# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

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



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## Executive Summary

The purpose of the Follow-up 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) 2022, and its progress in resolving outstanding findings and recommendations from previous FAME reports.

NJ PEOSH continued to use alternative procedures for conducting on-site inspections until April 2022 due to the COVID-19 pandemic. Enforcement inspections were accomplished using different procedures (for example, alternate on-site inspections or phone/correspondence/virtual inspections) to ensure protection of state and local government (SLG) workers. Consultants provided information and responded to inquiries from clients about COVID precautions. Therefore, the pandemic continued to impact the performance of the State Plan regarding meeting its enforcement inspection goals. The New Jersey Department of Labor (NJDOL) Safety Enforcement Division conducted 358 safety inspections (approximately 90% of the goal of 400 safety enforcement inspections). The New Jersey Department of Health (NJDOH) Enforcement Division conducted 99 health inspections (79% of the inspection goal of 125 health inspections).

In FY 2022, NJ PEOSH continued to have a significant presence in the workplace through its inspection activity, consultations, and partnerships. NJ PEOSH exceled in outreach and training and partnered with other agencies to deliver training. NJDOH PEOSH continued to work with The American Lung Association, Pediatric/Adult Asthma Coalition of New Jersey (PACNJ), and the NJ School Building and Grounds Association (NJSB&GA) to present a four- hour Indoor Air Quality (IAQ) course.

During the performance period, NJ PEOSH developed a Local Emphasis Program (LEP) to address the hazards encountered by beach patrols operating surfboats and potential exposure to lighting storms. This LEP was initiated as a direct result of Orders to Comply (OTC) issued for two lifeguard fatalities that occurred in August of 2021, and growing concerns that there could be multiple public employers that have beach patrol unit employees that may not be protected from the potential hazards identified in the OTCs.

NJ PEOSH developed focused inspection procedures specific to the hazardous conditions for which the two beach municipalities were cited for previously. Those citations were for Workplace Hazard Assessment for employees whose duties include operation of surfboats, and a Lightning Safety Plan for employees that have potential exposure to lightning storms. This NJ PEOSH LEP commenced on July 25, 2022, and targeted all state and local government employers with beach patrol agencies. All targeted sites in the beach patrol sweep activity were completed by August 26, 2022. This sweep included a total of 58 inspections which resulted in 73 violations issued and 32 hazard alert letters. This sweep was featured in an article published on September 28, 2022, written by Karin Price Muller of the New Jersey Advance Media for NJ.com, an electronic newspaper.

NJ PEOSH actively engaged with OSHA, provided requested information in a timely manner, and regularly participated in quarterly meetings. NJ PEOSH works collaboratively with OSHA and continuously strives to improve its program, and program administration maintains a high-level of performance. During the FY 2022 performance period, NJ PEOSH was responsive and made progress to address its six findings from the FY 2021 comprehensive FAME and submitted a corrective action plan to Region II showing that all actions had been completed.

However, a comprehensive on-site case file review is necessary to verify that the findings have been adequately corrected; therefore, all findings remain open. Additionally, five observations will continue pending a case file review in FY 2023. Two observations from the FY 2021 comprehensive FAME were closed based on a review of the State Activity Mandated Measures (SAMM) Report that showed that the measure being evaluated was within the Federal Review Level (FRL) in FY 2022. OSHA identified three new observations. Therefore, this year’s FAME resulted in PEOSH having a total of six findings and eight observations.

## State Plan Background

NJ 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.

NJ 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.

NJ 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. NJ PEOSH’s review proceedings reflect OSHA review procedures. PEOSH issued one set of Orders to Comply with a monetary penalty. One informal conference was conducted in FY 2022 and $4,000 in penalties was collected.

