



CHERIE BERRY
COMMISSIONER OF LABOR

August 14, 2012

ALLEN MCNEELY
DEPUTY COMMISSIONER/DIRECTOR
OCCUPATIONAL SAFETY AND HEALTH DIVISION

Cindy Coe, Regional Administrator
United States Department of Labor
Occupational Safety and Health Administration
60 Forsyth Street, Southwest, Room 6T50
Atlanta, Georgia 30303

Re: North Carolina Response to FY 2011 Federal Annual Monitoring and Evaluation (FAME) Report

Dear Ms. Coe:

The North Carolina State Plan was granted final approval on December 10, 1996. Final approval determination is a public acknowledgement that a State Plan is "at least as effective" as the federal OSHA program. The Occupational Safety and Health Act stipulates that federal OSHA must make a continuing evaluation of the manner in which each State having an approved plan is carrying out the plan. However the current evaluation process does not seem to be designed to determine if the State is appropriately carrying out the already approved plan in an "at least as effective" manner. The current evaluation process seems to be an ongoing comparison with federal OSHA activity and the federal OSHA way of doing things rather than a determination of effectiveness. The concept of State Plans is based on an assumption that states should have a right to conduct activity consistent with their plan. However, the evaluation process seems to be an attempt to determine if each state plan is just like the federal OSHA program. Consequently, instead of supporting and advancing unique state plans that address the issues in each State, the evaluation process has turned into an annual attempt to make each state plan more like federal OSHA.

In the absence of specific guidance from federal OSHA as to what constitutes effectiveness, or a willingness by federal OSHA to even acknowledge program effectiveness in the audit report, the State Plan has used the guidance provided by Congress to determine effectiveness as described in the Government Performance and Results Act (GPRA). GPRA requires a strategic planning process that defines effectiveness in terms of achieving specific outcome goals. The State Plan is continuing to evolve and improve in an attempt to develop the best procedures and strategies to reach established outcome goals and achieve program results. The State's high activity level and the program's lowest ever injury and illness rate of 3.1 supports the State's assumption that we're continuing to move in the right direction. The State would prefer an evaluation protocol in which more emphasis is placed on working with the State day by day to resolve issues rather than a "got you" approach that addresses items once per year in a multi-purpose audit report.

The biggest disappointment in the audit report is that while it highlights a few areas of State activity, the report does not provide a complete picture of the overall effectiveness of the program. This approach is especially true in the Executive Summary section of the report. The State has also received no explanation as to why the audit instructions even go so far as to indicate that the audit report should not “render a judgment on the state plan’s effectiveness, overall or in any specific areas.”

In most cases, the areas that federal OSHA chose to highlight certainly reflect differences in the federal and state programs but have little to do with overall program effectiveness. The way federal OSHA presents information in their audit report tends to make the State lose confidence in this formal monitoring process. It is also disappointing that with the time spent on the audit process it does not result in a determination as to whether the State is “at least as effective” as federal OSHA. Thankfully, the tone and emphasis of the audit report does not reflect the positive day to day working relationship with federal OSHA personnel. At the field level, there continues to be a spirit of program improvement and achievement of outcome goals. The State will continue to work with federal OSHA to develop an audit tool that accurately reflects state activity and performance levels with a goal of continued program improvement.

As far as the specific recommendations in the report, many did not meet the criteria included in the audit instruction document. The audit instructions indicated that recommendations should be “outcome and results oriented rather than process-oriented”. A number of the recommendations address how the State Plan operates differently than federal OSHA when the differences do not negatively influence effectiveness.

The following information is provided in response to the specific recommendations included in the FY 2011 FAME.

Recommendation 11-01 (formerly 10-1, 09-01) – OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation to retain pertinent information.

Response - This recommendation is a carry-over from the FY 2009 E-FAME. As the State has indicated previously, we do not feel that this item relates to program effectiveness. Certain items are purged from case files as a cost saving measure to reduce the amount of document imaging that is required. Our most recent imaging bill was over \$115,000 and a two year total has been about \$220,000.

