

# **FY 2016 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report**

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



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## **I. Executive Summary**

### **A. State Plan Activities, Themes, and Progress**

The purpose of this report is to assess the New Jersey Public Employees Occupational Safety and Health (PEOSH) State Plan's activities for Fiscal Year (FY) 2016, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the FY 2015 Comprehensive FAME Report.

FY 2016 is the third year of PEOSH's new Five-Year Strategic Plan. PEOSH continues to have a significant presence in the workplace through its inspection activity, partnerships, and outreach activity. PEOSH conducted 776 inspections in FY 2016 (87% of the 895 inspection goal). This number is slightly above the 750 inspections conducted in FY 2015. This year, PEOSH exceeded their projected consultation visits goal by 139 visits.

PEOSH also continues to excel in outreach and training, and its compliance assistance and training staff conducted significant outreach to targeted high hazard agencies. In addition, PEOSH continues to be a leader in the realm of homeland security in New Jersey. PEOSH personnel continues to serve as key members of the emergency response community and has served in leadership roles in a number of local, state, and federal emergency response efforts and activities. This participation helps to ensure effective PEOSH integration into the emergency response community.

Last year's comprehensive FAME report included four findings and eight observations. During the FY 2016 performance period, PEOSH addressed one previous FAME finding (worker retaliation/witness interviews documentation) which OSHA verified; therefore, this finding was successfully completed. Although PEOSH made progress toward addressing three other findings (notification to complainants, 23(g) program consultation case file documentation, and 23(g) program consultant training), OSHA converted these to observations for further monitoring during next year's performance period. OSHA determined that seven of the eight observations from the FY 2015 FAME report (advance notice documentation, missed violations, not obtaining final confirmation of completed abatement for phone/fax complaints, organization of worker retaliation case files not being in accordance with the Whistleblower Manual, insufficient of worker interview documentation, documentation that Petition for Modification of Abatement (PMA) was granted, and excessive abatement periods) were all sufficiently addressed and could be closed. During the on-site case file review, OSHA identified one new finding. PMAs were being granted without the required interim steps necessary to ensure protection for workers.

### **B. State Plan Introduction**

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 (DOH). Aaron R. Fichtner, Ph.D., is currently the Acting Commissioner who oversees the NJ State Plan which included 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 NJLWD 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” 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 are similar to OSHA review procedures.

The table below presents PEOSH’s funding history over the past five years:

<b>FY 2012-2016 Funding History</b>					
<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Plan Match (\$)</b>	<b>100% State Plan Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>Percentage of State Plan Contribution</b>
<b>2016</b>	41,921,400	\$1,921,400	\$1,165,793	\$5,008,593	61.6%
<b>2015</b>	\$1,921,400	\$1,921,400	\$911,664	\$4,754,464	59.5%
<b>2014</b>	\$1,912,800	\$1,912,800	\$824,156	\$4,649,756	58.9%
<b>2013</b>	\$1,901,900	\$1,901,900	\$946,025	\$4,749,825	59.3%
<b>2012</b>	\$1,984,700	\$1,984,700	\$1,093,483	\$5,062,883	60.8%

In their FY 2016 grant application, PEOSH allocated for 15 enforcement staff and has 11.60 on board; they allocated for 2.60 safety and health consultants and have 2.60 on board. PEOSH has half a full-time employee whistleblower investigator position on board. PEOSH does not meet staffing expectations (20 safety/seven health); however, as a state and local government-only State Plan, PEOSH is not subject to required benchmark levels.

### **C. Data and Methodology**

OSHA has established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA was not required to perform an on-site evaluation and case file review. However, OSHA reviewed a sample of case files to determine if the four findings and eight observations from the FY 2015 FAME report were isolated instances, or if they represented a trend that required further action.

This FAME was performed by the Regional State Plan Manager and the Regional Whistleblower Supervisory Investigator from Worker Retaliation conducted an on-site evaluation at PEOSH's office in Trenton, New Jersey on February 15 and 16, 2017. OSHA's case file review focused on the 3<sup>rd</sup> and 4<sup>th</sup> quarter of FY 2016 to determine if PEOSH made progress on findings from the FY 2015 FAME report shared with PEOSH in March of 2016. Case files were selected from a scan detail report and included: closed enforcement case files with violations, consultation case files, phone/fax non-formal complaints, case files where employers requested petition for PMA and worker retaliation case files. OSHA reviewed a total of 35 case files which are broken down into the below categories:

- Safety (9)
- Health (6)
- Consultation (8)
- Phone/fax non-formal complaints (3)
- PMAs (4)
- Worker Retaliation (5)

#### **D. Findings and Observations**

This follow-up report contains one finding. In FY 2016, PEOSH successfully completed one FY 2015 finding and converted the other three FY 2015 findings to observations.

