**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2022 – September 30, 2023**

Initial Approval Date: January 11, 2001

State Plan Certification Date: January 22, 2016

Final Approval Date: Not Applicable

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1. **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) 2023, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the past two performance periods (FY 2022 and FY 2023).

In FY 2023, 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. New Jersey Department of Health (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 (NJ SOAR, FY 2023).

For FY 2023, PEOSH conducted four PEOSH Advisory Board meetings as part of its outreach program. These meetings involve employer and employee representatives from state, counties, and municipalities, and provide members information on health and safety topics, data for enforcement, consultation and training services provided by PEOSH, special alerts, and updates on standard adoptions (NJ SOAR, FY 2023).

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.

The State Plan made some progress to address the previous six findings and eight observations from the FY 2022 Follow-up FAME Report. One finding was converted to an observation because most of the conditions listed in the original finding were addressed. Three observations were closed in FY 2023. Two of these observations were closed based on a review of the State Activity Mandated Measures Report contained in Appendix D. The other observation was closed based on a review of the consultation files and OSHA Information System (OIS) Report showing reports were issued within 20 federal working days in FY 2023. In summary, this report contains a total of eight findings and nine observations.

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.

**II. State Plan Background**

1. **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 (ALAE) as 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 six safety compliance officers at the end of FY 2023. Three of these six 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 four additional safety compliance officers in FY 2024. Three full-time safety consultants provided safety consultation services for the duration of FY 2023. In December 2023, a safety consultant transferred to the PEOSH health enforcement division.

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. Approval is being requested to fill two additional field positions in FY 2024.

The State Plan received a federal base award of $2,166,200 to operate its program during FY 2023. The program accepted $104,565 in one-time funding to purchase equipment such as cameras, noise cancelling headsets, surface tablets and projectors. This additional funding was also used to purchase training materials and to enroll staff in virtual training courses.

1. **New Issues**

None

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 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, was assembled to conduct a full remote case file review. The case file review was conducted remotely due to budget constraints beginning on November 13, 2023. A total of 94 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, 2022 through September 30, 2023). The selected population included:

* Three (3) closed fatality case files
* Ten (10) closed health files
* Thiry-five (35) closed safety files
* Ten (10) closed health unprogrammed activities that were investigated
* Ten (10) closed safety unprogrammed activities that were not investigated or inspected
* Eighteen (18) closed consultation files
* Eight (8) closed whistleblower case 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 Report (Appendix D)
* OSHA Information System (OIS)
* State Information Report
* Mandated Activities Report for Consultation
* State OSHA Annual Report
* State Plan Annual Performance Plan
* 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 2023 SAMM Report and includes the FRL for each measure.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

Both enforcement and consultation staff participated in training courses held at the OSHA Training Institute and OSHA Education Centers.

Courses attended by staff included the following:

* OSHA 1501, Introduction to Onsite Consultation
* OSHA 2060, Longshoring and Marine Terminal Processes and Standards
* OSHA 2090, Shipyard Employment
* OSHA 2260, Permit-Required Confined Spaces
* OSHA 2451, Evaluation of Safety and Health Management Systems
* OSHA 3190, Electrical Power Generation, Transmission and Distribution
* OSHA 3220, Applied Welding Principles

PEOSH received one-time funding money in FY 2023 and used the money to offer three training classes to both enforcement and consultation staff. These courses included the following:

* OSHA 5410, Maritime Standards
* OSHA 7600, Disaster Site Worker
* Cardiopulmonary Resuscitation and automated external defibrillator

All PEOSH consultants and PEOSH management maintain current certification in Hazardous Waste Operations & Emergency Response (HAZWOPER) through taking eight-hour annual refreshers at the Rutgers School of Public Health (NJ SOAR, FY 2023).

1. OSHA Information System

The State Plan utilizes OIS to enter all data for enforcement, consultation, and whistleblower case files. Compliance assistance activities are also captured in OIS.

**Observation FY 2023-OB-01(FY 2022-OB-08):** *OIS Open Inspection Report-Pending Citations*

The OIS Open Inspection Report, run on February 5, 2024, showed 23 inspection files that had either an opening and/or closing conference date listed in FY 2022 or FY 2023 with citations that were pending issuance over 180 days or six months. Page 88 of PEOSH’s Field Operations Manual (FOM) 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 PEOSH Act.

The PEOSH Act under Section 34:6A-41 has been interpreted by 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 PEOSH determines that a violative condition exists.

**Federal Monitoring Plan FY 2023-OB-01:**

OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in issuing these citations. OSHA will encourage PEOSH to revise this section of the FOM and clarify the discrepancy between these documents but ensure that federal at least as effective (ALAE) standards are met.

**Observation FY 2023-OB-02 (FY 2022-OB-07):** *OIS Open Inspection Report-Pending Abatement*

The OIS Open Inspection Report, run on February 5, 2024, showed 15 inspections with overdue abatement. The number of days overdue for these inspections ranged from 10 to 3,423 days.

**Federal Monitoring Plan FY 2023-OB-02:**

OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in obtaining abatement and updating OIS.