However, as we have said previously; we would continue to work with federal OSHA to address competing needs. With this promise to work with federal OSHA in mind, we have decided to change our retention policy to extend the amount of time we will maintain a closed case file before certain items are purged. Closed case files will be retained without any items removed for a period of one calendar year following the end of the fiscal year. This additional 15 months should ensure that case files are available for review by federal OSHA for evaluation purposes or in the event of an investigation of a Complaint About State Program Administration (CASPA). We would anticipate that this response should satisfy federal OSHA concerns and preclude this recommendation from appearing in subsequent evaluations.

Recommendation 11-02 – OSHNC should implement additional training to ensure that health files appropriately address potential exposures through full-shift monitoring.

Response - The State reviewed the health files that were the basis for this recommendation and does not agree with the assessment that our inspections did not address potential exposures through full-shift monitoring. Specific guidance for conducting industrial hygiene inspections is included in Chapter XV of the Field Operations Manual. These industrial hygiene compliance procedures include sampling protocol and are more detailed than information included in the federal OSHA Operations Manual.

For the case file review process to have benefit to the State in improving program performance, the results of the case file review should be discussed with the State. Unfortunately the State did not get the opportunity to discuss this issue with federal OSHA. The monitoring instructions recommend that discussion take place as soon as possible. This approach might resolve any disagreement about state activity. It is the State's expectation that this discussion should take place at least before any federal assumptions become a basis for a recommendation in the audit report. In the case of health case file review, the discussion would probably have taken a limited amount of time since a total of only 20 health case files were reviewed from a sample size of nearly 1,500 health inspections.

Recommendation 11-03 – OSHNC should implement procedures to ensure case files include documentation as to why non-formal complaints are upgraded when the OSHA-7 indicates that an inspection will not be conducted. None of the complaint files reviewed included signed OSHA-7 forms.

Response - North Carolina's complaint procedures allow a district supervisor to conduct an inspection of a nonformal complaint, if the complaint alleges serious hazards that could cause death or serious physical harm. Complaints that are designated as either serious health or serious safety on the OSHA 7 are candidates for inspection whether a signed OSHA 7 is secured or not. The State attempts to secure a signed OSHA 7 for all complaints in which the complainant indicates a willingness to sign the complaint form. However, a signed OSHA 7 is not required for a district supervisor to assign a complaint for inspection that includes an allegation of a serious safety or health item. The State will continue to investigate complaints according to established procedures. Since the state approach is "at least as effective" as federal OSHA, it is not apparent why this recommendation relating to procedural issues is included in the audit report. The State will continue to work with federal OSHA on ways to improve the complaint intake process.

Recommendation 11-04 – OSHNC should implement measures to ensure that initial and final NOK letters are signed by supervisors and sent at the beginning and end of fatality investigations and that signed copies are maintained in the case file.

Response - North Carolina's procedures require that contact is made with the next of kin (NOK) by compliance staff. The next of kin ombudsman is also always available to communicate with the NOK. During FY 2012, the State conducted an internal audit of the fatality inspection process specially relating to contact with the NOK. The audit determined that in almost every case the CSHO had made contact with the NOK or included an explanation as to why the NOK could not be contacted. State procedures require that an initial letter and an inspection results letter are sent to the NOK. The initial letter is signed by the CSHO. This seems appropriate since the CSHO is working directly with the case and will potentially have the most contact with the NOK. The initial letter also provides information to the NOK about contacting the next of kin ombudsman. The State will not be satisfied until each contact is made with the NOK that is required by established policies and procedures.

Results of the state's internal audit were shared with all compliance staff including those specific instances in which NOK contact was not made as required. Corrective action requests were also completed to determine what additional action should be taken to ensure that all required contact is made with the NOK. One approach has been the development of a checklist that documents all required activity relating to a fatality investigation. This checklist will be implemented and employees will be trained in its use. State procedure already requires that the CSHO meets at least weekly with the supervisor to track the status of a fatality investigation. The procedure will be revised to indicate that fatality discussions between the CSHO and the supervisor will also include the status of contact with the NOK.

