oversee all fatality investigations from start to finish within a mandated six-month timeframe. The Enforcement Case Coordinator meets weekly with the program manager to review and expedite fatality investigations. Staff training, conducted in October 2023 and April 2024, covered the results of the FY 2023 FAME, as well as safety and health topics affecting enforcement and consultation staff in both safety and industrial hygiene disciplines. In 2024, several meetings and trainings have been held to inform managers, supervisors, and staff on how to manage lapse time (issuance of new/old). Expectations have been set with managers that meeting the OSHA requirement of lapse time is required. As of March 2024, lapse time has been added to the Program Manager 2 performance evaluation. All other applicable positions will have lapse time included on performance management by September 30, 2024. The DOSH Director has been involved in routinely evaluating this metric since March 2024. A tracking sheet, by CSHO, has been developed to monitor outliers. | | Not Completed | Open  (As of March 15, 2025) | |
| FY 2023-02 | **Health Lapse Time** In FY 2023, the average health lapse time (SAMM 11) for citations was calculated at  110.49 days which was above the FRL range of 55.78 to  83.66 days for health. | NY PESH should utilize the OIS reports including the SAMM Report to track lapse time and encourage CSHOs to issue simple inspections rapidly as soon as is practical to average out the lapse time associated with more complex inspections. In addition, NY PESH needs to fill both vacant CSHO and administrative positions to provide additional  resources. | The Associate Administrative Analyst position was filled in July 2023. Duties include producing Internal “weekly action reports,” open inspection reports, lapse time per inspector, and other OIS data which are distributed to supervisors and management weekly. Filling vacant CSHO positions and maintaining existing staff is an ongoing effort.  Effective July 14, 2023, PESH implemented an all-staff directive on case management which ensures proper tracking and completion of case work. Supervisors are directed to review open cases with inspectors weekly, ensuring timely progress, and appropriate direction. Inspectors are required to maintain a “case management inventory” to inform supervisors and managers of case status. PESH continues to work on streamlining the case review process as well as providing staff with training and resources to improve lapse times and improve the quality of inspections. Additionally, a supervisor has been assigned as an Enforcement Case Coordinator to oversee all fatality investigations from start to finish within a mandated six-month timeframe. The Enforcement Case Coordinator meets weekly with the program manager to review and expedite fatality investigations. Staff training, conducted in October 2023 and April 2024, covered the results of the FY 2023 FAME, as well as safety and health topics affecting enforcement and consultation staff in both safety and industrial hygiene disciplines. In 2024, several meetings and trainings have been held to inform managers, supervisors, and staff on how to manage lapse time (issuance of new/old). Expectations have been set with managers that meeting the OSHA requirement of lapse time is required. As of March 2024, lapse time has been added to the Program Manager 2 performance evaluation. All other applicable positions will have lapse time included on performance management by September 30, 2024. The DOSH Director has been involved in routinely evaluating this metric since March 2024. A tracking sheet, by CSHO, has been developed to monitor outliers. | | Not Completed | Open  (As of March 15, 2025) | |
| FY 2023-03 | **OIS UPA Tracking Report**  The OIS UPA  Tracking Report, run on January 23, 2024, identified that there were 12 UPAs that were being handled as phone/fax investigations that were overdue for  responses from the employer to | NY PESH should develop and implement procedures to ensure that complaints are entered correctly into OIS, evaluated by managers, opened and completed timely, to ensure adequate and timely abatement of hazards. | The Associate Administrative Analyst position was filled in July 2023. Duties include producing Internal “weekly action reports,” open inspection reports, lapse time per inspector, and other OIS data which are distributed to supervisors and management weekly. Filling vacant CSHO positions and maintaining existing staff is an ongoing effort. Effective July 14, 2023, PESH implemented an all-staff directive on case management which  ensures proper tracking and | | Not Completed | Open  (As of March 15, 2025) | |
