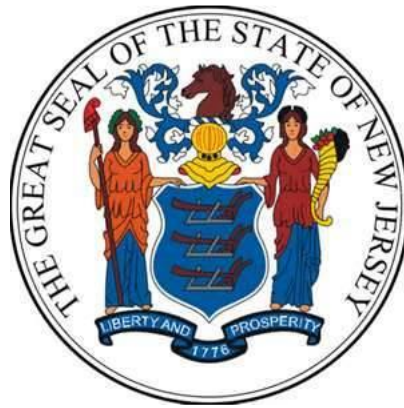


**FY 2021 Comprehensive  
Federal Annual Monitoring Evaluation (FAME) Report**

**State of New Jersey  
Public Employees Occupational Safety and Health (PEOSH)**



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## I. Executive Summary

The purpose of this Federal Annual Monitoring Evaluation (FAME) report is to assess the New Jersey (NJ) Public Employees Occupational Safety and Health (PEOSH) State Plan's activities for Fiscal Year (FY) 2021, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the past two performance periods (FY 2020 and FY 2021).

New Jersey's Governor Murphy signed Executive Order (EO) 103 on March 9, 2020, declaring a state and a public health emergency to deal with coronavirus, a contagious respiratory disease. This order continued throughout most of FY 2021. EOs protecting public food service establishments remained in place until January 1, 2022.

NJ PEOSH found it necessary to adapt to conducting modified daily operations. Enforcement inspections were accomplished using different procedures (for example, alternate on-site inspections or phone/correspondence/virtual inspections) to ensure that state and local government (SLG) workers were protected. Along with the enforcement staff, consultants also had to contend with adapting to a different way of conducting business. Consultants continued to reach out to their clients to provide information as well as responding to inquiries from clients about COVID precautions. Additionally, the pandemic placed additional resource demands on the staff to respond to inquiries from the public concerning COVID-19 worker protections.

In FY 2021, NJ PEOSH continued to have a significant presence in the workplace through its inspection activity, consultations, and partnerships. PEOSH also continued to excel in outreach and training and to be a leader in the realm of homeland security in New Jersey.

During this evaluation period, PEOSH actively engaged with OSHA by providing requested information in a timely manner and participating in quarterly meetings. PEOSH was responsive to OSHA's previous FAME findings and implemented corrective actions. PEOSH works collaboratively with OSHA and continuously strives to improve its program. PEOSH program administration maintains a high-level of performance.

During the FY 2021 comprehensive FAME, OSHA determined that two of the three previous findings and one observation were resolved. One finding was completed by providing additional training to the health staff and securing contracts to calibrate equipment. Another finding and observation related to the whistleblower program were corrected by increasing management review and oversight, and staff receiving training on the whistleblower manual.

This year OSHA identified four new findings and six new observations. One observation from FY 2020 was converted to a finding and one observation was continued. A finding from last year's follow-up FAME was continued; therefore, there are a total of six findings and seven observations as a result of this year's evaluation. The program contributes the increase in findings and observations to the increased workload associated with responding to inquiries and processing complaints related to non-indoor air quality hazards including COVID-19 workplace hazards, and the increased number of fatality reports received, and inspections conducted during this evaluation period.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

## **II. State Plan Background**

### **A. Background**

PEOSH is administered by the Public Safety and Occupational Safety and Health Division of the New Jersey Department of Labor and Workforce Development (NJDLWD) in partnership with the Consumer Environmental Occupational Health Service (CEOHS) of the New Jersey Department of Health (NJDOH). Robert Asaro-Angelo is currently the commissioner who oversees the NJ State Plan which includes two offices: a labor (safety) central office and a health central office – both located in Trenton, New Jersey. These offices cover all state and local government sector enforcement and consultation activities in New Jersey.

PEOSH covers both safety and health disciplines. Private sector enforcement is retained under federal jurisdiction, while private sector consultative services are provided by the NJDLWD Consultation Services Bureau under section 21(d) of the OSH Act. Private sector consultation services are administered under a separate grant. A review of that program is not included in this report. The New Jersey State Plan agreement requires PEOSH to adopt all applicable OSHA safety and health standards – either identically or as alternative standards at least as effective as (ALAE) the federal standards.

PEOSH does not contain provisions for the issuance of monetary penalties for state and local government sector employers found not to be in-compliance with applicable standards on a first instance basis, except in cases of willful or repeat violations. There is also a provision for penalties on all failure to correct violations. PEOSH's review proceedings reflect OSHA review procedures.

The NJ State Plan had eight safety compliance officers for the duration of the year. Four of these eight safety compliance officers work 75% on safety enforcement inspection activities and 25% of their time is spent on investigating whistleblower complaints. The State Plan is planning on hiring eight additional safety compliance officers in FY 2022. Two new safety compliance officers began work on December 6, 2021. Three full-time safety consultants provided safety consultation services in FY 2021. An additional safety consultant was hired in December 2021 which fully staffed the consultation program with a total of four safety consultants.

The PEOSH Health Enforcement Division was staffed with three field health compliance and one compliance officer responsible for indoor air quality/sanitation complaints and handling phone/fax complaints. The consultation and outreach staff consisted of one trainer and consultant until the trainer retired in August 2021. A member of the enforcement staff transferred into this vacant training position in August 2021. The hiring of an additional health compliance officer has been requested but not approved yet by the agency. The NJ State Plan

received a federal base award of \$2,090,400 to operate its program during FY 2021.

## **B. New Issues**

### **Lapsing of Funds**

On August 8, 2019, a new policy became effective for permanently redistributing 23(g) funds that are repeatedly lapsed or deobligated by State Plans. Under this policy, State Plans that lapse or deobligate funds in three consecutive years will have a portion of their base award permanently reduced in Year Four. NJ PEOSH lapsed a total of \$53,796.26 from their FY 2020 federal grant award. This was the first year PEOSH lapsed funds. OSHA issued a formal warning letter to NJ PEOSH with notification of the lapse and a reminder of OSHA's new policy. In FY 2021, the State Plan did not lapse any funds.

