



**SUSANA MARTINEZ**  
Governor  
**JOHN A. SANCHEZ**  
Lieutenant Governor

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**  
*Office of the Secretary*

Harold Runnels Building  
1190 Saint Francis Drive, PO Box 5469  
Santa Fe, NM 87502-5469  
Telephone (505) 827-2855 Fax (505) 827-2836  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



**RYAN FLYNN**  
Cabinet Secretary  
**BUTCH TONGATE**  
Deputy Secretary

August 3, 2016

Mr. Benjamin Ross, Acting Regional Administrator  
Occupational Safety and Health Administration  
525 Griffin Street, Room 602  
Dallas, TX 75202-5024

Dear Mr. Ross:

As requested in your letter of July 21, 2015, we hereby submit our formal response to the final report of the FY 2015 Federal Annual Monitoring and Evaluation (FAME) of the New Mexico Occupational Health and Safety Bureau. As you will see, most of the corrective actions to address the recommendations contained in the report have been initiated. We anticipate that with the continued assistance of the Region VI staff, we will be able to timely complete all recommended actions.

Please do not hesitate to contact us if you have any questions or comments regarding our corrective action plan.

Sincerely,

Ryan Flynn  
Cabinet Secretary

Enclosure: New Mexico's Response to OSHA's 2015 Federal Annual Monitoring and Evaluation (FAME) Report

Cc: Doug Kalinowski, Cooperative and State Programs  
Suzanne Smith, Cooperative and State Programs

NEW MEXICO'S RESPONSE TO OSHA'S  
2015 FEDERAL ANNUAL MONITORING AND EVALUATION (FAME) REPORT  
AUGUST 3, 2016

I. INTRODUCTION

The New Mexico Occupational Health and Safety Bureau (OHSB) is committed to administering an innovative and effective state plan aimed at making New Mexico the safest and most healthful state in which to work. In conjunction with OHSB's own performance plans and internal evaluation program, cooperative efforts with federal OSHA have facilitated continued improvements in state plan operations. OSHA's evaluations continue to identify areas where OHSB can improve its procedures and operations, and highlight a number of areas where our performance is excellent. Overall, OHSB produces well documented inspection reports, which has contributed to a strong record in sustaining violations. We recognize the importance of improvement and welcome federal evaluations and recommendations. OSHA provided pertinent information through their quarterly and year-end reviews over the past year which has enabled OHSB to quickly initiate processes aimed at improving program performance. The State appreciates the opportunity to respond to the federal OSHA evaluation of OHSB's program for the federal fiscal year 2015.

II. OHSB RESPONSE AND CORRECTIVE ACTION PLAN

Recommendation 15-1: New Mexico OHSB should ensure that the OHS Act, OHS regulations, and the New Mexico FOM Chapter 13 are followed for all whistleblower investigations.

Response: OHSB is committed to continued improvement of its whistleblower protection program and to working closely with OSHA to ensure state policies are effective and appropriately consistent with federal investigative procedures. However, a significant increase in the number of whistleblower complaints filed in FY2014 and FY2015 compared to prior years continues to present a challenge given the Bureau's limited resources. OHSB logged 43 complaints in FY2014 and 73 in FY2015, compared to an average of 14 complaints per year for the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the whistleblower program. While federal OSHA received increased budget for whistleblower programs in 2015, the state did not receive any portion of the increase.

Corrective Action: OHSB has provided a full curriculum of training for whistleblower investigations staff and has significantly reduced its prior backlog of cases. OHSB continues to improve its program by providing additional training as it becomes available through the OSHA Training Institute, by allocating additional staff resources including administrative assistance, and by working with the NMED Office of General Counsel to streamline investigation and settlement processes.

Actual or Anticipated Completion Date: September 30, 2016.

Status: On-going.

Recommendation 15-2: New Mexico OHSB must ensure that employer knowledge is documented for all violations, including documentation of employee discussions relative to violations or complaint items. Evidence of employee exposure to hazards should also be included.

Response: OHSB has historically maintained high rates of penalty retention and low rates of vacating and reclassifying violations, demonstrating the quality of issued citations. As part of yearly reviews, OSHA continues to provide insight and assistance in further strengthening the quality of OHSB citations through documentation of employer knowledge and employee exposure.

Corrective Action: In FY2015 and FY2016 OHSB continued to work with compliance staff to improve documenting employer knowledge when establishing violations. To drive continuous improvement, supervisors reviewed case files to ensure the adequacy of documentation on an on-going basis. Management reviewed violation documentation periodically during internal Compliance Officer (CO) training sessions and employee evaluations. With the conversion to the OSHA Information System (OIS), OHSB modified its procedure for documenting employer knowledge to capture information on OIS documents. Following a review of files completed using OIS during FY2015, OHSB has developed additional forms to augment identified limitations of the OIS system for documenting violations.

Actual or Anticipated Completion Date: September 30, 2016.

Status: On-going.

Recommendation 15-3: NM OHSB should review processes and policies to identify roadblocks and inefficiencies causing high lapse times.

Response: An employer's timely correction of violations is an important step to assuring a safe workplace. While many employers abate violations during or immediately following an onsite inspection, keeping citation lapse times to a reasonable minimum is important in protecting employee health and safety. OHSB and OSHA continually monitor the time it takes to issue citations following an inspection in an effort to identify areas for improvement. Over the years, OHSB has experienced challenges, particularly with respect to health citations, resulting in citation lapse times greater than the national average. This includes the challenge of a small enforcement staff, with significant case loads, covering large geographical areas. In addition, the bureau has increased the proportion of investigations which are more complex and time-intensive, including large hospitals and facilities with chemical-specific hazards, over the past several years. OHSB is committed to continuous reductions in citation lapse times.

Corrective Action: As part of an ongoing effort to reduce citation lapse times, OHSB instituted several internal measures to aid staff in timely closing inspection files. OHSB used OIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. During FY2015 and FY2016, management closely monitored inspection assignments to ensure caseloads were reasonable. Supervisors reviewed assignment data to compare with inspection reports weekly. OHSB also more closely reviewed referrals, including those received

as part of new employer injury reporting requirements, to identify those where an initial investigation by inquiry was appropriate. OHSB is performing monthly analysis of lapse times for individual Compliance Officers and includes lapse times as a major element of employee performance evaluations. Performance reviews include an analysis of task prioritization to identify potential improvements, and supervisors work closely with Compliance Officers on task prioritization.

Actual or Anticipated Completion Date: September 30, 2016.

Status: Ongoing.

Recommendation 15-4: New Mexico OHSB should ensure that family members are contacted early on and at appropriate times during fatality investigations, as provided in the New Mexico Field Operations Manual (NM FOM), and that these contacts are documented in the case files.

Response: While contact with family members was made for most fatality investigations in FY2015, there were several cases where either an initial letter informing the family of the investigation, or a closing letter informing them of the outcome, was not sent. In addition, telephone contact with family members was not documented in case files. An internal review of this issue revealed that the tracking system for letters and phone calls was not updated during the transition from the Integrated Management Information System (IMIS) to OIS in October 2014.

Corrective Action: Immediately following the FAME review OHSB instituted a system, including file tracking sheets, to ensure letters are sent to family members and phone contact is documented during fatality investigations.

Actual or Anticipated Completion Date: March 31, 2016.

Status: Completed.