##### **Completed FY 2015 Finding**

During the FY 2016 performance period, PEOSH successfully addressed one finding from last year's FAME report. The completed finding was regarding PEOSH not having adequate documentation as to whether or not to interview witnesses was noted on the standard contents table. During this FAME, all five (100%) of the worker retaliation case files reviewed contained adequate documentation. On March 24, 2016, PEOSH addressed this issue by instructing its whistleblower (WB) investigators on the requirements for documenting witness interviews when appropriate. A standard contents table was developed to document the determination whether or not to interview witnesses. OSHA considers this finding to be completed. In FY 2016, PEOSH successfully completed one finding and converted three previous findings to observations.

##### **New FY 2016 Finding**

During the FY 2016 FAME, in all of the case files reviewed, OSHA found that PMAs were being granted without the required interim steps necessary to protect workers. OSHA recommended that PEOSH adhere to its Field Operations Manual (FOM) regarding requested PMAs. Additional details of OSHA's new finding can be found in *Section III: Assessment of State Plan Corrective Actions and Appendix A: New and Continued Findings and Recommendations* of this report.

## **FY 2016 Observations**

This follow-up FAME report contains four observations. One observation was continued from FY 2015 and three findings from last year's FAME report were converted to observations. Seven observations noted in the FY 2015 FAME report were closed. Details regarding these observations can be found in *Section III: Assessment of State Plan Corrective Actions* and *Appendix B: Observations Subject to New and Continued Monitoring* of this report.

## **II. Assessment of State Plan Performance**

### **A. Major New Issues**

#### **State Plan Certification**

On January 22, 2016, OSHA certified New Jersey's State Plan for protecting the safety and health of more than 530,000 state and local government workers. The New Jersey State Plan was initially approved in January of 2001 and certification was effective on January 22, 2016. Formal certification documents the satisfactory completion of all structural and developmental aspects of New Jersey's approved State Plan. This certification attests to the fact that New Jersey now has in place all those structural components necessary for a State Plan covering state and local government workers. The certification was published in the Federal Register and can be viewed at the following link: <http://federalregister.gov/a/2016-01286>.

#### **Commissioner of Labor**

Harold J. Wirths, the former commissioner overseeing the NJ State Plan, left his position in late July 2016. Aaron R. Fichtner, Ph.D. is currently Acting Commissioner.

### **B. Assessment of State Plan Progress in Achieving Annual Performance**

#### **Goals (Source: FY 2016 Annual Performance Plan and FY 2016 State OSHA Annual Report)**

This section focuses on PEOSH's progress toward meeting its targeted performance goals as outlined in the program's FY 2016 Annual Performance Plan (APP). The APP consists of three fundamental goals to reduce workplace injuries, illness, and fatalities in New Jersey. Below is a summary of PEOSH activities and results as they relate to the PEOSH Strategic Plan for FY 2014-FY 2018:

#### **Strategic Goal #1**

Improve workplace safety and health for all state and local government sector workers as evidenced by fewer hazards; reduced exposures; and fewer injuries, illnesses, and fatalities.

#### **Performance Goal 1.1 - State Support Activities for Transportation (NAICS 488)**

Decrease non-fatal occupational injury and illness incident rates in state, county, and/or local agencies in the specific NAICS segments by 5% by 2018 (1% per year).

Entities targeted under this emphasis area identified were:

- New Jersey Turnpike Authority (includes Garden State Parkway)
- South Jersey Transportation Authority (includes Atlantic City Expressway)
- South Jersey Port Corporation

The National Emphasis Program (NEP) associated with this performance goal is Highway Work Zone Safety.

<b>New Jersey Incidence Rates<sup>1</sup> of Non-Fatal Occupational Injuries and Illnesses by Industry and Case Types</b>				
<b>Total Recordable Cases</b>				
Industry <sup>2</sup>	NAICS code <sup>3</sup>	2013	2014	2015
<b>State Government</b> Support activities for transportation	488	11.1	11.7	9.5
<sup>1</sup> Incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: $(N/EH) \times 200,000$ where: N = number of injuries and illnesses EH = total hours worked by all employees during the calendar year 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year). <sup>2</sup> Totals include data for industries not shown separately. <sup>3</sup> <i>North American Industry Classification System</i> -- United States, 2007. SOURCE: N.J. Department of Labor & Workforce Development, in cooperation with U.S. Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, October 25, 2016				

A 5% decrease from the baseline of 11.1 will result in 10.6 total recordable cases. The latest Division of Program Planning, Analysis, and Evaluation data is for the year 2015. The 2015 total recordable cases for Support Activities for Transportation decreased from the baseline of 11.1 to 9.5. The goal was met for this year.

During FY 2016, PEOSH conducted 11 inspections and five outreach training sessions. The compliance assistance specialist participated in quarterly meetings of the NJ Highway Work Zone Safety Partnership.

**Performance Goal 1.2 - State Nursing and Residential Care Facilities (NAICS 623)**

Decrease non-fatal occupational injury and illness incident rates in state, county, and/or local agencies in the specific NAICS segments by 5% by 2018 (1% per year).