|  | follow-up on the hazards alleged in the complaints.  The OIS Report shows the last action taken regarding these complaints was to forward a request to the employer to investigate and provide a response after investigating. The oldest two cases on this list date back to calendar year 2022. There were  11 UPAs including one fatality identified on the OIS Tracking Report for all PESH offices that were received before the end of calendar year 2023 that had not been inspected as of January 24, 2024.  The oldest UPA was received on June 24, 2020.  Fifteen UPAs were received in January 2024 and were awaiting inspection. The special study identified 52 UPAs awaiting inspection in the NYC Office as of the December 7, 2023 OIS Tracking Report. This report also identified 175 cases under the tab, Complaints and Referrals awaiting other actions. These cases require OIS entries to be updated to ensure that the complaints are effectively managed, and appropriate actions taken to resolve. |  | the FY 2023 FAME, as well as safety and health topics affecting enforcement and consultation staff in both safety and industrial hygiene disciplines. In 2024, several meetings and trainings have been held to inform managers, supervisors, and staff on how to manage lapse time (issuance of new/old). Expectations have been set with managers that meeting the OSHA requirement of lapse time is required. As of March 2024, lapse time has been added to the Program Manager 2 performance evaluation. All other applicable positions will have lapse time included on performance management by September 30, 2024. The DOSH director has been involved in routinely evaluating this particular metric since March 2024. A tracking sheet, by CSHO, has been developed to monitor outliers. Effective July 14, 2023, PESH implemented an all-staff directive on case management which ensures proper tracking and completion of case work. Supervisors are directed to review open cases with inspectors weekly, ensuring timely progress, and appropriate direction. Inspectors are required to maintain a “case management inventory” to inform supervisors and managers of case status. Focused case monitoring will ensure timely completion of case work, abatement tracking, timely follow up, and case completion.  Supervisors discuss lapse time and assist with case direction and prioritization at weekly one on one case management meetings with Inspectors. PESH continues to work on streamlining the case review process as well as providing staff with training and resources to improve lapse times and improve the quality of inspections. Additionally, a supervisor has been assigned as an Enforcement Case Coordinator to oversee all fatality investigations from start to finish within a mandated six-month timeframe. The Enforcement Case Coordinator meets weekly with the program manager to review and expedite fatality investigations. Staff training, conducted in October 2023 and April 2024, covered the results of the FY 2023 FAME, as well as safety and health topics affecting enforcement and consultation staff in both safety and industrial hygiene disciplines. In 2024, several meetings and trainings have been held to inform managers, supervisors, and staff on how to manage lapse time (issuance of new/old). Expectations have been set with managers that meeting the OSHA requirement of lapse time is required. As of March 2024, lapse time has been added to the Program Manager 2 performance evaluation. All other applicable positions will have lapse time included on performance management by September 30, 2024. The DOSH Director has been involved in routinely evaluating this particular metric since March 2024. A CSHO tracking sheet has been developed to monitor outliers. PESH established a Centralized Intake Unit (CIU) in December 2023, which processes all complaints received statewide ensuring complaints are correctly screened, entered into OIS, and addressed or resolved in a timely manner to ensure uniformity statewide. In February 2024, complainant communication procedures were formalized in policy. PESH also implemented a staff directive on case management. Under this directive, supervisors hold individual weekly meetings with inspectors to review their open cases. In preparation for these meetings, the supervisor generates and reviews any applicable reports from OIS. The supervisor reviews outliers in the reports, and monitors progress on any higher profile issues from previous weeks. The inspectors are required to maintain lists of their active cases with up-to-date status available to supervisors and managers in shared electronic folders. UPA tracking reports are generated and sent to supervisors in weekly action reports. Weekly case management meetings between supervisors and inspectors address open inspection activities, including UPAs. Key metrics will be added to the highlighted entries on weekly action reports to supervisors. | |  |  | |