**Observation FY 2023-OB-03:** *OIS Open Inspection Report-Citations Not Received*

The OIS Open Inspection Report, run on February 5, 2024, showed 60 inspection files listed that had not been updated in OIS to reflect the receipt of citations. OIS needs to be updated when the State Plan has confirmation that citations have been received so that the system can properly track abatement and the files closed.

**Federal Monitoring Plan FY 2023-OB-03:**

OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in obtaining abatement and updating OIS.

**Observation FY 2023-OB-04 (FY 2022-01, FY 2021-01):** *Complaint Investigation Processing*

During the case file review, 10 health complaint investigations were reviewed. Safety complaints are addressed with inspections only. Four of these 10 (40%) health investigations were missing evidence that the certification of posting was returned and signed by the employer before the investigation was closed. The certification of posting was emailed to the employer with the complaint, but not tracked to ensure that it was returned signed by the employer. The PEOSH Field Operations Manual (FOM) requires a certification of posting be received for all complaint investigations.

The FY 2021 and FY 2022 FAME reports issued a finding for complaint investigation processing that included references to missing OIS letters for non-indoor quality investigations and data entry errors in OIS, in addition to the certificate of posting requirement. This FAME identified that the State Plan was issuing all required letters for investigations and making all the required entries into OIS for the 10 health investigations reviewed. The only item from the original finding that was not addressed was to ensure that certificates of postings were returned. Therefore, this finding was converted to an observation.

**Federal Monitoring Plan FY 2023-OB-04:**

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

1. State Internal Evaluation Program Report

The State Plan under the civil service system conducts documented performance reviews of all staff every six months. These reviews include both a review of the work products submitted, and a documented field observation conducted by management with all field staff.

1. Staffing

PEOSH safety staffing levels saw a net decrease of three safety compliance officers during FY 2023 as two compliance officers were promoted to assistant chief positions, one in the early spring and one in early summer, and one retired in September leaving the number of compliance staff at six at the end of FY 2023. PEOSH received approval to hire replacements and has selected four new compliance officers with expected start dates of January 2024.

It is also noted that three of the remaining enforcement staff are trained to conduct PEOSH whistleblower complaint investigations which reduces programmed enforcement inspection activity (NJ SOAR, FY 2023).

NJDOH PEOSH currently has three compliance safety and health officers (CSHO) assigned to field work and one CSHO assigned to indoor air quality and sanitation complaints. In December 2023, NJDOH PEOSH backfilled one CSHO enforcement position. Approval for two additional CSHO positions are currently being pursued (NJ SOAR, FY 2023). There were three safety consultants and one health consultant at the end of FY 2023.

**2. ENFORCEMENT**

1. Complaints

SAMM #1a showed that the State Plan responded to 83 complaint inspections in FY 2023 in an average number of 5.42 workdays. The FRL is five days for serious hazards and 120 days for other-than serious hazards. In FY 2022, SAMM #1a reported that the State Plan responded to 83 complaint inspections in 36.42 workdays. The State Plan significantly reduced the number of days to conduct complaint inspections in FY 2023.

SAMM #2a reported that the State Plan responded to complaint investigations within .54 workdays. In FY 2022, the State Plan responded to complaint investigations within .13 workdays. The FRL is one workday.

For FY 2023, the NJDOH PEOSH Program received 62 non-indoor air quality (IAQ)/sanitation complaints. Sixty-two inspections were initiated within five days (average 1.80 days, range 1-5 days). The NJDOH PEOSH Program received 121 IAQ and sanitation complaints in FY 2023 (NJ SOAR, FY 2023).

SAMM #3 reported that the State Plan responded 100% of the time within one workday of receiving a report of an imminent danger complaint or referral.

Complainant Notification

**Finding FY 2023-01 (FY 2022-02, FY 2021-01, FY 2020-OB-01, FY 2019-OB-02, FY 2018-OB-01, FY 2017-OB-01):** *Complainant Notification*

The letter to the complainant at the conclusion of the inspection documenting the results of the inspection was missing in five of 16 (31%) of the complaint files reviewed.

**Recommendation FY 2023-01:**

PEOSH needs to ensure that the complainant receives a letter at the conclusion of the inspection with all allegations addressed and a copy is maintained in the electronic file.

b) Fatalities

PEOSH reported that they investigated five reports of fatalities in FY 2023. These fatalities included one safety and four health related fatalities (NJ SOAR, FY 2023).

SAMM #10 noted that there were four fatality inspections reported that met the reporting criteria to be measured for FY 2023. SAMM #10 showed that all four of these fatalities were responded to within one working day as required.

Three fatality inspections were reviewed during this FAME. The review included all the fatality inspections conducted in FY 2023 that were closed.

**Finding FY 2023-02 (FY 2022-03, FY 2021-03):** *Next-of-Kin Letters*

In one of the two (50%) fatality inspections requiring a next-of-kin letter, both the initial and final next-of-kin letters were not sent to the family of the victim. The State Plan noted in the case file that they did not send the letters because the death was determined not to occupationally related even though there was information in the file on the next-of-kin. The State Plan adopted directive CPL 02-00-166, Communicating OSHA Fatality Inspection Procedures to a Victim’s Family that requires an initial letter notifying the family of the investigation, and a final letter at the conclusion of the inspection with the results.