The NJ State Plan had 10 safety compliance officers on staff for most of the year. Two new safety compliance officers began work on December 6, 2021. Also, during the third quarter, one of the assistant chiefs left the Safety Enforcement office for a promotion and during the fourth quarter, one of the compliance officers was promoted internally to Assistant Chief. Five of the 10 safety compliance officers work 75% on safety enforcement inspection activities and 25% of their time is spent on investigating whistleblower complaints. The NJ State Plan is planning on hiring six additional safety compliance officers in FY 2023. There were four full-time safety consultants that provided safety consultation services in FY 2022. The newest safety consultant was hired in December 2021 which fully staffed the consultation program.

**New Issues**

None

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses 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)
* State Plan Annual Performance Plan (APP)
* OSHA Information System (OIS)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

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

NJ PEOSH made progress to address the previous six findings and seven observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains six findings (all continued) and eight observations (five continued, two closed, and three new). None of the findings were completed because a case file review is necessary to verify corrective actions were taken. The NJ State Plan provided a corrective action plan to OSHA that showed all corrective actions were completed. Two observations were closed based on the review of applicable SAMM measures. 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 2021 finding and recommendation in detail.

**Completed Findings**

None

**Continued Findings**

**Finding FY 2022-01 (FY 2021-01): *Complaint Investigation Processing***

During the FY 2021 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 NJ 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.

**Status:** NJ PEOSH has modified its complaint processing procedures regarding entering valid versus invalid complaints based on guidance provided from OSHA and following guidelines in Chapter 9 of the Field Operations Manual (FOM). A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding FY 2022-02 (FY 2021-02, FY 2020-OB-01, FY 2019-OB-02, FY 2018-OB-01, FY 2017-OB-01): *Complainant Notification***

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. NJ PEOSH verbally communicated the inspection findings to two of these three complainants.

**Status:** NJ PEOSH provided training to field staff to ensure that future complaint results letters will address all allegations. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding FY 2022-03 (FY 2021-03): *Next-of-Kin (NOK) Letters***

In FY 2021, in three of the four (75%) fatality inspections, both the initial and final NOK letters were not sent to the families of the victims. The practice of sending NOK 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 NJ PEOSH 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.

**Status:** NJ PEOSH issued NOK letters for the three inspection cases cited during the FAME audit on May 25, 2022. NJ PEOSH is following the FOM regarding issuance of NOK letters. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding FY 2022-04 (FY 2021-04): *Advanced Notice of Inspections***

After NJ 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 PEOSH and stated that after receipt of the programs, 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. NJ PEOSH’s FOM Chapter 3, Section II, D. permits advance notification in some circumstances, but this situation does not fall under those exemptions.

**Status:** NJ PEOSH has discontinued the practice of sending advanced notification letters to employers identified for routine health targeted (programmed) inspections. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding FY 2022-05 (FY 2021-05): *Worker Involvement***

In FY 2021, 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.

**Status:** NJ PEOSH provided training to all staff instructing them to ensure all employee interviews are documented in OIS and case file notes. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding 2022-06 (FY 2021-06, FY 2020-02, FY 2019-03): *Consultation File Documentation***

Consultation case file documentation was lacking.

**Status:** As of April 2022, NJ PEOSH hired a chief to oversee the Consultation staff with the assistant chief to ensure proper review and documentation of case files. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**New FY 2022 Findings**

None

#### Observations

**Closed FY 2021 Observations**

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

In 2021, the average 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 2020 when the average lapse time was reported at 68.76 days.

**Status:** In FY 2022, SAMM #11 for health lapse time was reported at 54.82 days which was within the FRL of +/- 20% of 66.10 days or an acceptable range of 52.88 to 79.32 days. This observation is closed.

**Observation FY 2021-OB-05: *In-Compliance Health Inspection****s*

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%.

**Status:** In FY 2022, SAMM #9 showed that the percent in-compliance for health inspections was 36.90% which was within the FRL of +/- 20% of 40.64% or an acceptable range of 32.51% to 48.77%. This observation is closed.