| FY 2023-04 | **OIS Health Sampling Forms**Six out of seven (86%) of the closed health inspections with sampling had either no OIS health forms in the file or incomplete sampling forms in the files to document the sampling performed. The four inspections with incomplete OIS forms that were incomplete were missing information such  as the make and model of the instrument used, the pre and post calibration results, and actual sampling times.  Two inspections had no OIS sampling forms in the file even though the narrative stated sampling was performed. The missing information on the forms could not be  located in the field notes of the file. | NY PESH should ensure that when sampling is performed complete data is entered in the OIS system and on the appropriate forms. NY PESH should consider retraining staff on the sampling information that needs to be documented in OIS and on the sampling forms. | This was addressed during the IH workshop in October 2023 during statewide training (with regional staff present), directing staff to use OSHA 91 form for lab air sampling and distinguishing OIS required fields from case file requirements. Also, NY PESH accepted the Region’s offer to arrange OIS health sampling training (scheduled for August 21, 2024). We discussed and reinforced requirements with staff whose reviewed cases did not contain any equipment or calibration information. We will reinforce this during quarterly Associate meetings and during statewide IH workshops. PESH will also create training and resources for supervisors to develop case review skills. | | Not Completed | Open  (As of March 15, 2025) | |
| FY 2023-05 | **Staffing**  NY PESH has attributed the 62% reduction in consultation visits from FY 2022 to a reduction in consultation staff. Administrative positions that  were intended to be filled in FY 2023 have remained open. | NY PESH should fill current staffing vacancies with qualified staff to help meet the annual performance goals established for both consultation and enforcement and improve metrics such as average  lapse time and response to complaints. | Program staff changes were made in January 2024 to prioritize enforcement needs and assure separation between ENF and CNS functions. Adaptations will continue to be made to accommodate consultation demand with reduced staff, including increased compliance assistance. An Associate Administrative Analyst position was filled in July 2023. Staffing levels will  be maintained with ongoing hiring, despite losses due to promotion, external opportunities and retirements. The 3.61% FY 2024 grant reduction, announced in May 2024, has resulted in Program operating with a 22% overmatch of federal funding. This accounts for 12.7 positions over the fill level supported by the grant. The program will continue to seek approval for additional overmatch funds; however, the state is funding almost 13 positions independently. | | September 30, 2024 | Completed | |
| FY 2023-06 | **Complaint Letters**In five of 18 (28%) closed complaint files lacked evidence that the complainant was provided with a complainant letter. In two of 13 (15%) closed files of the complaint letters that were sent, no reason was given for why the complaint was not  sustained. | NY PESH needs to follow its FOM when issuing letters to complainants and ensure that unsubstantiated allegations are explained in the letter or in the narrative. | In February 2024, complainant communication procedures were formalized with staff and supervisors. Staff have been provided with procedures and letter templates to ensure frequent and proper communication with complainants throughout the inspection process.  Centralized Intake Unit (CIU) complaint screening and intake ensures all complainant concerns are addressed. | | September 30, 2024 | Completed | |
| FY 2023-07 | **Evaluating Hazards**  In six of 18 (33%) of the closed complaint files, the inspections did not evaluate all the hazards that were alleged in the complaint. | NY PESH should  develop and implement a strategy to ensure that alleged and identified hazards are adequately addressed, and where apparent violations are not cited, an explanation should be included in the case file. Field staff should be provided with hazard recognition training, and managers should review files to ensure all apparent hazards are addressed.  Inspectors should be encouraged to document site conditions with  digital photographs. | With the creation of the CIU, there is  more consistency with writing the UPA from the complainant’s letter/PESH7. With the weekly case management meetings, managers are to review cases routinely with inspectors. Case review training and resources will be developed to assist supervisors sharpen their case review skills. | | Not  Completed | Open  (As of March  15, 2025) | |