Recommendation 11-05 – OSHNC should implement procedures to ensure that coding is uniform and appropriate. Employees should be provided with additional training on how codes should be applied.

Response - North Carolina has procedures in place to provide guidance in coding inspection case files. The importance of properly coding case files has been continuously shared with compliance personnel. The State was not provided with specific case files review notes so it is not apparent what the specific coding issue might have been in all of the ten case files listed as examples of coding issues. Nevertheless, the State will work with Federal OSHA to eliminate specific coding errors.

One issue that was brought to the attention of the State was the classification of inspections as safety or health. There is currently no federal OSHA definition pertaining to what constitutes a health or safety inspection. This issue has previously been discussed with federal OSHA including personnel in the Office of State Programs. The subject of health inspections and hazards also becomes an issue when considering appropriation rider exemptions. The definition of health hazard has also not been established which is necessary to implement stipulations included in the appropriation rider.

In North Carolina, any inspection conducted by health compliance officer is classified as a health inspection and those inspections conducted by a safety compliance officer are coded as safety. This is the case whether safety or health violations are cited by the compliance officer. The State will maintain this policy until we have determined that there is a better approach. This is another example of federal OSHA preferring that the State conduct business the federal way when the issue has no impact on program effectiveness.

Recommendation 11-06 – OSHNC should assign Health CSHOs with respiratory protection. Procedures should be developed and implemented for CSHOs to indicate what type of PPE, to include respiratory protection was used during the inspection.

Response - The State appreciates federal OSHA's concerns about our compliance personnel but the findings relating to Recommendation Number Six continue to be misleading even after the State previously brought this issue to the attention of federal OSHA. The FAME report does not include documentation of even one specific case in which CSHOs have not worn adequate personal protective equipment while conducting an inspection. North Carolina's Respiratory Protection Program stipulates that respirators will be made available to CSHOs when required, provides for respirator training requirements, and fit testing. CSHOs also receive annual physicals to determine, if they are physically able to wear a respirator. The state's respirator policy was made available to federal OSHA, and a member of the safety and health committee spoke with the auditor about our respirator policy. The State believes that our respirator program provides appropriate safe guards to protect CSHOs.

In 2009, 82 additional half-mask respirators of various sizes and appropriate filtering cartridges were ordered, received and distributed to field offices. The Compliance Bureau assigned respirators to Winston-Salem and Asheville based CSHOs. The Charlotte, Raleigh, and Wilmington offices all have appropriate quantities of respirators available at their offices. If it is determined that a respirator is needed for a compliance activity they are available for use, per policy. All CSHOs/supervisors have had annual physicals and are cleared for respirator usage. OSHNC has fit testing equipment in each office and has the ability to fit test on-demand, as needed

Nevertheless, in response to the federal OSHA recommendation, respirators will be assigned to each health compliance officer to be used within the guidelines established in the Respiratory Protection Program. This would include the assurance that the CSHO would confer with their supervisor to confirm respiratory protection requirements.

Even though adoption was not required, the State initially adopted the federal OSHA Respiratory Protection Program Guidelines (CPL 2-2.54). Within the framework of the state's safety and health program procedures, the State eventually adopted its own respirator policy. Both the state and federal policies require that as conditions dictate that state CSHOs should be provided with a respirator. We believe that even a casual review will confirm that the state's respirator policy is more protective than the federal policy since the CSHO must communicate directly with a supervisor before a respirator is assigned. This process insures that the appropriate respirator is provided with the right cartridge or canister. It also allows for conversation about the inspection process to confirm that the CSHO at no time put them self in a situation in which they would be overexposed to chemicals.