**Continued FY 2021 Observations**

**Observation FY 2022-OB-01 (FY 2021-OB-02): *OIS Reports for Consultation***

The OIS Consultation Report for Written Reports Pending run on February 16, 2022, showed three reports for visits conducted in 2021 still were pending issuance. One consultation file that originally had correction due on April 1, 2019, that was granted an extension to January 15, 2023, still had overdue correction for three hazards.

**Status:** Three written consultation reports from FY 2021 are still pending issuance to the employer and/or entry updates in OIS. The consultation case file noted as having correction that was 354 days overdue in the FY 2021 comprehensive FAME still has uncorrected abatement noted in OIS. This observation will be continued.

**Observation FY 2022-OB-02 (FY 2021-OB-03): Responding to Fatalities**

In FY 2021, SAMM measure #10 showed that NJ PEOSH responded approximately 75% of the time within one workday of a fatality notification showed and to three of the four reported fatalities within one day. The FRL is 100%.

**Status:** FY 2022, SAMM measure #10 showed that NJ PEOSH responded 55% of the time within one workday of a fatality notification. The SAMM report showed that NJ PEOSH responded to six of the 11 reported fatalities within one day. The FRL is 100%. The five fatality investigations that were not conducted within one day of notification were related to fatalities contributed to possible exposure to COVID-19. Due to the nature of these investigations, health compliance staff were assigned to conduct these inspections. With only three compliance health staff and two vacant compliance health positions, NJ PEOSH was not able to respond within the one day of notification of the fatality for these five fatality reports. This observation will be continued and will be amended to reflect the SAMM data from FY 2022.

**Observation FY 2022-OB-03 (FY 2021-OB-04): *Failure to Issue OTC for Not Reporting Within Eight Hours***

NJ PEOSH did not document, in four out of four inspections (or 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.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This observation will be continued.

**Observation FY 2022-OB-04 (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.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This observation will be continued.

**Observation FY 2022-OB-05 (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).

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This observation will be continued.

**New FY 2022 Observations**

**Observation FY 2022-OB-06: *Percent of Initial Inspections with Worker Walkaround*** *Representation or Worker Interview* *Discussion*

In 2022, the percent of initial inspections with worker participation (SAMM #13) was calculated at 98.42% which was below the FRL of 100%. Since the State Plan was slightly below this FRL for both FY 2021 and FY 2022 for SAMM 13, OSHA will monitor this situation as an observation. Next year’s comprehensive FAME will review case files to better determine if this outliner is due to the actual practice of not interviewing employees or administrative coding errors in OIS.

**Federal Monitoring Plan:** OSHA will monitor NJ PEOSH during FY 2023 utilizing OIS reports to identify possible causes of this disparity and ensure employees are being interviewed during workplace inspections.

**Observation FY 2022-OB-07: *OIS Hazard Tracking Reports and SIR***

The OIS Abatement Tracking Report identified five inspection files under RID 0253420 that had hazards that were due to be abated in FY 22 that were not documented as abated. The OIS Open Inspection Report for RID 0253420 identified 12 files under the tab “Citations Not Received” that were issued but the issuance date was not entered into OIS. Without the receipt date of citations in OIS, the system does not track open abatement. Of the 12 case files listed under this tab, 10 of 12 of these inspection files have overdue abatement from FY 2022.

The End-of-the-Year SIR identified six inspection files with overdue abatement for FY 22.

**Federal Monitoring Plan:** OSHA will utilize OIS reports quarterly to monitor performance.

**Observation FY 2022-OB-08: *OIS Open Inspection Report***

The OIS Open Inspection Report run on February 28, 2023, showed 10 inspection files that had either an opening and/or closing conference date listed in FY 2022, that had citations that were pending over 180 days or six months. The NJ PEOSH FOM (page 88) states that citations cannot be issued more than six months following the occurrence of the violation. This section of the FOM makes references to applicable sections in the OSHA Act regarding issuing citations and not the NJ PEOSH Act.