| FY 2023-08 | **Unprogrammed Activity** Documentation In 11 of 17 (65%)  of the unprogrammed  activities not investigated, there was no contact sheet to document the important events of the file. | NY PESH should follow the PESH FOM by developing and completing contact sheets for  all case files. NY PESH needs to follow its FOM regarding issuing letters to the families of victims. The issuance of both letters needs to be documented in the case files. | CIU creates a contact sheet, memorializing communications and case actions. For fatalities, the ECC is thoroughly reviewing case contents. Additionally, CSHOs have been  retrained on this topic and  supervisors are being held more accountable for their work. Case review training and resources continue to be developed for supervisors. By September 30, 2024, performance evaluations will be updated to include quality of cases  contents and contact sheets. | | Not Completed | Open  (As of March 15, 2025) | |
| FY 2023-09 | **Next-of-Kin Letters**  In four of seven (57%) of the closed fatality inspections reviewed, there was no evidence in the files that both the initial notification of the inspection and the results of the inspection next-of- kin letters were sent to the families  of the victims. |  | This has been addressed by the establishment and implementation of the Enforcement Case Coordinator (ECC), adoption of the OSHA NOK directive, ECC training, and implementation of a new policy. The ECC ensures timely and thorough correspondence with next of kin and their representatives throughout the course of the investigation. | | September 30, 2024 | Completed | |
| FY 2023-10 | **Advanced Notice**An OIS Inspection Address Notification Report, run on April 28, 2023, found that  advanced notice was given 23 times in FY 2022 and 10 times through the end of April 2023. Advanced notice was given four times in the closed files reviewed with no explanation  provided. | NY PESH has implemented a new advanced notice directive (effective on July 5, 2023) that prohibits advanced notice without  written approval and under limited circumstances. NY PESH needs to ensure that the directive is followed for all inspections. The cases found during the FAME were opened prior  to this date. | This has been addressed by an advance notice directive, effective July 5, 2023, prohibiting all advance notice of inspections except in exceptional circumstances, and only with the Commissioner’s approval. Ongoing OIS reports and case review  monitors compliance. | | Not Completed | Open  (As of March 15, 2025) | |
| FY 2023-11 | **Pending Violations**  An OIS Open Inspection Report, run on November 20, 2023,  identified NY PESH had 302 open inspections pending issuance. There were 153 inspections (approximately 50%) of the open inspections with pending citations that were more than 180 days open.NY PESH does not have a six-month statute of limitations for issuing citations. | To be more closely aligned with OSHA, NY PESH should strive to ensure that violations are issued within six months of the opening conference or violative condition. | PESH has evaluated the issue of lapse and the need for shorter issuance timeframes and is taking measures to shorten the time cases are open leading to quicker abatement with the goal of minimizing public employee exposure to hazards. Accordingly, in October 2023 a 6-month requirement was imposed on all fatality inspections moving forward. PESH has been able to meet this requirement for the fatality inspections opened since the policy effective date in October. PESH has evaluated the issue of lapse and the need for shorter issuance timeframes and is taking measures to shorten the time cases are open leading to quicker abatement with the goal of minimizing public employee exposure to hazards. On all fatality inspections PESH staff have been informed on more than one occasion (upon implementation of the October 2003 policy and during training) by Director Phillips that the 6-month requirement will be applied to all cases in the future, though this policy has not yet been implemented. Additionally, PESH is focusing on reducing lapse time through the creation of a case management policy and tracking lapse monthly. The requirement to meet national averages was added to the Program Manager 2 performance standards in 2024 and it will be added to CSHO performance standards starting in 2024. The addition to the CSHO performance standards will take approximately one year due to the union agreement and rolling performance evaluation dates.  Despite it taking a year for implementation, all CSHOs will be informed of this new requirement and are to work towards achieving it.  PESH recognizes the need to improve lapse and reduce the amount of time a case is open and is working towards that goal. PESH does not have a requirement in the act or FOM for six-  month issuance of violations and will voluntarily proceed in making this change. | | Not Completed | Open  (As of March 15, 2025) | |