Entities targeted under this emphasis include:

- NJ Department of Corrections
- NJ Department of Human Services
- NJ Department of Law and Public Safety
- NJ Department of Military and Veterans Affairs

The NEP associated with this performance goal is Nursing Homes Residential Care.

<b>New Jersey Incidence Rates<sup>1</sup> of Non-Fatal Occupational Injuries and Illnesses by Industry and Case Types</b>				
<b>Total Recordable Cases</b>				
Industry <sup>2</sup>	NAICS code <sup>3</sup>	2013	2014	2015
<b>State Government</b> Nursing and residential care facilities	623	11.9	11.1	10.5
<b>Local Government</b> Nursing and residential care facilities	623	14.0	11.3	10.1

<sup>1</sup> Incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: (N/EH) x 200,000 where:  
N = number of injuries and illnesses  
EH = total hours worked by all employees during the calendar year  
200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).  
<sup>2</sup> Totals include data for industries not shown separately.  
<sup>3</sup> *North American Industry Classification System* -- United States, 2007.  
SOURCE: N.J. Department of Labor & Workforce Development, in cooperation with U.S. Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, October 25, 2016.

A 5% decrease from the baselines of 11.9 (State Government) and 14.0 (Local Government) will result in 11.3 and 13.3 total recordable cases respectively. The latest Division of Program Planning, Analysis and Evaluation data is for the year 2015. The 2015 total recordable cases for State Nursing and Residential Care Facilities decreased from the baseline of 11.9 to 10.5 for State Government facilities and 14.0 to 10.1 for Local Government facilities. The goal was met for this year.

During FY 2016, PEOSH conducted six inspections and 16 outreach training sessions. Staff from the consultation program initiated an emphasis program to reduce the injuries and illnesses related to workplace violence and lifting (safe patient handling). Nursing and residential care facilities have recorded high injury and illness rates. PEOSH will evaluate rates, evaluate the workplace, and make recommendations to reduce injuries and illnesses related to workplace violence.

The PEOSH Safety Training/Consultation Unit exhibited at the Healthcare Association of New Jersey's (HCANJ) Annual Convention. This convention provided an opportunity to promote PEOSH cooperative services to state and local government sector nursing home administrators, directors of nursing and other high ranking officials.

**Performance Goal 1.3 – Local Fire Protection (NAICS 92216)**

Decrease non-fatal occupational injury and illness incident rates in state, county, and/or local agencies in the specific NAICS segments by 5% by 2018 (1% per year):

New Jersey Incidence Rates <sup>1</sup> of Non-Fatal Occupational Injuries and Illnesses by Industry and Case Types				
Total Recordable Cases				
Industry <sup>2</sup>	NAICS code <sup>3</sup>	2013	2014	2015
Local Government Fire protection	92216	10.5	8.2	9.4
<sup>1</sup> Incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: (N/EH) x 200,000 where: N = number of injuries and illnesses EH = total hours worked by all employees during the calendar year 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year). <sup>2</sup> Totals include data for industries not shown separately. <sup>3</sup> <i>North American Industry Classification System</i> -- United States, 2007. SOURCE: N.J. Department of Labor & Workforce Development, in cooperation with U.S. Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, October 25, 2016.				

A 5% decrease from the baseline of 10.5 will result in 10.0 total recordable cases. The latest Division of Program Planning, Analysis and Evaluation data is for the year 2015. The 2015 total recordable cases for Local Fire Protection decreased from the baseline of 10.5 to 9.4. The goal was met for this year.

During FY 2016, PEOSH conducted 130 inspections, 33 consultation visits, 17 outreach training sessions, and distributed over 190 outreach materials.

### Performance Goal 1.4 – Public Works Departments

Decrease injuries and illnesses in state, county, and/or local agencies in the specific NAICS segments by 5% by 2018 as follows (1% per year):

New Jersey Incidence Rates <sup>1</sup> of Non-Fatal Occupational Injuries and Illnesses by Industry and Case Types				
Total Recordable Cases				
Industry <sup>2</sup>	NAICS code <sup>3</sup>	2013	2014	2015
Public Works Departments <sup>4</sup>	921	3.3	3.7	3.3
<sup>1</sup> Incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: (N/EH) x 200,000 where: N = number of injuries and illnesses EH = total hours worked by all employees during the calendar year 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year). <sup>2</sup> Totals include data for industries not shown separately. <sup>3</sup> <i>North American Industry Classification System</i> -- United States, 2007. <sup>4</sup> Public Works Departments (PWD) do not have an individual NAICS code. Therefore, the measure used for the PWD category is the incident rate for the occupational duties found at PWD facilities under the 921 NAICS code for recordable cases with days away from work. This incident rate for PWD occupational duties for days away from work under the NAICS 921 comprises the majority (average 83 %) of the total number of cases. SOURCE: N.J. Department of Labor & Workforce Development, in cooperation with U.S. Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, October 25, 2016.				