## **III. Assessment of State Plan Progress and Performance**

### **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A three-person OSHA team, which included a whistleblower investigator, the State Plan Program Manager and the Consultation Program Manager was assembled to conduct a full remote case file review. The case file review was conducted remotely beginning on December 6, 2021, because the State Plan offices were closed to visitors due to the pandemic. A total of 50 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2020 through September 30, 2021). The selected population included:

- Four fatality case files
- Twenty-three safety enforcement files
- Eighteen health enforcement files
- Ten consultation safety files
- Seven phone/fax complaints
- Five whistleblower files

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

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- State Plan Annual Performance Plan (APP)
- State Plan Grant Application

- Quarterly monitoring meetings between OSHA and the State Plan
- Limited (*or full*) case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (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 2021 State Activity Mandated Measures Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### a) Training

PEOSH's health staff attended numerous training courses during the performance period, including: the OSHA National Emphasis Program-Coronavirus Disease 2019 Webinar, OSHA's Field Operations Manual Overview-Course, and the OSHA Safe Patient/Resident Handling Inspections Best Practices Webinar. All of PEOSH's safety compliance officers and safety consultants received training during the performance period. Examples of training courses included: Inspection Techniques, Accident Investigation, Initial Compliance, and Construction Standards. The two courses that were attended most by safety staff were OSHA's Virtual Incident Investigations and Scaffolding.

#### b) OSHA Information System (OIS)

The State Plan utilizes OIS to capture information for all complaint investigations. However, the utilization of letters in OIS is different for complaints that are classified as non-indoor air quality and sanitation compared to the indoor air quality and sanitation complaints. NJDOH PEOSH does not send the OIS letters in the system to the employer upon receipt of the complaint, the initial letter to the complainant, and the final closing letters for non-indoor air quality and sanitation complaints. Instead, the program sends emails to the employer notifying them of the allegations and an email to the complainant acknowledging receipt of the complaint. These emails do not contain the same information as contained in the OIS letters regarding the rights of workers, the posting requirements, and certification of posting.

#### **Finding FY 2021-01: Complaint Investigation Processing**

During the case file review, seven complaint investigations were reviewed. Four of these investigations were classified as non-indoor air quality and sanitation complaints, and three were identified as indoor air quality and/or sanitation complaints. In all four (100%) of the complaints that were non-indoor air quality complaints, OIS letters were not sent. The certification of posting was also not provided and returned. The PEOSH Field Operations Manual (FOM) requires a certification of posting be received for all complaint investigations.

In four of the seven (57%) complaints reviewed, there were OIS data entry errors or missing information. These include not entering codes for strategic initiatives for fire services, marking complaints being investigated as not valid, not marking whether an inspection will be conducted, and the responses from the employer.

**Recommendation FY 2021-01**

PEOSH needs to utilize the letters provided in OIS to process all complaint investigations and enter data correctly into the system. The processing of all complaints needs to follow Chapter 9 of the PEOSH Field Operations Manual (FOM). The State Plan needs to enter data into OIS correctly. The OIS system includes tutorials to assist with data entry.

**Lapse Time**

PEOSH uses OIS data for tracking purposes. The FRL for the average safety lapse time is +/- 20% of the three-year national average of 52.42 days which equals a range of 41.94 days to 62.90 days. During FY 2021, PEOSH's average lapse time for citations was calculated at 30.26 days for safety – an increase from 14.74 days in FY 2020, but still considerably lower than the three-year national average of 52.42 days. The FRL for average lapse time for health is +/- 20% of the three-year national average of 66.10 days which equals a range of 52.88 days to 79.32 days. The health lapse time was calculated at 115.52 days in FY 2021 compared to 68.76 days in FY 2020 and was higher than the FRL (SAMM #11).

**Observation FY 2021-OB-01: Health Lapse Time**

In 2021, the average health lapse time (SAMM #11) for issuing citations was calculated at 115.52 days which was above the FRL range of 52.88 to 79.32 for health. This represents an increase from FY 2020 when the average lapse for health was reported at 68.76 days. PEOSH had an observation regarding health lapse time above the FRL in 2019. This observation was closed in FY 2020 based on SAMM #11.

**Federal Monitoring Plan FY 2021-OB-01:**

In FY 2022, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.

**OIS Reports for Consultation**

**Observation FY 2021-OB-02: OIS Reports for Consultation**

OIS Consultation reports were run on February 17, 2022 for Uncorrected Hazards and Written Reports Pending for visits conducted during FY 2021. The Uncorrected Hazards Report showed one visit with three hazards that were 354 days overdue; however, PEOSH reported that the employer was in the process of correcting this hazard and the OIS system had not been updated to reflect the extension of correction accepted. Additionally, this report showed five hazards that were 38 days past the correction date. The Written Reports Pending Report documented 11 reports from FY 2021 that were pending receipt to the employer.

**Federal Monitoring Plan FY 2021-OB-02:**

OSHA will utilize OIS Consultation Reports to monitor quarterly.

c) State Internal Evaluation Program (SIEP) Report

Due to the ongoing pandemic restrictions, DOL PEOSH Enforcement State Internal Evaluation Program Reports were not prepared because alternate inspection procedures continued to remain in effect.

d) Staffing

The State Plan had eight safety compliance officers for the duration of the year. Four of these eight safety compliance officers work 75% on safety enforcement inspection activities and 25% of their time investigating whistleblower complaints. PEOSH is planning on hiring eight additional safety compliance officers in FY 2022. Two new safety compliance officers began work on December 6, 2021.

To provide safety consultation services, there were three safety consultants working in FY 2021. A new safety consultant was hired in December 2021 which fully staffed the consultation program with a total of four safety consultants.

The PEOSH Health Enforcement Division was staffed with three field health compliance and one compliance office responsible for indoor air quality/sanitation and handling phone/fax complaints. The consultation and outreach staff consisted of one trainer and consultant until the trainer retired in August 2021. A member of the enforcement staff transferred into this vacant training position in August 2021. The hiring of an additional health compliance officer has been requested but not approved by the agency.

**2. ENFORCEMENT**

a) Complaints

SAMM #1a showed that the State Plan responded to 187 complaint inspections in an average number of 1.40 workdays – significantly lower than the FRL of five days for serious hazards and 120 days for other-than serious hazards. This was a significant reduction from FY 2020 when SAMM #1a reported the average number of workdays to initiate complaint investigations was 37.12 days.

In FY 2021, the health enforcement section processed 214 complaints related to non-indoor air quality and 99 complaints related to indoor air quality (or a total of 313 complaints as investigations). In FY 2020, the State Plan processed 187 complaints related to non-indoor air quality and 152 complaints related to indoor air quality or a total of 339 complaints as investigations. In 2019, the State Plan processed 66 complaints related to non-indoor air quality hazards and 222 complaints related to indoor-air quality hazards or a total 288 complaints (NJ SOAR FY 21, FY 2020, and FY 19). The number of non-indoor air quality related complaints has increased in FY 20 and FY 21 as



compared to FY 19. The increase is contributed to the larger number of complaints received related to COVID-19 workplace hazards.