| FY 2023-12 | **Employer Knowledge**  In 16 of 38 (42%)  of closed files with citations, the employer knowledge that was documented did not support that the employer had knowledge of the hazard or condition. | NY PESH should ensure that the employer knowledge documented on the violation worksheet supports that the employer had knowledge of the hazard or condition. Refrain from relying on using “plain indifference” or “should have known” for employer knowledge.  Consider utilizing NY PESH’s legal staff to provide retraining to CSHOs on what constitutes documentation of prima facie employer  knowledge. | | Citation documentation, with emphasis on establishing employer knowledge, has been a focus area addressed as part of statewide training workshops held in October 2023 and April 2024. Emphasis on case development will continue in ongoing staff training and case review. This will also improve as the supervisors receive training in case review. Case management meetings will also improve this issue as there is early and often discussion regarding each case. | Not Completed | | Open  (As of March 15, 2025) | |
| FY 2023-13 | **Timely Follow-ups** Three of 22 (14%) follow-ups were not conducted within 30 working days of the latest abatement date from the initial inspection (OIS Entries). The special study Finding #13 found that six of the seven (86%) of follow-up inspections reviewed were not conducted within 30 working days of the latest abatement date.  The FAME shows an improvement in this area. | NY PESH should  follow the FOM and conduct follow-up inspections within 30 working days after the latest violation abatement date. | | The need and scheduling of follow-up  inspections are addressed during weekly case management meetings and OIS reports provided weekly to each supervisor. CSHOs are also instructed on how to run and use OIS reports for personal case tracking. | September  30, 2024 | | Completed | |
| FY 2023-14 | **Processing PMAs**Four of 12 (33%) of the closed files with an approved PMA were missing either adequate interim  protections or the steps taken to comply to achieve  compliance. | NY PESH should follow the PESH FOM and ensure that all necessary steps are satisfactorily completed before  approving the PMA. | | Processing and vetting of PMAs and ensuring final abatement have been reinforced with supervisors and is part of ongoing management review. Training will be conducted for PMA processing for supervisors by September 30, 2024. | 9/30/2024 | | Completed | |
| FY 2023-15 | **Overdue Abatement**The overdue  abatement tab on the OIS Open Inspection Report, run on November 20, 2023, showed  86 inspections that had overdue abatement. The oldest file with overdue abatement had abatement that was 2,120 days overdue as of November 20,  2023. | NY PESH needs to enter all required data into OIS including contests and better utilize OIS reports to ensure timely tracking and abatement of all hazards. The open files identified in this review and on the OIS Open Inspection Report that still have open abatement need to be reviewed, the employer contacted to secure abatement and follow-ups scheduled as appropriate. | | Timely verification of abatement is addressed in weekly case management meetings with staff and weekly OIS reports provided to supervisors and management.  Supervisors focus on lapse time reduction and timely abatement in one-on-one staff meetings. CSHOs are also instructed on how to run and use OIS reports for personal case tracking. Timely abatement was added to the Program Manager 2 performance evaluation in March 2024. This issue will be added to all remaining applicable performance evaluations by September 30, 2024. | Not Completed | | Open  (As of March 15, 2025) | |
| FY 2023-16 | **Documenting Employee Interviews**  In 57 of 88 (65%)  of the closed files reviewed, the field notes did not document which employees were interviewed and the information obtained during these interviews to evaluate the working conditions and support any violations issued. OIS entries were made to indicate that employees were interviewed in these files, but the field notes did not provide details of these  interviews. | NY PESH should train CSHOs on the importance of documenting employee interviews in field notes and ensure that supervisors check documentation of employee interviews during the case file review. | | The importance of properly documenting employee interviews was specifically addressed as part of statewide training workshops held in October 2023 and April 2024.  Additionally, staff have received training in interviewing techniques and the documentation of interviews remains an area of focused review.  The ECC reviews this during fatal case reviews. Supervisors have been informed of expectations related to this documentation and training will be developed for supervisor case review. | Not Completed | | Open  (As of March 15, 2025) | |
| FY 2023-17 | **Adoption of Federal Standards**  NY PESH has not adopted all overdue FPCs. | NY PESH should develop a strategy that ensures FPCs are adopted within the required timeframes. | | Since this review, two FPCs have been adopted and are effective on July 31, 2024. They comply with 20 CFR §§ 1904.39, Occupational Injury and Illness Recording and Reporting Requirements, and 1904.41, Final Rule to Improve Tracking of Workplace Injuries and Illnesses. | February 5,  2025 | | Completed | |