**Recommendation FY 2023-02:**

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

**Observation FY 2023-OB-05 (FY 2022-OB-03, FY 2021-OB-04):** *Failure to Issue Order to Comply (OTC) to Employer for Not Reporting Within Eight Hours of a Fatality*

The State Plan did not document in one of three (33%) closed fatality inspections why an OTC was not proposed for the employer not reporting to PEOSH the fatality within eight hours of being notified of the death. Additionally, PEOSH received notification of three fatalities in FY 2023 that were not investigated and reported timely.

**Federal Monitoring Plan FY 2023-OB-05:**

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.

**Finding FY 2023-03:**  *Case File Documentation for Fatalities Not Investigated*

In FY 2023, the State Plan received nine reports of fatalities that were not investigated or inspected. Of these nine fatality reports, one of these fatalities was not required to be reported to PEOSH because it involved a motor vehicle accident that caused the death. The other eight fatality reports appeared to meet the reporting requirements of 1904.39.

In seven of eight (87%) of these fatality reports, PEOSH did not acquire medical documentation to support the conclusion that the fatality was medically related and non-occupationally related.

The following fatalities were accepted as non-occupationally related based on discussions with the employer only and warranted further review:

* A young firefighter was admitted to the hospital suffering chest pains after a fire call and died three days later. The case file did not document the details of the fire and work exposures, prior to the employee being admitted to the hospital. PEOSH did not investigate the in-patient hospitalization or death of the firefighter.

* A maintenance mechanic was found dead next to an ice machine in the kitchen of a university according to the employer’s incident report. The initial report of the incident received and entered into OIS differed from this incident report on where the victim was found unresponsive. PEOSH did not inquire why the reports were different and investigate to determine what the victim was doing before the fatal event.
* A sewerage treatment worker was reported as dying from a cardiac event in the workplace. There is no description of what tasks this employee was performing before suffering a cardiac event in the case file or reported in OIS.

Six of eight (87%) of these fatality reports did not include a diary sheet to track and document the investigation of these inquires.

**Recommendation FY 2023-03**:

Before concluding that a reported fatality is medically related and not related to an occupational exposure, PEOSH should obtain medical documentation confirming this conclusion, or conduct a thorough inspection to evaluate the circumstances of the death to reach a conclusion. Diary sheets should be utilized to document all actions taken during the inquiry and/or investigation.

c) Targeting and Programmed Inspection

PEOSH conducted 454 inspections in FY 2023 which was 86% of the combined projected

goal of 525 inspections. Safety staff conducted 360 inspections (90% of the goal) and the

industrial hygiene staff conducted 94 inspections (75% of the goal) in FY 2023 (SAMM #7).

Both disciplines were impacted by staffing shortages due to vacancies not filled and created

by promotions of staff to management positions.

FY 2023 was the last of year of PEOSH’s 2019-2023 Five-Year Strategic Plan. This plan identified three goals. The first goal was to reduce the number of worker injuries and illnesses, by focusing statewide attention and resources on the most prevalent types of injuries and illnesses, the most hazardous public occupations, and the most hazardous workplaces. The four industries selected to target were the following:

* State Support Activities for Transportation (NAICS 488)
* Local Fire Protection (NAICS 92216)
* Departments of Public Works (NAICS 561210)
* Water and Sewage Treatment Facilities (NAICS 2213)

PEOSH conducted the following number of inspections in these industries in FY 2023 (NJ SOAR, FY 2023):

* Transportation – nine inspections
* Local Fire Protection – 66 inspections
* Public Works Departments – 203 inspections
* Water and Sewage Treatment Facilities – 32 inspections

The second goal of this strategic plan was to promote safety and health values in New Jersey’s public sector workplaces. The third goal of this strategic plan was to secure public confidence through excellence in the development and delivery of PEOSH programs and services. Based on the measures being used to meet these goals, PEOSH determined that the goals were met for FY 2023 (NJ SOAR, FY 2023).

Advanced Notice of Inspections

The New Jersey Administrative Code 2:110-4.3 contains a general prohibition against the

giving of advanced notice of inspections, except as authorized by the commissioner or designee. Advanced notice of inspections may be given only with the authorization of the director or designee and only in the situations identified under section Chapter 3, II, D.1.b of the PEOSH FOM.

One of these exemptions allowed for giving advanced notice, is to ensure the presence of employer and employee representatives or other appropriate personnel who are needed to aid in the inspection. PEOSH has interpreted this exemption to be applicable to volunteer fire departments. During this evaluation period, PESOH investigated two health fatality inspections in volunteer fire departments. PEOSH provided advanced notice of the inspection in both inspections, four weeks before conducting the on-site inspection. There was no explanation in either file why the opening conference was delayed for weeks, and that the authorization as required by the FOM was obtained, prior to giving advanced notice.

Additionally, there were three safety referral inspections reviewed that provided advanced notice of the inspection to the employer. There was no evidence in the file that the required authorization had been obtained from the Commissioner or his designee as discussed in the FOM. These two inspections did not meet any of the exemptions listed in the FOM.

**Finding FY 2023-04 (FY 2022-04, FY 2021-04):** *Advanced Notice of Inspections*

In five of 48 (10%) closed inspection files there was evidence that advanced notice of the

inspection was provided to the employer.