The written federal policy does not clarify when a respirator will be assigned but leaves the responsibility of having the appropriate respirator with the CSHO. Having a specific respirator permanently assigned to the CSHO also raises issues relating to storage and care. The trunk of a car subjects the respirator to possible damage as a result of extreme temperatures, dust, and sunlight. Even though the state's respirator policy that provided for issuance of respirators as needed has been effective in providing protection for employees as confirmed by review by division industrial hygienist, as stated previously, in consideration of the federal OSHA recommendation, the policy will be changed and each health compliance officer will be assigned a respirator.

In regards to the second part of your recommendation, the state does not see any need and/or benefit in requiring our staff to document the types of PPE worn at each individual worksite where they are performing compliance activity. OSHNC FOM Chapter III Section B.5 provides inspection preparation procedures to be followed by all CSHOs. These procedures specifically indicate that for all inspections the CSHO is to conduct a hazard assessment and ensure all necessary PPE is utilized. In addition, OSHNC procedures require hard hats, safety glasses and safety shoes be worn at all times during construction inspections, due to the ever changing nature of construction sites. These procedure also indicate that inspections involving the use of respirators will not be assigned to a CSHO that has not had an adequate fit test within the last year and appropriate respirator training. In addition the procedures indicate that if there is a need for special or additional inspection equipment, the district supervisor will be consulted to ensure that training in the use and limitation of such equipment has been completed prior to its use. Finally our procedures indicate that the district supervisors will ensure that a review or recheck in the use of all equipment is given to the CSHOs periodically.

Recommendation 11-07 (formerly 10-02, 09-06) – OSHNC should provide additional training to CSHOs to ensure each violation is classified accurately for penalty assessment, severity and probability. Guidelines for rating the severity of the injury or illness being prevented should be reviewed and revised as needed to assure that they are consistent with the definitions of high, medium, and low severity in OSHNC's procedures. Supervisors should ensure that case files are reviewed more carefully to ensure this is being done.

Response - The State appreciates the value of case file review in determining if there are any deviations from established policies and procedures. It is not apparent however what prompted the case file review to include penalty calculation when the state's average penalty was comparable to federal OSHA in FY 2011. Nevertheless, for the case file review process to work, the State must receive specific instances of nonconformity from case files that have been reviewed. Even after repeated requests, the State did not receive specific case file findings or worksheets for the case files reviewed. The State only received a list of case files in which "problems" were identified. Specific case file information was not even provided for the examples of misclassified violations included in the audit report. For senior management personnel who reviewed each case file provided on a list from federal OSHA, it was not often apparent where the alleged problem areas existed.

This audit approach is not consistent with the audit instructions prepared by federal OSHA or good audit practice. The instructions indicated that when information from case file review is used to support findings in a report, the report should include the number and percentage of case files in which the issue was identified. This information was also not shared with the State or included in the audit report. This is a problem that was initially identified by the State in the FY 2009 E-FAME. When audit reports are released with such fanfare and subjects the State to significant public scrutiny, the starting point for federal OSHA in producing an accurate audit report would seem to be assurances that audit instructions are followed explicitly and information is correct. This can be assured by sharing case file information directly with the State. This is especially true in the case file review portion of this audit in which such a small number of case files were reviewed. A total of only 135 case files were reviewed from the 4,276 inspections conducted by the State.

The State utilizes its own internal audit system to determine if violations are classified correctly and that penalties are calculated according to established procedures. It is the goal of the State to calculate penalties according to established procedures that are similar to federal OSHA. One of the ways that the State confirms that policies and procedures are followed is by conducting internal audits of program operations. In FY 2011, an audit was conducted of specific compliance districts. The audit included case file review and attention to penalty calculation and violation classification. Problem areas in individual case files were not only documented in the audit report, but on an action request form used by the State to document nonconformities.

The action requests are reviewed by senior management and appropriate action is taken. This can include policy revision when necessary and in response to our internal audit a specific training course was prepared for CSHOs. The training content included penalty calculation and violation classification. The classification of electrical violations was also noted in the FAME. A statistical analysis conducted by OSHNC confirmed that the state's percent serious for electrical violations was less than the overall federal OHSA rate. However, the statistics reviewed also indicated that there was also significant deviation for federal OSHA from region to region. The State has secured the services of an external electrical expert to help confirm that electrical violations are being classified appropriately.