| FY 2023-18 | **Responding to Worker Retaliation Cases Timely**  During the audit periods of FY 2022 and FY 2023, NY  PESH’s average days to screen a case was 55 days. There is a case currently pending intake from April of 2022 (669 days) and a total of four cases pending intake from FY 2022. OSHA has a goal of 10 days or less to screen a  case. For the 15 cases reviewed in the Intake/Screening Pending status, OSHA determined that 100% of the complaints had excessive time in this status. This should be the shortest phase in the processing of complaints. A determination should be made quickly if a case can be administratively closed or needs to be docketed.  As of January 30, 2024, NY PESH had  a total of 64 open complaints with 46 open-docketed cases. On average, a case is 954 days old by the time it is closed. The age of the docketed cases is currently from 244 days to 2051 days, with an average day pending at 902 days and the average age to close a case is 959  days. | NY PESH needs to ensure that investigators screen the cases upon receipt, properly record the cases in OIS, and work with the counsel’s office to close cases timely | | A retaliation unit with dedicated staff has been established and staff have completed OTI training in courses #1000, 1421, and 1310, along with continued in-house training. The addition of the Centralized Intake Unit and program supervision has ensured prompt assignments and timely intake/screening of new complaints. Program management is reviewing all older cases pending intake. Initial observations revealed a lack of updated data entry and the need to formally close some cases out. This process is ongoing. The NYSDOL Counsel’s Office recently established a retaliation unit to assist in more timely determinations of docketed cases. Bi-weekly meetings have been initiated to discuss case specifics and any questions that arise during review. | Not Completed | | Open (As of March 15, 2025) | |
| FY 2023-19 | **Case File Documentation in Whistleblower Files**  Case file documentation was missing in the case files reviewed as documented in the narrative of the FAME. | NY PESH needs to follow their FOM or adopt OSHA’s WIM as necessary.  Standardization of forms and the information contained in those forms would also help in ensuring consistent investigations and meeting critical  metrics. | | A retaliation unit with dedicated staff was established, training provided, and new and existing case files are now being managed in accordance with FOM Chapter X, Section G. (Contents of Case File). Dedicated staff are also currently enrolled in OTI course #1631 which covers Written Communication and Report Writing for Whistleblower Investigators. | Not Completed | | Open (As of March 15, 2025) | |
| FY 2023-20 | **Lack of Investigative Steps**  In 11 of 15 (73%)  of case files in the Intake/Screening Pending phase lacked substantial investigative steps. They ranged from never contacting the complainant, not sending docket letters, administrative closing letters, or following up with  supervisors. | NY PESH needs to follow its FOM to process whistleblower complaints effectively. | | A retaliation unit with dedicated staff was established. Weekly case management meetings are occurring to ensure case files contain all necessary investigative steps. Case statuses are tracked using a tracking sheet and OIS reports. | Not Completed | | Open (As of March 15, 2025 | |
| FY 2023-21 | **Consultation Policies and Procedures Manual**  Specific elements must be implemented into NY PESH’s consultation manual of October 2021 to be at least as effective (ALAE) as OSHA’s federal CPPM. | NY PESH should implement these elements into its consultation manual to be ALAE as federal OSHA’s latest CPPM dated September 29, 2023. | | Revisions will be made to the current PESH CPPM (based on the referenced version) and be submitted for approval prior to end of FFY 2024. The changes have been discussed during consultation staff meetings and will be finalized upon OSHA approval. | 1/7/2025 | | Completed | |
| FY 2023-22 | **Confidentially between Enforcement and Consultation Activities**  The activities of enforcement and consultation are not conducted independently from each other. | PESH should develop a policy designed to ensure that confidentiality is maintained between consultation and  enforcement activities. PESH should properly charge time to align with the correct category in the  23(g). | | Immediate changes were made to the program ensuring functional separation of review and supervision functions of consultation and enforcement programs. | September 30, 2025 | | Completed | |