A 5% decrease from the baseline of 3.3 will result in 3.1 total recordable cases. The latest Division of Program Planning, Analysis, and Evaluation data is for the year 2015. The 2015 total recordable cases for Public Works Departments maintained at the baseline of 3.3. The goal was not met for this year.

During FY 2016, PEOSH conducted 126 inspections, 17 consultation visits, 59 outreach training sessions, and distributed over 35 outreach materials.

**Performance Goal 1.5 –Sewage Treatment Facilities (NAICS 221320)**

Decrease injuries and illnesses in state, county and/or local agencies in the specific NAICS segments by 5% by 2018 as follows (1% per year):

New Jersey Incidence Rates <sup>1</sup> of Non-Fatal Occupational Injuries and Illnesses by Industry and Case Types				
Total Recordable Cases				
Industry <sup>2</sup>	NAICS code <sup>3</sup>	2013	2014	2015
<b>Local Government</b> Water, sewage, and other systems	2213	8.1	9.3	8.2

<sup>1</sup> Incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: (N/EH) x 200,000 where:  
N = number of injuries and illnesses  
EH = total hours worked by all employees during the calendar year  
200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).  
<sup>2</sup> Totals include data for industries not shown separately.  
<sup>3</sup> *North American Industry Classification System* -- United States, 2007.  
SOURCE: N.J. Department of Labor & Workforce Development, in cooperation with U.S. Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, October 25, 2016.

A 5% decrease from the baseline of 8.1 will result in 7.7 total recordable cases. The latest Division of Program Planning, Analysis, and Evaluation data is for the year 2015. The 2015 total recordable cases for Public Works Departments increased from the baseline of 8.1 to 8.2. The goal was not met for this year.

During FY 2016, PEOSH conducted 92 inspections, 23 consultation visits, and conducted 36 outreach training sessions.

**Strategic Goal #2**

To promote safety and health values in New Jersey’s state and local government workplaces.

**Performance Goal 2.1 – Worker Involvement**

All (100%) of PEOSH interventions (e.g., inspections, consultations, etc.) will include worker involvement (every year). All (100%) of PEOSH interventions conducted in FY 2016 included worker involvement. The goal was met for this year.

### **Performance Goal 2.2 – SHARP Award**

Award Safety and Health Achievement Recognition (e.g., SHARP, Inspection Deferral) to 20 worksites by the end of 2018 (four per year).

Presently there are two state and local government SHARP facilities. SHARP is promoted during each consultation visit and consultants are encouraged to work with companies that are interested in the program to hopefully add additional SHARP sites in FY 2017. The goal was not met for this year.

### **Performance Goal 2.3 – Promote Safety and Health Management System**

All (100%) of PEOSH consultations will include site specific recommendations to improve the Safety and Health Program Management System in place at that facility.

In FY 2016, 100% of PEOSH consultations included site specific recommendations to improve the Safety and Health Program Management System in place at that facility. The goal was met for this year.

### **Performance Goal 2.4 – Compliance Assistance for High Hazard Industry Organizations/Groups**

Perform compliance assistance interventions for high hazard industry organizations/groups specifically those named in Performance Goals 1.1, 1.2, 1.3, 1.4, and 1.5 (State Support for Transportation, Public Nursing Homes, Local Fire Protection, Public Works, and Water and Sewer). These interventions will focus on the hazards of relevant National and Local Emphasis Programs and promoting PEOSH cooperative services.

Six specific interventions were conducted which reached 149 individuals in high-hazard industry organizations/groups. The goal was met for this year.

### **Strategic Goal #3**

Secure public confidence through excellence in the development and delivery of PEOSH programs and services.

### **Performance Goal 3.1–Fatality Investigations/Inspections**

Initiate inspections of fatalities and catastrophes within one day of notification for 100% of occurrences to prevent further injuries or deaths by the end of FY 2018.

There were four state and local government worker fatalities in FY 2016. All investigations were initiated within one-day of notification. The goal was met for this year.

### **Performance Goal 3.2A–Safety Complaints Received**

As stated in the APP, the NJDLWD planned to initiate 100% of safety complaint inspections within five working days of notification.

During FY 2016, NJ PEOSH received 28 formal complaints. One hundred percent (100%) of the FY 2016 complaint investigations were initiated within five days. The goal was met for this year.

### **Performance Goal 3.2B –Health Complaints Received**

As stated in the APP, the NJDOH goal is to initiate 95% of non-indoor air quality (IAQ)/ sanitation complaint inspections within five working days of notification.

For FY 2016, NJDOH/PEOSH received 31 non-IAQ/Sanitation complaints. Thirty inspections were initiated within five days (average 2.1 days, range 1-5 days). The NJDOH PEOSH Program received 140 IAQ and sanitation complaints in FY 2016. Thirty of 31 (99%) non-IAQ, non-sanitation complaints were initiated within five days. The goal was met for this year.

### **Performance Goal 3.3 – Consultation Customer Satisfaction Surveys**

Each year, 90% of state and local government sector employers targeted through consultation visits rate the intervention as highly effective (score seven or higher on a scale of one through 10 on a customer satisfaction survey).