**Recommendation FY 2023-04:**

PEOSH should follow the requirements of their FOM when issuing advanced notice of

inspections and secure the required authorizations. Advanced notice should be given under the

exemptions permitted in the FOM, but the notice provided should be the shortest amount of

time needed to begin the inspection.

d) Citations and Penalties

PEOSH’s issuance of violations continues 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 1.75 for serious/willful/repeat (S/W/R) violations

which equals a range of 1.40 to 2.10. PEOSH’s S/W/R average was 4.47 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 0.89 which equals a range of 0.71 to 1.07. PEOSH’s OTS

average was 2.56 which was also above the FRL range (SAMM #5) but not indicative of a

concern.

PEOSH does not issue monetary penalties except in cases of willful or repeat violations. There

were two penalty Orders to Comply issued in FY 2023.

**Observation FY 2023-OB-06:** *Issuing OTCs for 1910.38 and 1910.39*

Four of 23 (17%) of closed safety files with OTCs that had issued an OTC for either OSHA standard 1910.38 or 1910.39 lacked evidence to support the orders and incorrectly cited 1910.38 or 1910.39 directly. OSHA standard 1910.38, Emergency Action Plans (EAP) and 1910.39, Fire Prevention Plans (FPP), requires these plans be developed when required by another OSHA standard. Per CPL 2-1.037, Compliance Policy for Emergency Action Plans and Fire Prevention Plans, 1910.38 and 1910.39 are not to be cited directly but included as a reference to the specific standard that requires these plans. There was no documentation in these cases noting which OSHA standard required an EAP and/or a FPP be developed to support the OTCs.

**Federal Monitoring Plan FY 2023-OB-06:**

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.

General Duty Clause Violations

Section 34:6A-33(a) of the Act requires that “Every employer shall provide each of his

employees with employment and a place of employment which are free from recognized

hazards which may cause serious injury, physical harm or death to his employees”.

The PEOSH FOM states the following elements are necessary to prove a violation of the

general duty clause:

* The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
* The hazard was recognized;
* The hazard was causing or was likely to cause death or serious physical harm; and
* There was a feasible and useful method to correct the hazard.

**Finding FY 2023-05:**  *General Duty Clause Violations*

Ten of twelve (83%) safety files with OTCs did not document all four of the elements required

to support a general duty violation.

**Recommendation FY 2023-05:**

PEOSH should ensure that all required elements of a general duty clause violation are

documented on the worksheets.

**Observation FY 2023-OB-07 (FY 2022-OB-04, FY 2021-OB-06):** *Case File Documentation* In 18 of the 48 (38%) safety inspection case files reviewed, diary sheets were incomplete.

**Federal Monitoring Plan FY 2023-OB-07:**

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.

1. Abatement

**Finding FY 2023-06:**  *Adequate Abatement*

In 10 of 23 (43%) of closed safety files, evidence of abatement of all the issued OTCs was

not available for review in the case files.

R**ecommendation FY 2023-06:**

PEOSH needs to ensure that all OTCs have adequate documentation of abatement, that

the abatement accepted completely addresses the requirements of the standard issued, and all instances cited are addressed in the abatement provided by the employer.

1. Worker and Union Involvement

**Finding FY 2023-07 (FY 2022-05, FY 2021-05):** *Worker Involvement*

In six of 12 (50%) of closed health files, employee interviews were not documented in the field notes. For both health fatality inspections reviewed there was no evidence in the files that non-managerial employees were interviewed to obtain information about their knowledge of the victim’s death and the general safety and health policies in place at the site. In 19 of 36 (53%) of the closed safety files, employee interviews were not documented.

**Recommendation FY 2023-07:** Follow the PEOSH FOM to conduct and document employee interviews during inspections.

**3. REVIEW PROCEDURES**

The Office of Public Employees Occupational Safety and Health (OPEOSH) has concluded that to better serve and to make workplaces safer and healthier, those areas that incur penalties for violations could create safer and healthier environments by using consultation services in their workplaces. As a result, and to encourage the use of these consultation services, the OPEOSH may at an informal conference offer a reduction of the imposed penalties of up to 75% of the initial amount provided that the offending authority agrees to full consultation services for all facilities within its control. This agreement would include both the NJDOL and NJDOH consultation units.

Should a penalty reduction agreement be made at the informal conference, the offending authority must provide documentation to OPEOSH confirming that request(s) for consultation were submitted for each facility within its control. Upon completion of consultation services, the offending authority must provide satisfactory proof to OPEOSH that consultation visits were completed and may do so without disclosing the full consultation report or its findings. Penalty cases will remain open, and the penalty reduction amount will remain suspended until such documentation is received and approved by OPEOSH. Due to confidentiality requirements present in 29 CFR 1908, the consultation program will not share any of these details directly with OPEOSH. PEOSH will extend abatement dates if necessary following established PEOSH guidelines.

1. Informal Conferences

NJ PEOSH conducted one (1) informal conference during FY 2022 and five informal conferences during FY 2023 (NJ SOAR, FY 2023 and FY 2022).

1. Formal Review of Citations

In FY 2022 there was one penalty Orders to Comply (OTC) issued by PEOSH. In FY 2023, there were two penalty Orders to Comply (OTC) issued by PEOSH (NJ SOAR, FY 2022 and 2023).