### Complainant Notification

#### **Finding FY 2021-02 (FY 2020-OB-01, FY 2019-OB-02, FY 2018-OB-01, FY 2017-OB-01):**

In three of the six (50%) safety complaint files reviewed, the letter sent to the complainant did not address the complaint items that were not cited, failed to address all the allegations, or lacked evidence that a letter was sent to the complainant. The State Plan verbally communicated the inspection findings to two of these three complainants.

#### **Recommendation FY 2021-02:**

PEOSH needs to ensure that the letter sent to the complainant provides an evaluation of all alleged hazards and copies are maintained in the file.

#### b) Fatalities

The OIS Fatality/Catastrophes Report showed that PEOSH conducted 13 fatality inspections in FY 2021. Eight of those 13 inspections were related to a COVID-19 death. During the FAME review, four health fatality inspections were reviewed. Three of the four fatalities (75%) reviewed were related to a COVID-19 fatality report.

The State Plan received reports of 22 fatalities in the workplace in FY 2021. In FY 2020, PEOSH received 56 reports of fatalities and in FY 2019, eight fatality reports were received (NJ SOAR, FY 21, FY 2020, and FY 19).

#### **Observation FY 2021-OB-03: Responding to Fatalities**

In two of the four (50%) fatality inspections were not responded to within one working day of the report. SAMM #10 reported that the State Plan responded 75% of the time within one workday of a fatality notification. The FRL is 100%.

#### **Federal Monitoring Plan FY 2021-OB-03:**

OSHA will monitor this quarterly through the SAMM report.

#### **Finding FY 2021-03: Next-of-Kin Letters**

In three of the four (75%) fatality inspections, both the initial and final next-of-kin letters were not sent to the families of the victims. The practice of sending next-of-kin letters was stopped at the beginning of the COVID-19 pandemic for those fatalities related to COVID-19 only. Due to the novel nature of these fatalities, there was confusion by the State Plan as to whether these letters should be sent since it was often unclear if the victim was exposed to the virus at work or through community spread.

#### **Recommendation FY 2021-03**

The State Plan needs to issue next-of-kin letters as required by the FOM.

**Observation FY 2021-OB-04** (*Failure to Issue OTC for Not Reporting Within Eight Hours*)

The State Plan did not document in all four inspections (100%) why a citation was not proposed for the employer not reporting to PEOSH the fatality within eight hours of being notified of the death.

**Federal Monitoring Plan FY 2021-OB-04:**

During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further evaluation.

c) Targeting and Programmed Inspection

PEOSH conducted 316 inspections in FY 2021 which was 60% of the combined projected goal of 525 inspections. Safety staff conducted 173 inspections (43% of the goal) and the industrial hygiene staff conducted 130 inspections – exceeding their goal of 125 inspections (104% of the goal) (SAMM #7).

PEOSH's low number of safety inspections can be attributed to the COVID-19 related state of emergency declared by Governor Murphy that started on March 9, 2020 and continued into July 2021. Some establishments were closed and/or open with limited operations; therefore, PEOSH developed and implemented alternate inspection methods (virtual inspections) beginning in March 2020 and continuing into FY 2021. These alternative inspection procedures involved limited on-site activity upon completion of a Job Hazard Assessment (JHA) for each subject facility in accordance with the OSHA Risk Assessment Evaluation Table and pre-screening of the facility following the OSHA JHA guidelines. Supervisors considered on a case-by-case basis how the inspection was to be accomplished, (e.g., correspondence, phone, virtual, or on-site).

Regardless of the type of inspection, alternate on-site inspections or phone/correspondence/virtual inspections, the inspections and corresponding documentation were required to be in accordance with the PEOSH Act, regulations, and the PEOSH Field Operations Manual. Electronic means were used to forward Orders to Comply and other documents to employers. Due to these extenuating circumstances, this does not rise to the level of an observation but will be monitored by OSHA during quarterly meetings (NJ SOAR, FY 2021).

Additionally, in response to the pandemic, the assistant director participated in the Coronavirus Task Force teleconference calls that were held by the NJ Department of Health (NJDOH). Calls included a coronavirus update, Governor's Office updates, vaccination updates and open discussion of any gaps, challenges, or support needs. These activities were in addition to the daily inquiries being received from the public regarding worker protections during the pandemic.

Also, during FY2021, PEOSH staff continued to assist the NJ Office of Homeland Security and Preparedness (NJOHSP) with reviewing donated personal protective

equipment (PPE) that would be used to protect individuals from coronavirus. The PPE reviews were conducted at a NJOHSP warehouse in northern NJ. The donated PPE would then be distributed to first responders, to those providing healthcare, and to others who needed PPE.

PEOSH focused its inspection resources within the following state and local government agencies targeted for enforcement interventions as follows (NJ SOAR, FY 2021):

- Transportation – 2 inspections
- Local Fire Protection – 54 inspections
- Public Works Departments – 63 inspections
- Water and Sewage Treatment Facilities – 25 inspections

PEOSH Safety Enforcement has implemented a manual electronic filing system to eliminate paper file assembly, handling, and storage for a paperless filing system. The electronic filing system will enable more ability to work remotely as part of contingency planning for current and future circumstances when typical facility access is not available to meet operational needs. PEOSH is furthering its electronic filing capabilities by researching utilization of a tablet in the field and currently has one piece on order for a pilot program to prototype the next steps in moving forward with paperless forms in the field.

**Finding FY 2021-04:** *Advanced Notice of Inspections*

After PEOSH received a health complaint and identified that the facility was part of a local inspection targeting program, the employer was emailed a form letter. The form letter stated that a programmed inspection would be scheduled in the future. The letter requested the employer forward health and safety programs to the NJ State Plan. After receipt of the programs, the letter stated an inspection would be scheduled. An inspection was scheduled approximately a month and a half later. This letter is commonly used by PEOSH when conducting some programmed inspections.

PEOSH's FOM Chapter 3, Section II, D. permits advance notification in some circumstances, but this situation does not fall under those exemptions.

**Recommendation FY 2021-04:**

PEOSH's current practice of sending out this letter in advance needs to be discontinued.