NJDLWD PEOSH received 15 customer satisfaction surveys for initial consultation interventions. One hundred percent (100%) of the customer satisfaction surveys received rated the consultation interventions as highly effective. NJDOH PEOSH received five customer satisfaction surveys for initial consultation interventions. One hundred percent (100%) of the customer satisfaction surveys received rated the consultation interventions as highly effective. The goal was met for this year.

### **Performance Goal 3.4 – Compliance Assistance Customer Satisfaction Surveys**

Every year, 90% of compliance assistance interventions (e.g., outreach, seminars, mass mailings, hazard bulletins, newsletters, etc.) conducted/distributed in the state and local government sector rated the intervention as highly effective.

NJDLWD PEOSH received 58 customer satisfaction surveys for compliance assistance interventions. One hundred percent (100%) of the customer satisfaction surveys received rated the compliance assistance interventions as highly effective. NJDOH PEOSH received 21 customer satisfaction surveys for compliance assistance interventions. One hundred percent (100%) of the customer satisfaction surveys received rated the compliance assistance interventions as highly effective. The goal was met for this year.

In addition, PEOSH is involved in other activities that include involvement of workers or their representatives including: conducting a total of four PEOSH Advisory Board meetings that involve employer and worker representative from state, counties and municipalities, involvement with the PEOSH Advisory Board Subcommittee on workplace violence in schools, and the American Lung Association, Pediatric/Adult Asthma Coalition (IAQ-related).

## **C. Highlights from the State Activity Mandated Measures (SAMMs)**

(Source: Appendix D SAMM report and NJ SOAR FY 2016 report)

### **Inspections, Response Time to Complaints and Fatalities**

PEOSH conducted 776 inspections in FY 2016 which is 87% of its 895 annual inspection goal and 74 less than the further review level of 850 for SAMM 7 (-5% of goal, 895). Safety staff

conducted 606 inspections which is 84% of its 720 inspection goal and 36 less than the further review level of 684 for SAMM 7. Industrial hygiene staff conducted 168 inspections, which is 96% of its 175 inspection goal and two more than the further review level of 166 for SAMM 7. PEOSH's response time to complaints averaged 26.66 days (SAMM #1a). However, the further review level for SAMM 1a is divided into a five-day response time for serious hazards and 120 days or other than serious hazards. The 26.66 average response time is skewed due to the high number of indoor air quality (IAQ) complaints that were received by the NJDOH during the year and were likely considered other than serious hazards. PEOSH's response to all non-IAQ complaints averaged less than five days which is acceptable and within the further review level for serious hazards. (SAMM #1a) One day response to fatalities was reported at 100%. (SAMM #10)

### **Citations/Notices of Violations and Lapse Time**

As in the past, PEOSH continues to be above the one year national rate of 1.87 serious/willful/repeat violations per inspection. During FY 2016, PEOSH's average S/W/R was 4.63. Their average for other-than-serious violations per inspection was 2.97 – also above the .99 one-year national rate. (SAMM #5) PEOSH's citations lapse time (the average number of calendar days from opening conference to citation issuance) for FY 2016 was calculated at 14.04 days for safety, well below the one-year national rate of 45.16 days. The lapse time for health was 56.64 days, also below the one-year national rate of 57.28 days. (SAMM # 11)

## **III. Assessment of State Plan Corrective Actions**

A total of four findings and eight observations were identified in the FY 2015 FAME report. In FY 2016, PEOSH successfully completed one previous finding and converted three previous findings to observations. Also in FY 2016, seven observations noted in the FY 2015 FAME report were closed. OSHA determined that one observation would continue to be monitored. Details are presented below:

### **FY 2015 Findings**

#### **Finding 15-01**

PEOSH 23(g) program consultants had not received the required OTI Course #1500 (Introduction to On-Site Consultation) as outlined in the Consultation Policies and Procedures Manual (CSP 02-00-002). Three of five (60%) consultants who were conducting training and consultation visits had not received the required OTI training, and two of four (50%) consultants conducting initial visits had not completed the required OTI course.

#### **Status Finding 15-01**

Two of the three 23(g) program consultants who conduct training and assistance visits and initial visits received the required OTI Course #1500 (Introduction to On-Site Consultation) in June 2016. The remaining one consultant will receive the Course #1500 training before the end of FY 2017. This finding will be converted to an observation until OSHA can confirm the remaining consultant has completed the training.

**Finding 15-02**

In four of the 12 (33%) complaint files reviewed, documentation that the complainant was notified of the results of the inspections, either by letter or phone, was missing in the case file.

**Status Finding 15-02**

In two of the seven (29%) FY 2016 complaint files reviewed, documentation that the complaint was notified of the results of the inspection (either by letter or phone) was missing in the case file. Due to only a sample of case files reviewed, this finding will be converted to an observation until OSHA conducts a full, comprehensive on-site case file review.