As well as developing training to address nonconformities, the importance of field level case file review was also discussed with supervisory personnel. Even though the audit did not uncover significant deviation from established policies and procedures, the State expects continued improvement in the area of penalty calculation and violation classification.

Recommendation 11-08 – OSHNC should eliminate the Cooperation penalty reduction policy.

Response – For federal OSHA to suggest that the State eliminate a program because it is different from a federal program is to miss the entire rationale for state programs. Having a state program allows the State to establish unique programs in their state that are designed to help in achieving established outcome goals. North Carolina's cooperation credit is intended to provide an incentive for the employer to immediately abate a hazard and assist the CSHO during the inspection process. This is similar to federal OSHA's quick fix penalty reduction program which provides a penalty reduction greater than the state reduction of 10%. The OSHA Act does not stipulate that a state with final approval must have identical procedures, policies, and directives to be “at least as effective” as federal OSHA. Even with the cooperation penalty credit, the state's penalty amounts were comparable to federal OSHA during this audit period. The State routinely reviews all policies to determine if they continue to promote the intended results. The cooperation policy will also be routinely reviewed. At this time however, the State does not have plans to eliminate the cooperation penalty reduction policy.

The State's cooperation policy requires that the CSHO document their reasoning for giving cooperation credit and specific examples of cooperation are included in the Compliance Operations Manual. One reason for giving cooperation credit is when a violation is abated at the time of the inspection. This is similar to federal OSHA's quick-fix reduction. State personnel reviewed most of the case files indentified by federal OSHA as having issues with the justification of the cooperation reduction. The review confirmed that CSHOs did not always indicate in the case file why cooperation credit was being given. To address this issue, all compliance personnel from supervisor to CSHO have been given specific written instructions on the implementation of the cooperation penalty credit. It is also included in new training material. Justification for giving the cooperation credit will continue to be an area of emphasis as supervisors review case files and internal audits are conducted.

Recommendation 11-09 – OSHNC should ensure that informal conference notes documenting changes made to the citations and/or penalties are legible, organized, and include the justification in the case file.

Response -The State's review of case files included in the audit confirmed that informal conference notes were not always included in appropriate case files. Action requests were prepared to initiate a revision to the Compliance Operations Manual to make it clear that informal conference notes should be prepared to document actions taken during an informal conference, and the notes should be placed in the case file.

Recommendation 11-10 (formerly 10-3, 0909 A-D) – The State should continue their work toward the necessary modification to the EDB's program to ensure procedures are at least as effective as Federal procedures. The State should develop and implement a tracking system with a final due date to ensure timely completion.

Response - A revised OSH Discrimination Manual dated May 11, 2012 was submitted to federal OSHA as a plan change on May 25, 2012. The revised manual addresses recommendations included in the 2009

E-FAME. These include a provision for receiving oral complaints, conducting interviews in person, documenting the closing conference activity, and case disposition. The Employment Discrimination Bureau will continue to work with federal OSHA to develop and implement policies and procedures that are “at least as effective” as federal OSHA. This must be accomplished within the guidelines developed by the North Carolina General Assembly in the Retaliatory Employment Discrimination Act.

Closing - The State appreciates the opportunity to respond to the specific recommendations included in the FY 2011 FAME Report. However, as stated previously, we are once again disappointed that with all of the time and effort put into this audit process that a determination could not be made as to the overall effectiveness of the State Program. This seems like an obvious primary goal of the process. The state’s activity level, including the number of compliance inspections, and performance outcome certainly compares favorable to federal OSHA and is obviously “at least as effective”, if not more effective. However, federal OSHA’s reluctance to share federal data and define “at least as effective” makes statistical program comparisons difficult. State performance includes injury and illness rates that have declined steadily during the program’s history and reached its lowest level in FY 2010 of 3.1. It should also be noted that the State did not have a single complaint about state program administration (CASPA) filed in FY 2011. Positive state performance data should be prominently placed in the audit report and in the executive summary of the report in order to give a total picture of the North Carolina State Program.