The NJ PEOSH Act under Section 34:6A-41 has been interpreted by NJ PEOSH that citations can be issued more than six months following the occurrence of the violation. The six-month date is not based on the date of last employee exposure or the opening conference date but the date that NJ PEOSH determines that a violative condition exists.

**Federal Monitoring Plan:** OSHA will monitor the OIS Open Inspection Report quarterly. OSHA will encourage NJ PEOSH to revise this section of the FOM and clarify the discrepancy between these documents.

### 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 2022 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The New Jersey State Plan was outside the FRL on the following SAMMs:

**SAMM 1a – Average Number of Workdays to Initiate Complaint Inspections**

**Discussion of State Plan Data and FRL:** The FRL for average number of workdays to initiate complaint inspections is five (5) days for serious hazards and 120 days for other-than serious hazards. The New Jersey State Plan’s average number of workdays to initiate complaint inspections in FY 2022 was 36.42 days. This was above the FRL for serious hazards.

Explanation: The New Jersey State Plan’s significant increase in the average number of workdays to initiate complaint inspections that was noted from FY 2021 to FY 2022 is directly related to the inspection of indoor air quality and or sanitation complaints that were initially assigned as phone/fax investigations but converted to inspections when a satisfactory response was not received from the employer, or the complainant disputed the response. The program did not conduct inspections for these complaints within five days of deciding to conduct an inspection due to staff vacancies, a backlog of these complaints and other higher priority enforcement activities. However, these complaints are usually classified as other-than-serious complaints. The FRL for responding to other-than-serious hazards is 120 days.

When a SAMM report for measure 1a is run for the NJDOL Safety Program only for FY 2022, the report documented that the average number of workdays to initiate complaint inspections is 5.65 days. The NJDOL Safety Program conducts inspections for all complaints and does not typically utilize investigations as a tool to address complaints regardless of the severity alleged.

**SAMM 5a and 5b-Average Number of Violations Per Inspection with Violations by Violation Type (SWRU) and OTS**

**Discussion of State Plan Data and FRL:** The FRL for average number of violations per inspection by violation type (SWRU) is +/-20% of 1.78. The New Jersey State Plan’s average number of violations per inspection by violation type (SWRU) was 3.98 which was above the FRL.

The FRL for average number of violations per inspection by violation type (OTS) is +/- 20% of .91. The New Jersey State Plan’s average number of violations per inspection by violation type (OTS) was 2.39 which was above the FRL.

Explanation: Both the average number of violations per inspection for both SWRU and OTS citations exceeded the FRL. This indicated that the New Jersey State Plan was issuing more citations of both types during inspections then the FRLs. The percentage of SWRU violations issued was 62% of all violations while the percentage of OTS is approximately 38%. Exceeding the FRLs for this SAMM measure in this situation does not reflect negatively on performance.