**Hazard Identification/Sampling**

During the FY 2019 comprehensive FAME and on-site case file review, OSHA reviewed six health enforcement case files and found that six (83%) case files had potential hazards where sampling should have been conducted, and two case files noted that sampling needed to be conducted but was not due to sampling equipment not being calibrated. The FY 2021 FAME did not find case files that indicated that sampling should have been conducted but was not. Due to the current COVID-19 pandemic, most of the files

reviewed involved an evaluation of evaluating this hazard and sampling would not be required.

Of the 22 case files selected, only one case file had documented sampling conducted for carbon dioxide.

In response to the FY 2019 comprehensive FAME, the Department of Health (DOH) staff was instructed to perform sampling where potential hazards existed based on active work tasks. New Jersey DOH (NJDOH) secured contracts with two vendors to perform sampling equipment service and calibration. Servicing of dosimeters and for acoustical calibrators was completed. NJDOH also has a contract with a local equipment rental service to provide sampling and/or monitoring equipment, as required, for enforcement inspections and consultations. Finding FY 2019-01 is completed.

### In-Compliance Inspections

The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 31.65% which equals a range of 25.32% to 37.98%. PEOSH's percent in-compliance for safety was 25.40% which is within the FRL. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 40.64% which equals a range of 32.51% to 48.77%. PEOSH's percent in-compliance for health was 83.06 % which is above the FRL (SAMM #9). In FY 2020, PEOSH's percent in-compliance for health inspections was 46.67% which was slightly above FRL.

### **Observation FY 2021-OB-05:** *In-Compliance Health Inspections*

In FY 2021, the percent in-compliance (SAMM #9) for health inspections was 83.06% which is above the three-year national average of 40.64%.

### **Federal Monitoring Plan FY 2021-OB-05:**

OSHA will continue to monitor this issue by utilizing the quarterly SAMM reports.

### Significant Cases

In September 2020, a worker was operating a zero-turn mower in proximity to an adjacent body of water. The ride-on zero-turn mower slid backwards down a slope and overturned, pinning the worker between the mower and the land below the water's surface resulting in the worker drowning. Due to the lack of witnesses, a determination could not be made as to how the incident unfolded.

On the day of the onsite accident investigation The New Jersey Department of Labor and Workforce Development's Office of Public Employees' Occupational Safety and Health (OPEOSH) observed the mower's roll-overprotective system (ROPS) locked by retaining/hairpin cotter pins in the lowered, folded down position. After conducting interviews and reviewing other materials, OPEOSH determined that workers were not

familiar with the manufacturer's recommended procedures for operating the mower safely near edges, including along bodies of water, as well as use and maintenance of the ROPS.

An Order to Comply was issued with two General Duty Clause citations that must be abated by the employer training workers in accordance with ANSI/OPEI B71.4-2017, "Commercial Turf Care Equipment – Safety Specifications" and the mower's manual.

This case is significant as this is one of three investigations of similar riding lawnmower fatality/serious injury incidents on state and local government worksites in a year where citations were issued primarily for a lack of training.

As a result of these three investigations, OPEOSH is currently drafting a Public Employee Safety Alert to address the potential hazards associated with riding lawnmowers.

#### d) Citations and Penalties

PEOSH's issuance of violations continue to be above the three-year national average. The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.78 for serious/willful/repeat (S/W/R) violations which equals a range of 1.42 to 2.14. PEOSH's S/W/R average was 4.48 violations which was significantly above the FRL range. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.91 which equals a range of 0.73 to 1.09. PEOSH's OTS average was 2.56 which was also above the FRL range (SMM #5).

PEOSH does not issue monetary penalties except in cases of willful or repeat violations. There were no willful or repeat violations issued during FY 2021; therefore, no penalties were issued by PEOSH (NJ FY 2021 SOAR).

#### Case File Documentation

##### **Observation FY 2021-OB-06:** *Case File Documentation*

In four of the 23 (17%) of the safety inspection case files reviewed, diary sheets were incomplete. For example, in one file, the only entry on the diary sheet was the opening conference, another diary sheet only documented the events of the initial inspection, not the follow-up, and another incomplete diary sheet had only two entries.

In three of the 23 (13%) safety inspection files reviewed, the files lacked documentation that the OSHA 300 Logs for the last three calendar years and the current year were reviewed during the inspection.

In 13 of 22 (59%) of the health inspection files reviewed, the files lacked documentation that the OSHA 300 logs for the last three calendar years and the current year were reviewed during the inspection.

**Federal Monitoring Plan FY 2021-OB-06:**

During the next FAME review, case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

e) Abatement

The review of case files during this evaluation period revealed that adequate verification/evidence of abatement was obtained in the case files that had citations. Follow-up inspections were performed when indicated. Follow-up inspections contained photos of abatement.

**Petition for Modification of Abatement (PMA)**

A finding from the FY 2018 Follow-up FAME (FY 2018-02) noted that PMAs were granted without the required interim steps necessary to protect workers. PEOSH was successful in completing this finding from the FY 2018 follow-up FAME (FY 2018-02) by developing and utilizing a PMA request form which requires each element of a PMA request to be satisfied prior to granting the extension.

This FAME review found that this PMA request form is still being used. The one safety case file reviewed during this comprehensive review was found to contain the required information to grant the PMA. PEOSH was following their Field Operations Manual regarding processing of PMAs.

f) Worker and Union Involvement

**Finding FY 2021-05: Worker Involvement**

Twelve of the 23 (52%) safety case files reviewed lacked documentation of worker interviews in OIS and/or in the field notes. Additionally, documentation was lacking that a representative number of interviews were conducted to evaluate the working conditions. For example, in seven of the eight (88%) comprehensive inspections reviewed, there was no documentation that a representative number of workers were interviewed, or there was only one worker interviewed in each case. In two of the six (33%) of the safety accidents investigated, the injured worker was not interviewed.

Sixteen out of 22 (73%) of the health case files lacked documentation of worker interviews in OIS and/or in the field notes. Additionally, documentation was lacking that a representative number of worker interviews were conducted to evaluate the working conditions. For example, in three out of the four (75%) health fatality inspections reviewed, only management representatives were interviewed. Other examples include in the other 13 health inspections, there were either no non-management employees interviewed, or only the union representative and/or the complainant. One health complaint alleged hazards on the second shift for direct care patient staff, the union representative was interviewed, but it was unknown if this person worked on the second shift or was directly involved with patient care.