Total monetary penalties collected for FY 2022: $4,000 (NJ SOAR, FY 2022)

Total monetary penalties collected for FY 2023: $182,700 (NJ SOAR, FY 2023)

**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 ALAE 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.

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 2022 and FY 2023 Federal Standards Adoption**

***(May include any delinquent standards from earlier fiscal years)***

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 3/31/2022 | N/A |  | 12/5/2021 |  |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | 1/8/2022 | Y | N | 1/24/2022 | 1/24/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 6/14/2022 | N/A | N/A | 7/15/2022 | SLG workers only-no first instance penalties |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and ®  (2/14/2022) | 4/14/2022 | 4/14/2022 | Y | Y | 8/14/2022 | 8/14/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 2/13/2023 | N/A | N/A | 7/15/2023 | SLG Workers only-no first instance penalties |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 12/20/2023 | Y | Y | 1/21/2024 | 1/1/2025 |

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Adoption**

***(May include any delinquent FPCs from earlier fiscal years)***

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| ***Adoption Required*** |  |  |  |  |  |  |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 2/10/2023 | Y | Y | 7/30/2023 | 2/10/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 12/20/2023 | Y | Y | 1/9/2024 | 12/20/2023 |
| ***Equivalency Required*** |  |  |  |  |  |  |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 8/1/2022 | Y | Y | 11/3/2022 | 7/13/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/11/2022 | Y | N | 2/11/2023 | 2/11/2023 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/15/2022 | Y | Y | 3/15/2022 | 4/15/2023 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 5/8/2023 | N | N/A | 8/6/2023 | SLG workers only |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/30/2023 | Y | Y | 10/28/2023 | 12/20/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 6/30/2023 | Y | N | 3/27/2024 |  |
| ***Adoption Encouraged*** |  |  |  |  |  |  |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 2/18/2022 | N | N/A | N/A |  |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 6/14/2022 | Y | Y | N/A | 6/14/2022 |

**5. Variances**

There were no variances requested or approved in FY 2022 or FY 2023.

**6. STATE AND LOCAL government WORKER Program**

NJ PEOSH conducted 100% of their inspections in state and local government workplaces as

measured by SAMM #6 in FY 2022 and FY 2023. NJ PEOSH conducted a total of 454

inspections, 360 safety and 94 health inspections or 86% of their inspection goal for FY 2023

(SAMM #7, FY 2023).

**7. WHISTLEBLOWER Program**

NJ PEOSH processed 16 discrimination complaints under its jurisdiction in FY 2023. Two

cases were investigated and resulted in non-merit findings. Thirteen cases were

administratively closed as they did not establish all of the required prima-facie elements to

initiate a formal discrimination investigation, were not jurisdictional under the PEOSH Act or

withdrawn by the complainant. PEOSH determined that one case met merit status. There were

no cases transferred to the Office of Administrative Law (OAL). Once hearing decisions or

recommendations are returned to New Jersey Department of Labor (NJDOL), the

Commissioner of NJDOL may adopt, reject, or modify the recommendations which will become

a final determination no more than 45 days from receipt of the OAL hearing report (NJ

SOAR, FY 2023).

NJ PEOSH processed 15 discrimination complaints under its jurisdiction, three of which

were completed within 90 days in FY 2022. Two cases were investigated and resulted in

non-merit findings. Thirteen cases were administratively closed as they did not establish all the required prima-facie elements to initiate a formal discrimination investigation, were not

jurisdictional under the PEOSH Act or withdrawn by the complainant. There were no

cases transferred to the OAL. Once hearing decisions/recommendations are returned to

NJDOL, the Commissioner of NJDOL may adopt, reject, or modify the recommendations which

will become a final determination not more than 45 days from receipt of the OAL hearing report

(NJ SOAR, FY 2022).

During the FAME review, Region II’s Supervisory Investigator reviewed two full investigations

and six administrative closure cases that were closed in FY 2023. The review found that

the cases were well documented and followed the procedures in the NJ PEOSH

Whistleblower’s manual. There were no findings or observations related to the review of these

cases.

NJ PEOSH is utilizing their own whistleblower manual that has been evaluated and determined

to be equivalent to the current federal whistleblower manual by federal whistleblower staff.

**8. Complaint About State Program Administration (CASPA)**

There were no Complaints about State Program Administration filed in FY 2022 or FY 2023.

**9. Voluntary Compliance Program**

PEOSH does not administer a Voluntary Compliance Program.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

The NJDOL PEOSH Consultation Program conducted (197) total consultation visits consisting of 110 initial visits, 37 follow-up visits, and 50 training and education sessions in FY 2022. The NJDOH PEOSH Program conducted 12 initial visits, four follow-up visits and one training and assistance visit, but was unable to attain the goal of 30 due to having only one consultant on staff (NJ SOAR, FY 2022).

The New Jersey Department of Labor (NJDOL) PEOSH Consultation Program conducted 276 total consultation visits consisting of 132 initial visits, 63 follow up visits, and 81 training and education sessions in FY 2023. The NJDOH PEOSH Program conducted (28 initial visits and one follow-up visit but was unable to attain the goal of 30 due to having only one consultation staff member (NJ SOAR, FY 2023).