**Finding 15-03**

Witness interviews were not documented and/or there was no statement as to why the witnesses should not be interviewed in 100% of the case files reviewed.

**Status Finding 15-03**

All five (100%) of the worker retaliation case files contain documentation of the decision to not interview witnesses in the contents table. OSHA determined this item is completed.

**Finding 15-04**

Documentation in the consultation case files was lacking. Specifically:

- Ten of the 12 (83%) training and assistance case files reviewed were missing the training syllabus.
- The safety and health hazard survey (Form 33) was not completed correctly in all 12 (100%) of the consultation training and assistance files. It appeared that a number is being inserted in only one of the six attributes without performing a true evaluation of the training program.
- In all 12 (100%) of case files reviewed, evidence that a hazard assessment had been completed in the last 12 months was lacking.
- In two of the three (67%) health case files, there was no supervisory review documented prior to issuing the report. All 12 (100%) of the safety case files lacked a training and assistance letter signed by the consultant.

**Status Finding 15-04**

All six (100%) of the training and assistance case files contained a training syllabus, evidence that a hazard assessment had been completed in the last 12 months, a signed training and assistance letter, and documented supervisory review prior to issuing the report. OSHA determined these items to be complete. However, in two of the eight (25%) consultation case files reviewed, the safety and health hazard survey (Form 33) was not completed correctly. All attributes in each section were not addressed when given low scores. Due to only a sample of case files reviewed, the item in this finding will be converted to an observation until OSHA conducts a full, comprehensive on-site case file review.

## **FY 2015 Observations**

### **Observation 15-01**

In three of the 15 (20%) health case files reviewed, the employer and worker were given advance notice of the inspection. The case files lacked documentation of the condition requiring the advance notice and the procedures followed.

### **Status Observation 15-01**

Advance notice of inspections was not found in all six (100%) of the health case files reviewed. OSHA closed this observation.

### **Observation 15-02**

Missed violations were noted in five of the 40 (13%) case files reviewed. The missed violation in all five case files was related to OSHA 300 logs. Citations were not issued for lack of the OSHA 300 logs when the case file had documentation that they were missing.

### **Status Observation 15-02**

In the 13 (100%) case files reviewed that had violations, there was no evidence that violations were missed. OSHA closed this observation.

### **Observation 15-03**

Severity/probability given on the violation worksheet did not compare to the injury/illness assessed in 12 of the 40 (30%) case files reviewed. Examples include: high/greater given for a worker exposed to a trip hazard with lacerations/contusions listed as the probable injury; a medium severity was listed when the probable injury was classified as amputation or death.

### **Status Observation 15-03**

Severity/probability given on the violation worksheet did not compare to the injury/illness assessed in five of the 13 (38%) case files reviewed that had violations. Examples include: medium severity was given when the probable injury was classified as death, no injury or illness was listed when the severity was given a high probability. OSHA will continue to monitor this observation.

### **Observation 15-04 (FY 2014-02)**

Abatement periods established for correction of violations were found to be excessive in four of the 44 (9%) case files that had citations issued. Examples of excessive abatement periods included: 30 days for a blocked electrical panel, 30 days to anchor a drill press, and 30 days to adjust the work rest on a grinder.

### **Status Observation 15-04**

Abatement periods established for the correction of violations were found to be adequate in the 13 (100%) case files reviewed that had violations. OSHA closed this observation.

**Observation 15-05**

Two of the ten (20%) phone/fax complaints were being closed in the system without final confirmation that abatement verification had been completed, and supervisors were not signing the letters to the complainant.

**Status Observation 15-05**

All three (100%) of the phone/fax complaints reviewed were closed in the system after confirmation that abatement had been completed and the letters to the complainant were signed by the supervisors. OSHA closed this observation.

**Observation 15-06 (OB-14-02)**

Of the 50 safety case files reviewed, documentation that PMAs were granted was missing in five of the case files.

**Status Observation 15-06**

Documentation that PMAs were granted were in all four (100%) of the PMA case files reviewed. OSHA closed this observation.

**Observation 15-07**

In five of the 75 (7%) case files reviewed, worker interviews were not documented.

**Status Observation 15-07**

Worker interviews were documented in all 15 (100%) enforcement case files reviewed. OSHA closed this observation.

**Observation 15-08**

Although the case files were organized, seven of the 17 (41%) workplace retaliation case files reviewed were not organized in accordance with the Whistleblower Manual.

**Status Observation 15-08**

All six (100%) of the worker retaliation case files reviewed were organized in accordance with the PEOSH Whistleblower Investigations Manual, Chapter V, Section III, Case File Organization. OSHA closed this observation.

**New FY 2016 Finding**

In FY 2016, OSHA identified one new finding:

**Finding 16-01** *Petition for Modification of Abatement (PMA)* – PMAs are being granted without the required interim steps necessary to protect workers in all four (100%) of the case files reviewed. The written PMA documentation provided by the employer did not meet all five of the requirements under 1903.14a (b) (1-5) which are as follows:

- 1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period (1903.14a (b) (1)).
- 2) The specific additional abatement time necessary in order to achieve compliance (1903.14a (b) (2)).