Finally, the diverse audience for the report should not prevent the audit process from serving as a mechanism to help to improve state programs. As usual, the State is willing to continue to work with federal OSHA to address all valid concerns included in this report. We are also committed to working with federal OSHA to assure that all audit reports accurately reflect state activity and documents the effectiveness level of the North Carolina State Program. As stated in the FAME guidance document, the audit should “identify areas of concern and areas of excellence.” Please consider this letter to be the State’s official response to the FY 2011 FAME to be posted along with the FAME on your public web site.

Sincerely,



Allen McNeely

cc: Kim Morton
Doug Kalinowski
Eric Lahaie

NORTH CAROLINA
FY2011 FAME Report – Corrective Action Plan

| FY 11 and Related Rec #s | Findings | Recommendations | State Response/Corrective Action | Completion Date | Status (to be tracked and updated by Region) |
|--------------------------|--|--|---|---|--|
| 11-01, 10-01, 09-01 | Supporting documentation such as, photographs, sketches, and witness statements, is purged from (most) case files. | OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation to retain pertinent information. | OSHNC's record retention policy has been revised. No information is purged from a closed case file for one calendar year following the end of the federal fiscal year. | October 1, 2012 | |
| 11-02 | Health case files that were reviewed, did not include sampling where concerns with potential exposures to asbestos, methylene chloride, hexavalent chromium and carbon monoxide were raised. In many cases sampling could not take place due to the work being finished; however serious citations were issued based upon what the CSHO believed to be on-site. | OSHNC should implement additional training to ensure that health files appropriately address potential exposures through full-shift monitoring. | CSHOs have received refresher health inspection training including proper sampling requirements. As federal OSHA continues to review case files, proper sampling protocol will be discussed. Unfortunately the State was unable to pin point all health case file issues referenced by federal OSHA even after repeated case file review. This is an area that the State and federal OSHA must continue to discuss. | October 1, 2012 and ongoing as specific issues in case file review indicates. | |
| 11-03 | All formal complaints were in fact non-formal complaints where an inspection had been conducted. Documentation of why the complaint was upgraded is not included in the case file. Coding is also not used consistently on the OSHA-7. | OSHNC should implement procedures to ensure case files include documentation as to why non-formal complaints are upgraded when the OSHA-7 indicates that an inspection will not be conducted. None of the complaint files reviewed included signed OSHA-7 forms. | The OSHA-7 form is documented to reflect complaints alleging serious safety and/or health conditions. OSHNC procedures allow the district supervisor to inspect serious safety and health nonformal complaints. This is a procedural difference in state policy, and does not result in the State being less effective than federal OSHA. | Completed, no additional action is planned by the State at this time. | |
| 11-04 | Initial and final next-of-kin (NOK) letters are not consistently sent to the families for all fatality investigations. Letters should be sent to the NOK at the beginning and at the close of each investigation to ensure the family is made aware of the investigation and the results. In some instances, CSHOs are signing the letters and signed copies are not consistently maintained in the case file. | OSHNC should implement measures to ensure that initial and final NOK letters are signed by supervisors and sent at the beginning and end of fatality investigations and that signed copies are maintained in the case file. | NC procedures require that the initial letter to the NOK is sent and signed by the CSHO. Our experience indicates that this approach is best since the CSHO will have more knowledge of the fatality investigation and will potentially have the most contact with the NOK. The FOM Complaint Chapter has been revised (August 15, 2012), to document that the district supervisor will verify during a weekly meeting with the CSHO that the initial NOK letter has been sent with this action documented on the case file summary sheet. The district supervisor does sign the inspection results letter. All NOK letters have been revised with revisions placed on the NCR. Also the Complaint Chapter has been revised to make it clear that all NOK required activity, including letters to the NOK, must be recorded on the case file summary sheet so that activity can be tracked. Appropriate compliance personnel received refresher training that | September 25, 2012 | |