**Recommendation FY 2021-05:**

PEOSH needs to follow the PEOSH FOM to conduct and document worker interviews during inspections.

**3. REVIEW PROCEDURES**

The Office of Public Employees Occupational Safety and Health (OPEOSH) concluded that to better serve and to make workplaces safer and healthier, those areas that incur penalties for violations should utilize consultation services in their workplaces. As a result, and to encourage the use of these consultation services, during an informal conference, OPEOSH may offer a reduction in the amount of the imposed penalties of up to 75% - provided that the employer agrees to total consultation services for all facilities within its control. This agreement would include both NJDOL and NJDOH consultation units. If the employer agrees to a partial consultation for the specific facility where the violations were cited, a penalty reduction would be limited to 25% of the original penalty.

Once a penalty reduction agreement occurs, the consultation visit is scheduled. Following the completion of the consultation service, the enforcement management staff is notified so that penalty case may be closed. PEOSH will extend abatement dates if necessary following established PEOSH guidelines.

a) Informal Conferences

PEOSH has no first instance sanctions and therefore conducts very few informal conferences. PEOSH held zero informal conferences during FY 2021 (NJ SOAR, FY 2021). The State Plan conducted one informal conference during FY 2020 (NJ SOAR, FY 2020).

In FY 2020, there were two penalty Orders to Comply (OTC) issued by NJDOL PEOSH. One of the penalty OTCs resulted in a penalty settlement agreement that included a comprehensive safety and health consultation.

b) Formal Review of Citations

During FY 2021, PEOSH did not have any contested cases (NJ SOAR, FY 2021). In FY 2020, there were two penalty Orders to Comply (OTC) issued by NJDOL PEOSH. One of the penalty OTCs resulted in a penalty settlement agreement that included a comprehensive safety and health consultation. Total monetary penalties collected for FY 2020: \$71,250.00 (NJ SOAR, FY 2020).

**4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION**

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards

covering hazards not addressed by federal standards. During this period, PEOSH responded in a timely manner with the required notice of intent to adopt.

In regards, to the adoption of the Interim Final Rule, “Occupational Exposure to COVID-19; Emergency Temporary Standard” (ETS) PEOSH adopted the standard. The ETS appeared in the NJ Register on September 7, 2021. The tables below provide a complete list of the federal directives and standards which required action during this performance period:

**Table A  
Status of FY 2020 and FY 2021 Federal Standards Adoption**

<b>Standard</b>	<b>Response Due Date</b>	<b>State Plan Response Date</b>	<b>Intent to Adopt</b>	<b>Adopt Identical</b>	<b>Adoption Due Date</b>	<b>State Plan Adoption Date</b>
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	10/1/2020	Y	Y	1/14/2021	1/1/2021
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	2/7/2021	Y	Y	2/27/2021	2/27/2021
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	6/23/2021	Y	N	7/21/2021	9/17/2021
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/24/2020	N	N/A	7/15/2020	N/A
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	2/17/2021	N	N/A	7/14/2021	N/A
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	10/21/2020	Y	Y	1/26/2021	10/19/2021
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work	11/14/2020	2/7/2021	Y	Y	3/14/2021	3/14/2021



Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR 1926 (9/15/2020)						

**Table B**  
**Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption**

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<b><i>Adoption Required</i></b>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	5/20/2020	Y	Y	6/10/2020	5/20/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	10/21/2020	Y	Y	8/4/2020	12/25/2020
<b><i>Equivalency Required</i></b>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	10/27/2020	Y	N	10/14/2020	12/31/2020
Inspection Procedures for the Respirable Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	5/20/2020	Y	Y	12/22/2020	5/20/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	6/17/2021	N	N/A	6/12/2021	N/A
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	5/21/2021	Y	Y	9/19/2021	5/21/2021
Inspection Procedures for the COVID-19 Emergency	7/13/2021	7/13/2021	Y	Y	7/28/2021	7/21/2021

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)						
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/30/2021	Y	Y	12/28/2021	8/30/2021
Revised National Emphasis Program- Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	7/20/2021	Y	Y	8/7/2021	7/21/2021
<b><i>Adoption Encouraged</i></b>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	2/24/2020	N	N/A	N/A	N/A
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	10/21/2020	Y	N	N/A	12/18/2020
National Emphasis Program – Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/21/2021	N	N/A	N/A	N/A

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/6/2021	Y	Y	N/A	8/17/2021

## 5. VARIANCES

The State Plan issued no variances in FY 2020 or FY 2021.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

One hundred percent (100%) of all inspections conducted by PEOSH were within SLG workplaces during FY 2020 and FY 2021 (SAMM #6).

## 7. WHISTLEBLOWER PROGRAM

In FY 2020, the State Plan processed 16 discrimination complaints under its jurisdiction – 13 of which were completed within 90 days. Two cases were investigated (one pending). The one case resulted in a non-merit finding. Fourteen cases were administratively closed as they did not establish all the required prima-facie elements to initiate a formal discrimination investigation or were not jurisdictional under the PEOSH Act. No cases were transferred to the Office of Administrative Law (OAL) (NJ SOAR, FY 2020).

In FY 2021, PEOSH processed five discrimination complaints under its jurisdiction – two of which were completed within 90 days. Three cases were investigated and resulted in non-merit findings. Two cases were administratively closed as they did not establish all the required prima-facie elements to initiate a formal discrimination investigation or were not jurisdictional under the PEOSH Act. There were no cases transferred to the Office of Administrative Law (OAL) (NJ SOAR, FY 2021).

SAMM #16 reported for FY 2021 that the average number of calendar days to complete an 11(c) investigation was 275 days. The FRL is 90 days. The average number of calendar days to complete an 11(c) investigator is higher than the FRL. However, the State Plan is handling some complex cases and requires the extra time to fully document the merits of those cases which justifies exceeding the FRL.

During this FAME, Region II's Supervisory Whistleblower Investigator reviewed five case files all closed during FY 2021. Of these five case files reviewed, three were docketed full field investigations and two were administratively closed (no full field investigation). The full investigation cases were well documented by the investigator

assigned to the investigation. They obtained documentation to address the complaint and for the investigator to reach a conclusion based on the facts that were presented. The cases were documented according to the whistleblower manual.

Additionally, two administrative closed cases were reviewed. One administrative closed case was well documented. The other case file was found to be missing an activity log as well as the administrative closing letter to the complainant in the file. However, there was documentation in the case file showing communication between the supervisor and investigator regarding the decision to close the file and an IMIS summary showing relevant action dates.