The OIS Consultation Metrics Report, run on February 26, 2024, showed 161 requests received in FY 2023, 651 identified serious hazards identified, an average of 5.34 serious hazards per initial visit, and consultation visits were conducted in maritime, construction, and general industry sectors. In addition to conducting consultation visits, there were 21 compliance assistance activities conducted.

The OIS Request Pending Report run on February 14, 2024 showed that there were 120 requests pending a consultation visit. Out of these 120 requests, there were 110 requests that had been received more than 30 days ago. Of the requests that had an identified service scope listed, there were 53 health requests pending a visit on this list.

**Observation FY 2023-OB-08:**  *Pending Requests*

There are 120 requests for consultation visits pending per OIS reports.

**Federal Monitoring Plan FY 2023-OB-08:**

The Region will monitor quarterly with OIS reports and discuss at quarterly meetings.

**Observation FY 2023-OB-09 (FY 2022-OB-01, FY 2021-OB-01):** *OIS Uncorrected Hazards Report*

The OIS Uncorrected Hazards Report, run on February 5, 2024, showed 34 serious hazards that were overdue by more than calendar 14 days. The overdue hazards ranged from 17-70 calendar days overdue.

**Federal Monitoring Plan FY 2023-OB-09:**

OSHA will monitor this report quarterly and discuss at quarterly meetings.

Consultation Case File Documentation

During this year’s FAME, adequate case file documentation was lacking for the following health consultation files: three out of five (60%) of the initial health visits lacked evidence that a report was sent to the employer. In three out of five (60%) of the initial health visits where chlorine cylinder storage was pictured, coverage under the OSHA Process Safety Management Standard 1910.119 was not evaluated. Two of the three (66%) health consultation reports that were reviewed had injury and illness rates for only one year of data reported.

Three of six (50%) safety initial consultation visits issued a notice under 1910.38. OSHA standard 1910.38, Emergency Action Plans (EAP) requires an emergency action plan be developed when required by another OSHA standard. Per CPL 2-1.037, Compliance Policy for Emergency Action Plans and Fire Prevention Plans, 1910.38, is not to be cited directly but the standard that requires the EAP be cited with a reference to the specific requirement in 1910.38 in the notice. There was no documentation in these cases noting which OSHA standard required an EAP be developed to support requiring the development of an EAP.

In two of two (100%) of safety initial consultation visits where the employer was given an extension there was no documentation that the employer was given an updated List of Hazards when the extension was approved. Two notices were issued for not establishing lockout/tagout programs, but the notices lacked information on the specific equipment being serviced that was required to be included in the lockout/tagout program. One initial safety visit lacked information on how the hazards were corrected on-site. One follow-up safety consultation visit did not describe how the hazards were corrected.

**Finding FY 2023-08 (FY 2022-06, FY 2021-06, FY 2020-02, FY 2019-03):** *Consultation File Documentation*

Consultation case file documentation was lacking. Specifically, the health files were missing the following: three out of five (60%) of the initial visits lacked a report, three out of five (60%) of the initial visits showing chlorine cylinder storage lacked evidence that coverage under the OSHA Process Safety Management Standard was evaluated and two of the three (66%) of the reports did not include all required years of injury/illness data. The safety consultation files were specifically missing the following: evidence in three of six (50%) of initial visits to support the issuance of notices under 1910.38, in two of two (100%) of the visits with an extension that the employer received an updated List of Hazards, evidence to support issuing lockout/tagout program notices for two visits and in two visits how hazards were corrected.

**Recommendation FY 2023-08:**

PEOSH should improve documentation in its consultation case files by adhering to CSP 02-00-

05, Consultation Policies and Procedures Manual.