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| | | | included requirements for communicating with the NOK. Adherence to NOK procedures is also verified through additional case file review during compliance internal audits. | | |
| 11-05 | In several of the case files reviewed, coding was found to be inaccurate and/or inappropriate for the inspections being conducted. Of the programmed health construction case files reviewed all were coded as health programmed inspections, however only safety items were reviewed and documented. Safety CSHOs code their files as safety and note a health local emphasis program (LEP) code. | OSHNC should implement procedures to ensure that coding is uniform and appropriate. Employees should be provided with additional training on how codes should be applied. | CSHOs received refresher training in August and September of 2012 that included case file coding requirements. HCOs will continue to code all inspections as health and SCOs will code their inspections as safety. The State will continue this approach until such time as federal OSHA is able to fully explain how the OSHNC coding method negatively impacts OSHNC's program effectiveness and/or OSHA is able to fully explain how the suggested federal coding provides more reliable data collection. Coding requirements are also addressed during internal audits. | September 25, 2012 | |
| 11-06 | Respiratory protection is not assigned to Health CSHOs for use when monitoring for potential overexposures to air contaminants. | OSHNC should assign Health CSHOs with respiratory protection. Procedures should be developed and implemented for CSHOs to indicate what type of PPE, to include respiratory protection was used during the inspection. | All Health Compliance Officers have been fit tested, assigned respirators, and provided refresher training in respirator use. The state's respirator program has been revised, and the State still believes that it is as protective as the federal OSHA policy. Discussions continue about the benefit of documenting in the case file the type of PPE that the CSHO utilizes while conducting an inspection. | October 1, 2012 | |
| 11-07 10-02 09-06 | While OSHNC had a hazard classification and penalty assessment system that was similar to federal OSHA, they did not follow it in all cases. Penalty assessment and severity/probability ratings did not follow guidance established in accordance with OSHNC FOM. | OSHNC should provide additional training to CSHOs to ensure each violation is classified accurately for penalty assessment, severity and probability. Guidelines for rating the severity of the injury or illness being prevented should be reviewed and revised as needed to assure that they are consistent with the definitions of high, medium, and low severity in OSHNC's procedures. Supervisors should ensure that case files are reviewed more carefully to ensure this is being done. | All CSHOs received refresher training in penalty assessment and violation classification. The training course outline was shared with the Area Director. The State will review each specific case file citation item brought to our attention by federal OSHA, whenever federal OSHA indicates that they feel that it appears to reflect inappropriate penalty assessment and violation classification. A difference of opinion between federal OSHA and OSHNC related to classification and penalty calculations would not be considered non-adherence with OSHNC operational procedures. Case files are also reviewed during internal audits and adherence to procedures relating to penalty assessment and violation classification is addressed. | October 1, 2012 | |
| 11-08 | The OSHNC Field Operations Manual (FOM), Chapter VI, permits a CSHO to give a "cooperation" penalty reduction to an employer of up to 10 percent. This reduction is applied by the CSHO at his/her discretion to a "cooperative" | OSHNC should eliminate the Cooperation penalty reduction policy. | Compliance personnel have been reminded in writing and during recent refresher training that when applying the cooperation credit the inspection narrative must include how the employer cooperated to justify the 10% penalty | September 25, 2012 | |