Based on the review of these case files, OSHA determined Finding FY 2019-02 is completed and closed Observation FY 2019-OB-03.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

No CASPAs were filed against PEOSH during FY 2020 and FY 2021 (NJ SOAR, FY 2020 and FY 2021).

## **9. VOLUNTARY COMPLIANCE PROGRAM**

PEOSH does not administer a Voluntary Compliance Program.

## **10. STATE AND LOCAL GOVERNMENT (SLG) 23(g) ON-SITE CONSULTATION PROGRAM**

PEOSH's SLG workers' consultation program did not meet its Annual Performance Plan projections in both FY 2020 and FY 2021 due to the impacts of the COVID-19 pandemic and staffing issues. In FY 2020, PEOSH conducted 46 consultation visits, which included 39 safety and 7 health visits (OIS Consultation Metrics Report). There were 25 initial, 13 training and education, and eight follow-up visits conducted (OIS Consultation Metrics Report). The goals for FY 2020 were 100 consultation safety visits and 30 health consultation visits.

In FY 2021, a total of 53 consultation visits were conducted (OIS Consultation Metrics Report). There were 52 safety and one health visit. The 53 visits included 34 initial, 13 follow-up, and six training and education visits (OIS Consultation Metrics Report). The Annual Performance Plan projections for FY 2021 were 100 consultation visits for safety and 30 visits for health.

In FY 2021, a total of 101 serious hazards were documented which represented an average number of 3.26 serious hazards per initial visit (OIS Consultation Metrics Report). The Mandated Activities Report for Consultation (MARC) measure MARC #4a showed that 94.83% of all serious hazards were verified corrected within 14 days of latest correction date. The reference standard is 100%. No hazards were referred to enforcement.

During this case file review, 10 safety consultation files were reviewed. The case files were broken down as follows: five initial, three follow-ups, and two training and education visits.

#### Consultation Case File Documentation

During a previous FAME, OSHA identified that consultation case file documentation was lacking and issued this as a finding. PEOSH addressed and completed the following areas of concern: hazard assessment evidence in all of the training and education case files reviewed; evidence that the employer was informed of their Days, Away, Restricted, and Transferred (DART) and Total Recordable Case (TRC) rates for the last three-years with a comparison to the national average for the employers North American Industrial Classification System (NAICS) code; a completed Form 33 with comments in all the initial visit files reviewed; evidence that the supervisor was provided with the entire file electronically prior to reviewing the employer's report and improved documentation of hazard correction.

During this year's FAME, adequate case file documentation was lacking for the following: five out of five (100%) of the initial visits lacked evidence that the OSHA 300 Logs were reviewed for the current year; four out of four (100%) files with unions lacked a copy of the email or letter transmittal that was sent with the List of Hazards (LOH) to the union representatives even though a notation was noted in the diary sheet that the union received the LOH; two out of two (100%) follow-up visits with unions lacked evidence that all unions were invited to participate; 3 out of 10 (30%) visits were closed in OIS before the supervisor either reviewed the report and/or the correction received from the employer; and one out of two (50%) of the follow-up visit reports lacked documentation that the supervisor reviewed the initial report before the follow-up visit was conducted.

**Finding FY 2021-06 FY (FY 2020-02, FY 2019-03):** *Consultation File Documentation*  
Consultation case file documentation was lacking.

#### **Recommendation FY 2021-06:**

PEOSH should improve documentation in its consultation case files by adhering to PEOSH's consultation policies and procedures manual. Supervisors should review consultation case files to ensure appropriate documentation is included before closing the file.

#### **Observation FY 2021-OB-07 (FY 2020-OB-03, FY 2019-OB-04, FY 2018-OB-05):** *Consultation Reports*

There were delays in issuing consultation reports. In three of the 10 (30%) consultation files reviewed, reports were not issued to the employer within 20 working days of the closing conference.

Additionally, there were several versions of the cover letter that accompanied the employer's report that were being used. One of these versions stated the following, "the

letter needs to be posted until all hazards are abated.” The letter needs to be revised to state that the letter needs to be posted for at least three days or until all the hazards are corrected (whichever is longer).

**Federal Monitoring Plan FY 21-OB-07:**

OSHA will use OSHA Consultation Data to monitor quarterly.

**11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM**

This is a state and local government State Plan. The NJ State Plan does not operate a private sector 23(g) program.

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 NJ PEOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	<p><i>Complaint Investigation Processing</i> During the case file review, seven complaint investigations were reviewed. Four of these investigations were classified as non-indoor air quality and sanitation complaints while the other three were identified as indoor air quality and/or sanitation complaints. In all four (100%) of the complaints that were non-indoor air quality complaints, OIS letters were not sent. The certification of posting was also not provided and returned. The PEOSH Field Operations Manual (FOM) requires a certification of posting be received for all complaint investigations.</p> <p>In four of the seven complaints (57%) reviewed, there were OIS data entry errors or missing information. These include not entering codes for strategic initiatives for fire services, marking complaints being investigated as not valid, not marking whether an inspection will be conducted and the responses from the employer.</p>	PEOSH needs to utilize the letters provided in OIS to process all complaint investigations and enter data correctly into the system. The processing of all complaints needs to follow the guidelines in Chapter 9 of the FOM. Data needs to be entered into OIS correctly.	New
FY 2021-02	<p><i>Complainant Notification</i> In three of the six (50%) safety complaint files reviewed, the letter sent to the complainant did not either address the complaint items that were not cited, failed to address all the allegations or lacked evidence that a letter was sent to the complainant.</p>	PEOSH needs to ensure that the letter sent to the complainant provides an evaluation of all alleged hazards and copies are maintained in the file.	FY 2020-OB-01 FY 2019-OB-02 FY 2018-OB-01 FY 2017-OB-01
FY 2021-03	<p><i>Next-of-Kin Letters</i> In three of the four (75%) fatality inspections, both</p>	PEOSH needs to issue next-of-kin letters as required by the FOM.	New