**Appendix D – FY 2024 State Activity Mandated Measures (SAMM) Report**

FY 2024 NY PESH Follow-up FAME Report

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| **SAMM**  **Number** | **SAMM Name** | **State**  **Plan Data** | **Further**  **Review Level** | **Notes** |
| **1a** | Average number of workdays to initiate complaint inspections  (state formula) | 8.30 | 10 | The further review level is negotiated by OSHA and the State Plan. |
| **1b** | Average number of workdays to initiate complaint inspections  (federal formula) | 6.97 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| **2a** | Average number of workdays to initiate complaint investigations (state  formula) | 6.39 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| **2b** | Average number of workdays to initiate complaint investigations (federal  formula) | 5.87 | N/A | 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) | 100% | 100% | The further review level is fixed for all State Plans. |
| **4** | Number of denials  where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| **5a** | Average number of violations per inspection with violations by violation  type (SWRU) | 3.87 | +/- 20% of  1.74 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.08 for SWRU. |
| **5b** | Average number of violations per inspection with violations by violation  type (other) | 0.95 | +/- 20% of  0.94 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from .75 to 1.12 for OTS. |
| **6** | Percent of total  inspections in state and | 100% | +/- 5% of  Grant% | This is a State and Local Government State  Plan. |

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| **SAMM**  **Number** | **SAMM Name** | **State Plan Data** | **Further Review Level** | **Notes** |
|  | local government  workplaces |  |  |  |
| **7a** | Planned v. actual inspections (safety) | 673 | +/- 5% of  600 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring  further review is from 570 to 630 for safety. |
| **7b** | Planned v. actual inspections (health) | 359 | +/- 5% of  375 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 356 to 394 for  health. |
| **8** | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A | +/- 25% of  $3,793.81 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | N/A | +/- 25% of  $2,498.51 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | N/A | +/- 25% of  $4,322.61 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **c**. Average current serious penalty in private sector (101-250 workers) | N/A | +/- 25% of  $6,114.84 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **d**. Average current serious penalty in private sector (greater than 250 workers) | N/A | +/- 25% of  $7,533.58 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| **9a** | Percent incompliance (safety) | 24.90% | +/- 20% of  32.83% | The further review level is based on a three-year national average. The range of |

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| **SAMM**  **Number** | **SAMM Name** | **State Plan Data** | **Further Review Level** | **Notes** |
|  |  |  |  | acceptable data not requiring further  review is from 26.27% to 39.40% for safety. |
| **9b** | Percent in- compliance (health) | 48% | +/- 20% of  44.18% | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from 35.34% to 53.01% for health. |
| **10** | Percent of work- related fatalities responded to in one  workday | 90.0% | 100% | The further review level is fixed for all State Plans. |
| **11a** | Average lapse time (safety) | 108.55 | +/- 20% of  56.02 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.82 to  67.23 for safety. |
| **11b** | Average lapse time (health) | 126.52 | +/- 20% of  67.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from 53.77 to 80.65 for health. |
| **12** | Percent penalty retained | N/A | +/- 15% of  70.81% | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| **13** | Percent of initial inspections with worker walk-around representation or  worker interview | 99.90% | 100% | The further review level is fixed for all State Plans. |
| **14** | Percent of 11(c) investigations completed within 90  days | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| **15** | Percent of 11(c) complaints that are  meritorious | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new  SAMM measures starting in FY 2025. |
| **16** | Average number of calendar days to | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |

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| **SAMM**  **Number** | **SAMM Name** | **State Plan Data** | **Further Review Level** | **Notes** |
|  | complete an 11(c)  investigation |  |  |  |
| **17** | Percent of enforcement presence | N/A | N/A | NA – This is a State and Local Government State Plan and is not held to this SAMM.  The further review level is based on a three-year national average. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 12, 2024, as part of OSHA’s official end-of-year data run.