### Appendix A – New and Continued Findings and Recommendations

FY 2022 NJ PEOSH Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021-# or**  **FY 2021-OB-#** |
| FY 2022-01 | *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 while 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.  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. | NJ 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. Corrective action complete, awaiting verification. | FY 2021-01 |
| FY 2022-02 | *Complainant Notification*  In three of the six (50%) safety complaint files reviewed, the letter sent to the complainant did not either address the allegations, or lacked evidence that a letter was sent to the complainant. | NJ PEOSH needs to ensure that the letter sent to the complainant provides an evaluation of all alleged hazards. Corrective action complete, awaiting verification. | FY 2021-02  FY 2020-OB-01  FY 2019-OB-02  FY 2018-OB-01 |
| FY 2022-03 | *Next-of-Kin Letters (NOK)*  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 NOK 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 NJ PEOSH 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. | NJ PEOSH needs to issue NOK letters as required by the FOM. Corrective action complete, awaiting verification. | FY 2021-03 |
| FY 2022-04 | *Advanced Notice of Inspections*  After NJ PEOSH received a health complaint and identified that the facility was part of a local targeting program, and 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 New Jersey 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 NJ PEOSH when conducting some programmed inspections. NJ PEOSH’s FOM Chapter 3, Section II, D. permits advance notification in some advance notification in some circumstances, but this situation does not fall under those exemptions. | NJ PEOSH needs to discontinue the practice of issuing this letter. Corrective action complete, awaiting verification. | FY 2021-04 |
| FY 2022-05 | *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. | PEOSH will follow the NJ PEOSH FOM to conduct and document employee interviews during inspections. Corrective action complete, awaiting verification. | FY 2021-05 |
| FY 2022-06 | *Consultation Case File Documentation* Consultation case file documentation was lacking in consultation case files. | NJ 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. Corrective action complete, awaiting verification. | FY 2021-06 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 NJ PEOSH Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-# *or* FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
|  | FY 2021-OB-01 | *Health Lapse Time*  In 2021, the average 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 2020 when the average lapse time was reported at 68.76 days. |  | Closed |
|  | FY 2021-OB-05 | *In-Compliance Health Inspections*  In FY 2021, the percent incompliance (SAMM #9) for health inspections was 83.06% which is above the three-year national average of 40.64%. |  | Closed |
| FY 2022-OB-01 | FY 2021-0B-02 | *OIS Reports for Consultation*  The OIS Report for Written Reports Pending run on February 16, 2022, showed three reports for visits  conducted in 2021 were still pending issuance. | OSHA will utilize OSHA Consultation reports to monitor performance quarterly. | Continued |
| FY 2022-OB-02 | FY 2021-OB-03 | *Responding to Fatalities*  SAMM measure #10 showed that PEOSH responded approximately 55% of the time within one workday of a fatality notification. The SAMM showed that PEOSH responded to six of the 11 reported fatalities within one day. The FRL is 100%. | OSHA will utilize the SAMM Report to monitor performance quarterly. | Continued |
| FY 2022-OB-03 | FY 2021-OB-04 | *Failure to Issue OTC for Not Reporting within Eight Hours*  PEOSH 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. | During the next comprehensive FAME review, a limited number of case files will be selected randomly to determine if these are isolated instances or if this represents a trend that requires further evaluation. | Continued |
| FY 2022-OB-04 | FY 2021-OB-06 | *Case File Documentation*  In four of the 23 (17%) of the safety inspection case files reviewed, the 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 next comprehensive FAME review, a limited number of case files will be selected randomly to determine if these are isolated instances or if this represents a trend that requires further evaluation. | Continued |
| FY 2022-OB-05 | 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 ten (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 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. | During the next comprehensive FAME review, a limited number of case files will be selected randomly to determine if these are isolated instances or if this represents a trend that requires further evaluation. | Continued |
| FY 2022-OB-06 |  | *Percent of Initial Inspections with Worker Walkaround Representation or Worker Interview*  In 2022, the percent of initial inspections with worker participation (SAMM #13) was calculated at 98.42% which was below  the FRL of 100%. | OSHA will utilize the SAMM Report to monitor performance quarterly. | New |
| FY 2022-OB-07 |  | *OIS Hazard Tracking Reports and SIR*  The OIS Abatement Tracking report identified five (5) files under RID 0253420 that had hazards that were due to be abated in FY 22 that were not documented as abated. The OIS Open Inspection Report for RID 0253420 identified 12 files under the tab “Citations Not Received” that were issued but the issuance date was not entered into OIS. Without the receipt date of citations in OIS, the system does not track open abatement. Of the 12 case files listed under this tab, 10 of 12 of these inspection files have overdue abatement from FY 2022.  The End-of-the-Year SIR for measure #3b identified six inspection files with overdue abatement more than 60 days. | OSHA will utilize the SAMM report to monitor performance quarterly. | New |
| FY 2022-OB-08 |  | *OIS Open Inspection Report*  The OIS Open Inspection report run on February 28, 2023, showed 10 inspection files that had either an opening and/or closing conference date listed in FY 2022, that had citations that were pending over 180 days or six months. The NJ PEOSH FOM on page 88 states that citations cannot be issued more than six months following the occurrence of the violation. This section of the FOM makes references to applicable sections in the OSHA Act regarding issuing citations and not the NJ PEOSH Act.    The NJ PEOSH Act under Section 34:6A-41 has been interpreted by NJ PEOSH that citations can be issued more than six months following the occurrence of the violation. The six-month date is not based on the date of last employee exposure or the opening conference date but the date that NJ PEOSH determines that a violative condition exists. | OSHA will monitor the OIS Open Inspection report quarterly. OSHA will encourage NJ PEOSH to revise this section of the FOM and clarify the discrepancy between these documents. | New |

### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 NJ PEOSH Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| 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 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 NJ PEOSH Field Operations Manual  (FOM) requires a certification of posting be received for all complaint investigations. 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. | NJ 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. | NJ DOH PEOSH conducted training for staff and modified their complaint investigation processing procedures. Data is correctly entered into OIS per guidelines in Chapter 9 of the NJ PEOSH FOM. | 5/22/2022 | Awaiting Verification |
| FY 2021-02 | *Complainant Notification*  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. | NJ 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. | NJ PEOSH management conducted staff training on August 18,2022 with field staff to ensure that future complaint results letters will include allegations not cited with an explanation. | 8/18/2022 | Awaiting Verification |
| FY 2022-03 | *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. | NJ PEOSH needs to issue next-of-kin letters as required by the FOM. | NJ DOH PEOSH issued next-of-kin letters for the three inspection cases found missing these letters during the FAME. NJ PEOSH is following the FOM regarding issuance of next-of-kin letters for fatality inspections. | 5/22/2023 | Awaiting Verification |
| FY 2022-04 | *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. NJ PEOSH’s FOM Chapter 3, Section II, D. permits advance notification in some circumstances, but this situation does not fall under those  exemptions. | NJ PEOSH’s current practice of issuing this letter in advance needs to be discontinued. | NJ DOH PEOSH is no longer sending advanced notification letters to employers identified for routine targeted (programmed) inspections. | 5/22/2023 | Awaiting Verification |
| FY 2022-05 | *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. | NJ PEOSH needs to follow the NJ PEOSH FOM to conduct and document worker interviews during inspections. | A review of how to properly document and conduct worker interviews was conducted with safety enforcement field staff during training conducted on August 18, 2022. All interviews are now documented in OIS or in case file notes if no employee representatives are available. | 8/18/2022 | Awaiting Verification |
| FY 2022-06 | *Consultation Case File*  Consultation case file documentation was lacking in consultation  case files. | NJ PEOSH should improve documentation in its consultation case files by adhering to PEOSH’s Consultation Policies and Procedures Manual. | NJ PEOSH hired a new supervisor for the consultation staff to increase oversight and ensure proper review and documentation of case files. | 4/19/2022 | Awaiting Verification |

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 NJ PEOSH Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 36.42 | 5 days for serious hazards; 120 days for other- than-  serious hazards | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 1.17 | 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) | .13 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | .09 | 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% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 100% | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 3.98 | +/- 20% of  1.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 2.39 | +/- 20% of  0.91 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 100% | 100% | Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces. |
| 7a | Planned v. actual inspections (safety) | 359 | +/- 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) | 99 | +/- 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 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A | N/A | 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 | N/A | 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 | N/A | 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 | N/A | 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 | N/A | . 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) | 24.68% | +/- 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) | 36.90% | +/- 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 | 54.55% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 19.10 | +/- 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 41.94 to 62.90 for safety. |
| 11b | Average lapse time (health) | 54.82 | +/- 20% of  66.10 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health. |
| 12 | Percent penalty retained | 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. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 98.47% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A | 100% | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A | +/- 20% of 20% | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A | 90 | The further review level is fixed for all State Plans. |
| 17 | Percent of enforcement presence | N/A | +/- 25% of  0.99% | 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 run on November 14, 2022, as part of OSHA’s official end-of- year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.