**11**. **Private Sector 23(g) On-site Consultation Program**

NJ PEOSH is a state and local government plan.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | *Complainant Notification*  The letter to the complainant at the conclusion of the inspection documenting the results of the inspection was missing in five of 16 (31%) of the complaint files reviewed. | PEOSH needs to ensure that the complainant receives a letter at the conclusion of the inspection with all allegations addressed and a copy is maintained in the electronic file. | FY 2022-02  FY 2021-02  FY 2020-OB-01 FY 2019-OB-02 FY 2018-OB-01 FY 2017-OB-01 |
| FY 2023-02 | *Next-of-Kin Letters*  In one of the two (50%) of the fatality inspections requiring a next-of-kin letter, both the initial and final next-of-kin letters were not sent to the family of the victim. The State Plan noted in the case file that they did not send the letters because the death was determined not to be occupationally related even though there was information in the file on the next-of-kin. The State Plan adopted directive CPL 02-00-166, Communicating OSHA Fatality Inspection Procedures to a Victim’s Family, that requires an initial letter notifying the family of the investigation and a final letter at the conclusion of the inspection with the results. | The State Plan needs to issue next-of-kin letters as required by its FOM and the OSHA directive. | FY 2022-03  FY 2021-03 |
| FY 2023-03 | *Case File Documentation of Fatalities Not Inspected*  The case files of eight reported fatalities not inspected lacked evidence to support the conclusion that the death was not occupationally- related. | Before concluding that a reported fatality is medically related and not related to an occupational exposure, PEOSH should obtain medical documentation confirming this conclusion, or conduct a thorough inspection to evaluate the circumstances of the death to reach a conclusion. Diary sheets should be utilized to document all actions taken during the inquiry and/or investigation. | New |
| FY 2023-04 | *Advanced Notice of Inspections*  In five of 48 (10%) closed inspection files there was evidence that advanced notice of the inspection was provided to the employer. | PEOSH should follow the requirements of their FOM when issuing advanced notice of  inspections and secure the required authorizations. Advanced notice should be given under the exemptions permitted in the FOM, but the notice provided should be the shortest amount of time needed to begin the inspection. | FY 2022-04  FY 2021-04 |
| FY 2023-05 | *General Duty Clause Violations*  Ten of 12 (83%) safety files with OTCs did not document all four of the elements required  to support a general duty violation. | PEOSH should ensure that all required elements of a general duty clause violation are  documented on the worksheets. | New |
| FY 2023-06 | *Adequate Abatement*  In 10 of 23 (43%) of closed safety files, evidence of abatement of all the issued OTCs was not available for review in the case files. | PEOSH needs to ensure that all OTCs have adequate documentation of abatement, that  the abatement accepted completely addresses the requirements of the standard issued and all instances cited are addressed in the abatement provided by the employer. | New |
| FY 2023-07 | *Worker Involvement*  In six of 12 (50%) of closed health files, employee interviews were not documented in the field notes. For both health fatality inspections reviewed there was no evidence in the files that employees were  interviewed to obtain information about their knowledge of the victim’s death and the general  safety and health policies in place at the site.    In 19 of 36 (53%) of the closed safety files, employee interviews were not documented. | PEOSH should follow the PEOSH FOM to conduct and document employee interviews during inspections. | FY 2022-05  FY 2021-05 |
| FY 2023-08 | *Consultation File Documentation*  Consultation case file documentation was Specifically, the health files were missing the following: three out of five (60%) of the initial visits lacked a report, three out of five (60%) of the initial visits showing chlorine cylinder storage lacked evidence that coverage under the OSHA Process Safety Management Standard was evaluated and two of the three (66%) of the reports did not include all required years of injury/illness data. The safety consultation files were specifically missing the following: evidence in three of six (50%) of initial visits to support the issuance of notices under 1910.38, in two of two (100%) of the visits with an extension that the employer received an updated List of Hazards, evidence to support issuing lockout/tagout program notices for two visits and in two visits how hazards were corrected. | PEOSH should improve documentation in its consultation case files by adhering to CSP 02-00-  05, Consultation Policies and Procedures Manual. | FY 2022-06  FY 2021-06  FY 2020-02  FY 2019-03 |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-08 | *OIS Open Inspection Report-Pending Citations*  The OIS Open Inspection Report, run on February 5, 2024, showed 23 inspection files that had either an opening and/or closing conference date listed in FY 2022 or FY 2023, that had citations that were pending issuance over 180 days or six months. | OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in issuing these citations. OSHA will encourage PEOSH to revise this section of the FOM and clarify the discrepancy between these documents but ensure that federal at least as effective (ALAE) standards are met. | Continued |
| FY 2023-OB-02 | FY 2023-OB-07 | *OIS Open Inspection Report-Pending Abatement*  The OIS Open Inspection Report, run on February 5, 2024, showed 15 inspections with overdue abatement. The number of days overdue for these inspections ranged from 10 to 3,423 days. | OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in obtaining abatement and updating OIS. | Continued |
| FY 2023-OB-03 |  | *OIS Open Inspection Report-Citations Not Received*  The OIS Open Inspection Report run on February 5, 2024, showed 60 inspection files listed that had not been updated in OIS to reflect the receipt of citations. OIS needs to be updated when the State Plan has confirmation that citations have been received so that the system can properly track abatement and the files closed. | OSHA will continue to review the OIS Open Inspection Report quarterly to monitor the State Plan’s progress in obtaining abatement and updating OIS. | New |
| FY 2023-OB-04 | FY 2022-01  FY 2021-01 | *Complaint Investigation Processing*  Ten health complaint investigations were reviewed. (Safety complaints are addressed with inspections only.) Four of these 10 health investigations (40%) were missing evidence that the certification of posting was returned signed by the employer before the investigation was closed. The certification of posting was emailed to the employer with the complaint but not tracked to ensure that it was returned signed by the employer. The PEOSH Field Operations Manual (FOM) requires a certification of posting be received for all complaint investigations. | During the next comprehensive FAME review, a limited number of investigations will be selected randomly to determine if these are isolated instances or if this represents a trend that requires further evaluation. | Converted from Finding |
| FY 2023-OB-05 | FY 2022-OB-03, FY 2021-OB-04 | *Failure to Issue Order to Comply (OTC) to Employer for Not Reporting Within Eight Hours of a Fatality*  The State Plan did not document in one of three closed fatality inspections (33%) why an OTC was not proposed for the employer not reporting to PEOSH the fatality within eight hours of being notified of the death. Additionally, PEOSH received notification of three fatalities in FY 2023 that were not investigated and reported timely. | 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. | Continued |