- 3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date (1903.14a (b) (3)).
- 4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period (1903.14a (b) (4)).
- 5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph (c)(1) of this section and a certification of the date upon which such posting and service was made 1903.14a (b) (5)).

PEOSH was granting PMAs to employers who failed to properly address 1903.14a (b) (4).

**Recommendation** – PEOSH should ensure the procedures as stated in its Field Operations Manual (FOM) Chapter 7, III, “Petition for Modification of Abatement,” are followed for any requested PMA.

## Appendix A – New and Continued Findings and Recommendations

### FY 2016 New Jersey PEOSH State Plan Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 2015#
FY 2016-01	<i>Petition for Modification of Abatement (PMA)</i> PMAs are being granted without the required interim steps necessary to protect workers in all four (100%) of the case files reviewed.	PEOSH should ensure the procedures as stated in its Field Operations Manual (FOM) Chapter 7, III, “Petition for Modification of Abatement,” are followed for any requested PMA.	

**Appendix B – Observations Subject to New and Continued Monitoring**  
**FY 2016 New Jersey PEOSH State Plan Follow-up FAME Report**

<b>Observation # FY 2016-OB-#</b>	<b>Observation# FY 2015-OB-#</b>	<b>Observation</b>	<b>Federal Monitoring Plan</b>	<b>Current Status</b>
	FY 2015-OB-01	<i>Documentation</i> Advance notice of inspections was not found in all six (100%) of the health case files reviewed.		Closed
	FY 2015-OB-02	<i>Missed Violations</i> In the 13 (100%) case files with violations reviewed, there was no evidence that violations were missed.		Closed
FY 2016-OB-01	FY 2015-OB-03	<i>Appropriateness of Violation Classification</i> Severity/probability given on the violation worksheet did not compare to the injury/illness assessed in five of the 13 (38%) case files reviewed that had violations.	During next year's FAME, a sample of case files will be reviewed to determine possible trends.	Continued
	FY 2015-OB-04	<i>Excessive Abatement Periods</i> Abatement periods established for the correction of violations were found to be adequate in the 13 (100%) case files reviewed that had violations.		Closed
	FY 2015-OB-05	<i>Abatement Verification</i> All three (100%) of the phone/fax complaints reviewed were closed in the system after confirmation that abatement had been completed and the letters to the complainant were signed by the supervisors.		Closed
	FY 2015-OB-06	<i>Petition for Modification of Abatement (PMA)</i> Documentation that PMAs were granted were in all four (100%) of the PMA case files reviewed.		Closed
	FY 2015-OB-07	<i>Worker Interview Documentation</i> Worker interviews were documented in all 15 (100%) enforcement case files reviewed.		Closed

**Appendix B – Observations Subject to New and Continued Monitoring**  
**FY 2016 New Jersey PEOSH State Plan Follow-up FAME Report**

<b>Observation # FY 2016-OB-#</b>	<b>Observation# FY 2015-OB-#</b>	<b>Observation</b>	<b>Federal Monitoring Plan</b>	<b>Current Status</b>
	FY 2015-OB-08	<i>Worker Retaliation Documentation</i> All five (100%) of the workplace retaliation case files reviewed were organized in accordance with the PEOSH Whistleblower Investigations Manual, Chapter V, Section III, “Case File Organization.”		Closed
FY 2016-OB-02		<i>Notification to Complainant</i> In two of the seven (29%) complaint files reviewed, documentation that the complainant was notified of the results of the inspection (either by letter or phone) was missing in the case file.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	New
FY 2016-OB-03		<i>Consultation Case File Documentation</i> In two of the eight (25%) 23(g) program consultation case files reviewed, the safety and health hazard survey (Form 33) was not completed correctly.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	New
FY 2016-OB-04		<i>Consultant Training</i> One of the three (33%) 23(g) program consultants who were conducting training and assistance visits had not received the required OTI Course #1500 (Introduction to On-Site Consultation) as outlined in the Consultation Policies and Procedures Manual (CSP 02-00-002).	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	New

**Appendix C - Status of FY 2015 Findings and Recommendations**  
**FY 2016 New Jersey PEOSH State Plan Follow-up FAME Report**

FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2015-01	<p><i>Consultant Training</i>            Consultants had not received the required OTI Course #1500 (Introduction to On-Site Consultation) as outlined in the Consultation Policies and Procedures Manual (CSP 02-00-002). Three of five (60%) consultants who were conducting training and assistance visits had not received the required OTI training, and two of four (50%) consultants conducting initial visits had not completed the required OTI course.</p>	<p>PEOSH Consultation should ensure that its consultants have received the required training as outlined in the Consultation Policies and Procedures Manual prior to conducting visits.</p>	<p>Two NJLWD Safety Consultants completed the OSHA 1500 course at OTI. On 8/15/2016, a request for a waiver regarding the third safety consultant's training was submitted to OSHA RA Kulick per the CPPM (Chapter 5, Section V) due to the consultant's completion of several precursors to the OSHA 1500 course.</p>	Not Completed	Converted to an observation
FY 2015-02	<p><i>Notification to Complainant</i>            In four of the 12 (33%) complaint files reviewed, documentation that the complainant was notified of the results of the inspections (either by letter or phone) was missing in the case file.</p>	<p>PEOSH should ensure that case files, through supervisory review, include all required letters or documentation related to complaints according to PEOSH's Field Operations Manual (FOM).</p>	<p>Current NJDOH standard procedure is that the complainant is copied on all Orders to Comply and closeout letters. Administrative staff will document all correspondence with complainant as a carbon copy on the letter and in the case file activity sheet/diary.</p>	February 29, 2016	Converted to an observation

**Appendix C - Status of FY 2015 Findings and Recommendations**  
**FY 2016 New Jersey PEOSH State Plan Follow-up FAME Report**

FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2015-03	<p><i>Worker Retaliation Witness Interviews</i></p> <p>In all case files reviewed (100%), witness interviews were not documented and/or there was no statement as to why the witnesses should not be interviewed.</p>	<p>PEOSH should ensure it is following the requirements of their Whistleblower (WB) Manual regarding witness interviews.</p>	<p>WB investigators were instructed on requirements to document witness interviews when appropriate. A standard contents table was developed to document the determination whether or not to interview witnesses.</p>	March 24, 2016	Completed
FY 2015-04	<p><i>Consultation Case File Documentation</i></p> <p>NJ PEOSH should improve its consultation case file documentation, specifically: In all 12 (100%) training and assistance visits case files reviewed, the safety and health hazard survey (Form 33) was not completed correctly. In all 12 (100%) of case files reviewed, evidence that a hazard assessment had been completed in the last 12 months was lacking. In two of the three (67%) health case files, there was no supervisory review documented prior to issuing the report. All 12 (100%) of the safety case files lacked a training and assistance letter signed by the consultant.</p>	<p>PEOSH should ensure that consultants complete the required training in accordance with CSP 02-00-002 to improve consultation case file documentation, specifically:</p> <ul style="list-style-type: none"> <li>• Evaluate and complete the safety and health hazard survey (Form 33) correctly. Ensure a copy of the syllabus is in the case file as required by the CSP 02-00-002. Ensure consultants are obtaining the required hazard assessment prior to conducting a training and assistance visit.</li> <li>• Ensure supervisors are reviewing reports and/or letters prior to consultants signing and sending them to employers in both safety and health case files.</li> </ul>	<p>For NJLWD, on 2/5/2016, consultation staff received training to address the FAME findings. Training was provided regarding the proper completion of the Form 33, ensuring a training syllabus is in the case file and how to conduct an establishment search to verify the presence of a hazard survey. A letter was provided to the consultants to disseminate to their clients making them aware of these policy changes.</p> <p>For NJDOH, on 2/29/2016, consultation staff was informed of the FAME findings and was directed to ensure that a supervisor's review be completed before any reports or letters are sent to employers. The supervisor will document the review with a notation in the diary.</p>	February 5, 2016	Converted to an observation

## Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

### FY 2016 New Jersey PEOSH State Plan Follow-up FAME Report

Fiscal Year (FY) 2016 is the first year since the transition from the NCR (OSHA’s legacy data system) began that all State Plan enforcement data has been captured in OSHA’s Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA’s WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA’s official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

<b>U.S. Department of Labor</b>				
<b>Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)</b>				
<b>State Plan: New Jersey - PEOSH</b>			<b>FY 2016</b>	
<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	26.66	5 days for serious hazards; 120 days for other than serious hazards	Further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	24.55	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	2.26	1	Further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.03	N/A	This measure is for informational purposes only and is not a mandated measure.

## Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

### FY 2014 New Jersey PEOSH State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
3	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	N/A – The State Plan did not receive any imminent danger complaints and referrals for FY 2016. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 4.63	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 2.97	+/- 20% of Other: .99	
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.
7	Planned v. actual inspections – safety/health	S: 606	+/- 5% of S: 720	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 168	+/- 5% of H: 175	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$2,279.03	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,558.96	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$2,549.14	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$3,494.20	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$4,436.04	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.

**Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report**  
**FY 2014 New Jersey PEOSH State Plan Follow-up FAME Report**

<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>9</b>	Percent in compliance	S: 13.35%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 34.92%	+/- 20% of H: 35.68%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	100%	Further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 14.04	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 56.64	+/- 20% of H: 57.28	
<b>12</b>	Percent penalty retained	100%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	Further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	100%	100%	Further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 24%	Further review level is based on a three-year national average.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	87	90	Further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	N/A	+/- 25% of 1.26%	N/A - This is a State and Local Government State Plan and is not held to this SAMM.
				Further review level is based on a one-year national rate.