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 NJ PEOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	<p>the initial and final next-of-kin letters were not sent to the families of the victims. The practice of sending next-of-kin letters was stopped at the beginning of the COVID-19 pandemic for those fatalities related to COVID-19 only. Due to the novel nature of these fatalities, there was confusion by the State Plan as to whether these letters should be sent since it was often unclear if the victim was exposed to the virus at work or through community spread.</p>		
FY 2021-04	<p><i>Advanced Notice of Inspections</i>                      After PEOSH received a health complaint and identified that the facility was part of a local inspection targeting program, the employer was emailed a form letter. The form letter stated that a programmed inspection would be scheduled in the future. The letter requested the employer forward health and safety programs to the NJ State Plan. After receipt of the programs, the letter stated an inspection would be scheduled. An inspection was scheduled approximately a month and a half later. This letter is commonly used by PEOSH when conducting some programmed inspections.</p> <p>PEOSH’s FOM Chapter 3, Section II, D. permits advance notification in some circumstances, but this situation does not fall under those exemptions.</p>	PEOSH’s current practice of issuing this letter in advance needs to be discontinued.	New



## Appendix A – New and Continued Findings and Recommendations

### FY 2021 NJ PEOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-05	<p><i>Worker Involvement</i></p> <p>Twelve of the 23 (52%) safety case files reviewed lacked documentation of worker interviews in OIS and/or in the field notes. Additionally, documentation was lacking that a representative number of interviews were conducted to evaluate the working conditions. For example, in seven of the eight (88%) comprehensive inspections reviewed, there was no documentation that a representative number of workers were interviewed, or there was only one worker interviewed in each case. In two of the six (33%) of the safety accidents investigated, the injured worker was not interviewed.</p> <p>Sixteen out of 22 (73%) of the health case files lacked documentation of worker interviews in OIS and/or in the field notes. Additionally, documentation was lacking that a representative number of worker interviews were conducted to evaluate the working conditions. For example, in three out of the four (75%) health fatality inspections reviewed, only management representatives were interviewed. Other examples include in the other 13 health inspections, there were either no non-management employees interviewed, or only the union representative and/or the complainant. One health complaint alleged hazards on the second shift for direct care patient staff, the union representative was</p>	<p>POESH needs to follow the PEOSH FOM to conduct and document worker interviews during inspections.</p>	<p>New</p>

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 NJ PEOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	interviewed, but it was unknown if this person worked on the second shift or was directly involved with patient care.		
FY 2021-06	<p><i>Consultation Case File Documentation</i>                      Consultation case file documentation was lacking. For example, during this year’s on-site review, adequate case file documentation was lacking for the following:</p> <ul style="list-style-type: none"> <li>• 100% of the initial visits lacked evidence that the OSHA 300 Logs were reviewed for the current year;</li> <li>• 100% of files with union involvement lacked a copy of the email or letter transmittal that was sent with the List of Hazards (LOH) to the union representatives even though a notation was noted in the diary sheet that the union received the LOH;</li> <li>• 100% of follow-up visits with unions lacked evidence that all unions were invited to participate;</li> <li>• 50% of the follow-up visit reports lacked documentation that the supervisor reviewed the initial report before the follow-up visit was conducted.</li> </ul>	PEOSH should improve documentation in its consultation case files by adhering to PEOSH’s consultation policies and procedures manual. Supervisors should review consultation case files to ensure appropriate documentation is included before closing the file.	FY 2020-02 FY 2019-03

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 NJ PEOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	<ul style="list-style-type: none"><li>30% of visits were closed in OIS before the supervisor either reviewed the report and/or the correction received from the employer.</li></ul>		

## Appendix B – Observations and Federal Monitoring Plan

### FY 2021 NJ PEOSH Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 20XX-OB-# <i>or</i> FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01		<p><i>Health Lapse Time</i></p> <p>In 2021, the average health lapse time (SAMM #11) for issuing citations was calculated at 115.52 days which was above the FRL range of 52.88 to 79.32 for health. This represents an increase from FY 2020 when the average lapse for health was reported at 68.76 days.</p> <p>The State Plan had an observation regarding health lapse time above the FRL in 2019. This observation was closed in FY 2020.</p>	In FY 2022, OSHA will continue to monitor this issue utilizing quarterly SAMM reports.	New
FY 2021-OB-02		<p><i>OIS Reports for Consultation</i></p> <p>OIS Consultation reports were run on February 17, 2022 for Uncorrected Hazards and Written Reports Pending for visits conducted during FY 2021. The Uncorrected Hazards report showed one visit with three hazards that were 354 days overdue. Additionally, this report showed five hazards that were 38 days past the correction date.</p>	OSHA will use OIS Consultation Reports to monitor quarterly.	New

## Appendix B – Observations and Federal Monitoring Plan

### FY 2021 NJ PEOSH Comprehensive FAME Report

		The Written Reports Pending Report documented 11 reports from FY 2021 that were pending receipt to the employer.		
FY 2021-OB-03		<i>Responding to Fatalities</i> In two of the four (50%) files, fatality inspections were not responded to within one working day of the report. SAMM #10 shows that the NJ State Plan responded 75% of the time within one workday of a fatality notification. The FRL is 100%.	OSHA will monitor quarterly through the SAMM report.	New
FY 2021-OB-04		<i>Failure to Issue OTC for Not Reporting Within 8 Hours</i> PEOSH did not document in all four inspections (100%,) as to why a citation was not proposed for the employer not reporting to PEOSH the fatality within eight hours of being notified of the death.	During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further evaluation.	New
FY 2021-OB-05		<i>In-Compliance Health Inspections</i> In FY 2021, the percent in-compliance (SAMM #9) for health inspections was 83.06% which is above the three-year national average of 40.64%.	OSHA will monitor this issue by utilizing the quarterly SAMM report.	New
FY 2021-OB-06		<i>Case File Documentation</i> In four of the 23 (17%) of the safety inspection case files reviewed, the diary sheets were	During the next comprehensive FAME review, a limited number of case files will be selected randomly and reviewed to determine if these are isolated	New

## Appendix B – Observations and Federal Monitoring Plan

### FY 2021 NJ PEOSH Comprehensive FAME Report

		<p>incomplete. For example, in one file, the only entry on the diary sheet was the opening conference, another diary sheet only documented the events of the initial inspection, not the follow-up, and another incomplete diary sheet had only two entries.</p> <p>In three of the 23 (13%) safety inspection files reviewed, the files lacked documentation that the OSHA 300 Logs for the last three calendar years and the current year were reviewed during the inspection.</p> <p>In 13 of 22 (59%) of the health inspection files reviewed, the files lacked documentation that the OSHA 300 logs for the last three calendar years and the current year were reviewed during the inspection.</p>	instances or if this represents a trend that requires further evaluation.	
FY 2021-OB-07	FY 2020-OB-03 FY 2019-OB-04 FY 2018-OB-05	<p><i>Consultation Reports</i></p> <p>There were delays in issuing consultation reports. In three of the ten (30%) consultation files reviewed, reports were not issued to the employer within 20 working days of the closing conference.</p>	OSHA will monitor with the OSHA Consultation Reports quarterly.	Continued