| FY 2023-OB-06 |  | *Issuing OTCs for 1910.38 and 1910.39*  Four of 23 (17%) of closed safety files with OTCs that had issued an OTC for either OSHA standard 1910.38 or 1910.39 lacked evidence to support the orders and incorrectly cited 1910.38 or 1910.39. OSHA standard 1910.38, Emergency Action Plans (EAP) and 1910.39, Fire Prevention Plans (FPP), requires these plans be developed when required by another OSHA standard. Per CPL 2-1.037, Compliance Policy for Emergency Action Plans and Fire Prevention Plans, 1910.38 and 1910.39 are not to be cited directly but included as a reference to the specific standard that requires these plans. There was no documentation in these cases noting which OSHA standard required an EAP and/or a FPP be developed to support the OTCs. | 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 2023-OB-07 | FY 2022-OB-04  FY 2021-OB-06 | *Case File Documentation*  In 18 of the 48 (38%) safety inspection case files reviewed, diary sheets were incomplete. | 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. | Continued |
| FY 2023-OB-08 |  | *Pending Requests*  There are 120 requests for consultation visits pending per OIS reports. | OSHA will monitor this report quarterly and discuss at quarterly meetings. | New |
| FY 2023-OB-09 | FY 2022-OB-01  FY 2021-OB-02 | *OIS Uncorrected Hazards Report*  The OIS Uncorrected Hazards Report, run on February 5, 2024, showed 34 serious hazards that were overdue by more than calendar 14 days for consultation visits. The overdue hazards ranged from 17-70 calendar days overdue. | OSHA will monitor this report quarterly and discuss at quarterly meetings. | 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%. |  | Closed |
|  | 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 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. |  | Closed |
|  | 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%. |  | Closed |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| 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 (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. | 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. | DOH PEOSH is following the required procedures per Chapter 9 of the FOM and utilizing letters provided in OIS to process all complaint investigations, specifically for indoor air quality complaints. Codes for strategic initiatives are being entered in OIS.  DOH PEOSH has  modified its complaint processing regarding entering valid vs invalid complaints based on guidance provided from OSHA and following guidelines in Chapter 9 of the FOM.  DOL PEOSH will ensure through supervisory review that all applicable strategic initiatives, NEPs, and LEPs will be recorded in OIS when  appropriate. | Not Applicable | Converted to Observation  (As of September 30, 2023)? |
| 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. | DOL PEOSH copies complaint results to complainants in the form of Orders to Comply, Hazard Awareness letters, or No Hazard letters. Any alleged hazard in a complaint not identified in the above documents is communicated to the complainant verbally or other communication form and is noted in the Case File Diary. Also, field staff contact complainants prior to the issuance of the above correspondence to inform them of the  complaint inspection results. PEOSH reviewed with field staff to ensure that communication of complaint inspection results will be included in the case file diary with an explanation. | Not Applicable | Open  (As of September 30, 2023) |
| 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. | DOH PEOSH issued next-of-kin letters for the three inspection cases cited during the FAME audit on 5/25/2022. The protocol for issuance of next-of- kin letters during the COVID-19 pandemic was unclear. PEOSH will continue to follow the FOM regarding issuance of next-of- kin letters. | Not Applicable | Open  (As of September 30, 2023) |
| 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. | DOH PEOSH has  reviewed FOM and  will ensure not to send advanced notification to employers identified for routine targeted (programmed) inspections.  DOL PEOSH provides advance inspection notice for correctional institutions as required per their safety and security protocols and for volunteer fire departments who must arrange to have proper representation available on the day of inspection. | Not Applicable | Continued  (As of September 30, 2023) |
| 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. | DOH PEOSH field staff have been advised that the off-site interviews conducted during the COVID-19  pandemic required adequate follow through to ensure workers interviews were completed as best possible. Off- site investigation presented new challenges for enforcement staff and attempts were made but was not always followed through in terms of repeating attempts to contact workers for interviews.  Staff have been advised that worker interviews are required to ensure all information is documented to the OIS and case file notes.  DOL PEOSH will ensure that employee interviews are conducted and documented accordingly. In cases where interviews could not be conducted due to unavailability of employees or reluctance to be interviewed, the CSHO will also record accordingly.  DOL PEOSH makes every attempt to interview an injured worker and will properly document the circumstances when this cannot  be achieved. | Not Applicable | (As of September 30, 2023) |
| FY 2022-06 | *Consultation Case File Documentation* Consultation case file documentation was lacking in consultation case files. |  | NJ PEOSH reformatted consultation case file tracking and review forms and modified case file closure processes. The new process is thorough and ensures completeness and accuracy of electronic case files through a three- layered review  process. | Not Applicable | Open  (As of September 30, 2023) |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 5.42 | 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) | 2.08 | 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) | 0.54 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 0.29 | 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) | 4.47 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 2.55 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 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) | 360 | +/- 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) | 94 | +/- 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 | +/- 25% of  $3,625.21 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | N/A | +/- 25% of  $2,348.03 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | N/A | +/- 25% of  $4,167.28 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | N/A | +/- 25% of  $6,052.04 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | N/A | +/- 25% of  $7,331.41 | 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) | 23.42% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in-compliance (health) | 16.07% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 17.16 | +/- 20% of  55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 57.00 | +/- 20% of  69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | N/A | +/- 15% of  71.84% | 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 | 99.87% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | N/A | +/- 25% of  0.93% | NA – This is a State and Local Government State Plan and is not held to this SAMM.  The further review level is based on a three-year national average. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 14, 2023, 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 2023.