## Appendix B – Observations and Federal Monitoring Plan

### FY 2021 NJ PEOSH Comprehensive FAME Report

		<p>Additionally, there were several versions of the cover letter that accompanied the employer’s report that were being used. One of these versions stated that the following, “the letter needs to be posted until all hazards are abated.” The letter needs to be revised to state that the letter needs to be posted for at least three days or until all the hazards are corrected, whichever is longer.</p>		
	<p>FY 2020-OB-01 FY 2019-OB-02 FY 2018-OB-01 FY 2017-OB-01</p>	<p><i>Complaint Notification</i> In two of the eight (25%) complaint files reviewed in FY 2019, the letter sent to the complainant did not address complaint items when no citation was issued.</p>	<p>In FY 2021, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.</p>	<p>Converted to a finding</p>
	<p>FY 2020-OB-02</p>	<p><i>Sound Legal Reasoning</i> In one of five (20%) docketed workplace retaliation case files reviewed in FY 2019, it is unclear if the determination reached was based on substantive evidence in the case file and sound legal reasoning.</p>		<p>Completed</p>

## Appendix C - Status of FY 2020 Findings and Recommendations

### FY 2021 NJ PEOSH New Jersey Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	<p><i>Hazard Identification/ Sampling</i></p> <p>In FY 2019, five of six (83%) health enforcement case files reviewed had potential hazards where sampling should have been done, and two files noted that sampling needed to be done but was not due to sampling equipment not being calibrated.</p>	<p>PEOSH/DOH staff should ensure that sampling should be performed when potential hazards exist. In addition, a maintenance/calibration contract with the manufacturer or outside vendor needs to be implemented to ensure equipment is calibrated and ready for use.</p>	<p>NJDOH staff was instructed to perform sampling where potential hazards exist based on active work tasks. NJDOH secured contracts with two vendors to perform sampling equipment service and calibration. Servicing of dosimeters and for acoustical calibrators was completed. NJDOH also has a contract with a local equipment rental service to provide sampling and/or monitoring equipment, as required, for enforcement inspections and consultations.</p>	September 30, 2020	Completed
FY 2020-02	<p><i>Case File Documentation and Organization</i></p> <p>FY 2019 worker retaliation case files reviewed did not accurately reflect the correct case closure date, contain proof of complaint filing date, document that supervisory review</p>	<p>PEOSH should follow its procedures detailed in the PEOSH Whistleblower Manual, Chapter 4, Case Disposition and Chapter 5, Documentation and</p>	<p>PEOSH will use the date posted on the closing letter as the closing date as stated in the PEOSH W/B manual. WB complaints received via USP mail or fax are date stamped upon receipt into the PEOSH office. Complaints received via email are reflected as the email receipt date. Supervisory review is documented by signing and dating the Reports of Investigation (ROI) prior to issuance of the determination letter. In addition, supervisors and WB compliance officers</p>	August 11, 2020	Completed



## Appendix C - Status of FY 2020 Findings and Recommendations

### FY 2021 NJ PEOSH New Jersey Comprehensive FAME Report

	was conducted prior to the issuance of determination letters, or document that respondent received the determination letters.	Commissioners Determination	attended a Microsoft Teams meeting where Chapters 4 & 5 of the PEOSH WB Manual were reviewed and reinforced.		
FY 2020-03	<i>Consultation Case File Documentation</i> In FY 2019, consultation case file documentation was lacking.	PEOSH should improve documentation in its consultation case files by adhering to PEOSH's consultation policies and procedures manual. Supervisors should review consultation case files to ensure appropriate documentation is included.	New processes for documenting consultation case files were implemented such as: prior to report issuance, field notes and photos are shared with the supervisor which identify potentially missed hazards; consultants and supervisors review hazard abatement certification submitted by the employer prior to closing the case file; prior to authorizing an abatement extension, all required information will be completed by the employer, reviewed by the supervisor, and documented in the case file; and three-year DART/TRC rates will be calculated and compared to the national average NAICS code which will be provided to the employer during the opening conference and in the written report.		Continued

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 NJ PEOSH Comprehensive FAME Report

### U.S. Department of Labor

#### Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
1a	Average number of workdays to initiate complaint inspections (state formula)	1.40	5 days for serious hazards; 120 days for other-than serious hazards.	The further review level is negotiated by OSHA and the State.
1b	Average number of workdays to initiate complaint inspections (federal formula)	0.69	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)	1.69	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of workdays to initiate complaint investigations (federal formula)	1.57	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)	4.48	+/-20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	2.56	+/-20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government	100%	100%	Since this a State and Local Government State Plan, all inspections are in state and

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 NJ PEOSH Comprehensive FAME Report

### U.S. Department of Labor

#### Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
	workplaces			local government workplaces.
7a	Planned v. actual inspections – safety	173	+/-5% of 400	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 380 to 420 for safety.
7b	Planned v. actual inspections-health	143	+/-5% of 125	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 118.75 to 131.25 for health.
8	a. Average current serious penalty in private sector - total (1 to greater than 250 workers)	143	+/-5% of 125	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 (1-25 workers)	N/A	+/-25% of \$3,100.37	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 (26-100 workers)	N/A	+/-25% of \$2,030.66	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 (101-250 workers)	N/A	+25% of \$3,632.26	N/A-This is a State and Local Government State Plan.  The further review level is

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 NJ PEOSH Comprehensive FAME Report

### U.S. Department of Labor

#### Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
				based on a three-year national average.
	e. Average current serious penalty in private sector (Greater than 250 workers)	N/A	+/-25% of \$6,575.70	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 in-compliance (safety)	25.40%	+/-20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in-compliance (health)	83.06%	+/-20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	75%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	30.26	+/-20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
11b	Average lapse time-health	83.06%	+/-20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
12	Percent penalty retained	N/A	+/-15% of 69.08%	N/A-This is a State and local Government State Plan and is not held to this SAMM.

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 NJ PEOSH Comprehensive FAME Report

### U.S. Department of Labor

#### Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
				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	98.42%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	98.42%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/-20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	275	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	N/A	+/-25% of 0.99%	N/A-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.