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|-------------------------|---|--|--|--------------------|----------|
| | employer. A significant percentage of the case files reviewed was given the Cooperation penalty reduction with minimal written justification or no justification at all. There is no way to understand the rationale for these penalty reductions. | | reduction credit. The State has no intention at this time to eliminate the cooperation penalty reduction policy. All OSHNC policies are routinely reviewed however to determine if they are meeting the original objective. The State will continue the dialog with federal OSHA about the benefits of unique state policies and procedures that have no impact on the “at least as effective” as status of the State or negatively impacts outcome goals. | | |
| 11-09 | Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files. | OSHNC should ensure that informal conference notes documenting changes made to the citations and/or penalties are legible, organized and include the justification in the case file. | Chapter XIII of the Compliance FOM has been revised to document that informal conference notes must be included on the Informal Conference Notes Form. The completed form must be maintained in the case file to document the reason for any changes to a citation or penalty amounts. The district supervisors were reminded of this requirement at a supervisor’s meeting and also in writing. | September 27, 2012 | |
| 11-10 10-03 09-09 | The FY 2009 FAME report noted deficiencies in North Carolina’s discrimination program, including the State policy that: complaints must be received in writing; almost all interviews are conducted by phone; not in person; the lack of closing conference information in case files; and guidance on settlement requirements that is not as detailed as OSHA’s Whistleblower Investigation Manual. The EDB has already begun a review of the new Federal OSHA Whistleblower Manual and has assigned staff to specific issues. | The State should continue their work toward the necessary modifications to the EDB’s program to ensure procedures are at least as effective as Federal procedures. The State should develop and implement a tracking system with a final due date to ensure timely completion. | A revised OSH Discrimination Manual dated May 11, 2012 was submitted to federal OSHA as a state plan change on May 25, 2012. The revised manual addresses recommendations included in the 2009 E-FAME. | May 25, 2012 | |
| | | | | | 10/11/12 |

**FEDERAL ANNUAL MONITORING
EVALUATION (FAME) REPORT**

FOR THE

**NORTH CAROLINA DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

DESIGNATED STATE AGENCY:

**NORTH CAROLINA DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

PERIOD COVERED BY THIS REPORT:

October 1, 2010 – September 30, 2011

NORTH CAROLINA STATE PLAN APPROVED: FEBRUARY 1, 1973

18(e) FINAL APPROVAL RECEIVED: DECEMBER 10, 1996

REPORT PREPARED BY:

U.S. DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

REGION IV, ATLANTA

**North Carolina Department of Labor
Occupational Safety and Health Program**

FY 2011 FAME Report

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Appendices

Appendix A – FY 2011 Findings and Recommendations

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**North Carolina Department of Labor
Occupational Safety and Health Program**

FY 2011 FAME Report

I. Executive Summary

A. Summary of the Report

The fiscal year (FY) 2011 North Carolina FAME resulted in a comprehensive FAME report that focused on the State's overall performance in their enforcement and cooperative programs, compliance assistance activities, as well as the state's progress in achieving the recommendations resulting from the earlier Enhanced FAME (EFAME) reports. This report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2011, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) ending September 30, 2011.

This report contains ten findings for the North Carolina Occupational Safety and Health Division, three of which remain from the previous FAME evaluations, where no agreement could be reached. The detailed account of the findings and recommendations are discussed in the report include the following: purging of supporting case file documentation; documentation of upgrading complaints; sampling not being conducted when concerns with potential exposures to asbestos, methylene chloride, hexavalent chromium, and carbon monoxide are raised; initial and final next-of-kin (NOK) letters are not consistently sent to the families; inaccurate or inappropriate coding; compliance officers are not assigned respiratory protection; OSHNC guidance not consistently followed on hazard classification and penalty assessment; inconsistency with cooperation penalty reduction, documentation of informal conferences, and deficiencies with the State's discrimination program.

Additionally, in support of the monitoring evaluation effort follow-up interviews were conducted by telephone with several of the State's stakeholders initially contacted during the FY 2009 EFAME process. During this recent effort the stakeholders expressed their continued support for the State; however, they acknowledged that the current economic climate had adversely impacted the program. Overall the stakeholders indicated that the NC Department of Labor operated and administered an effective Occupational Safety and Health Program.

B. State Plan Introduction

The North Carolina Occupational Safety and Health State Plan received final approval under Section 18(e) of the OSH Act on December 10, 1996. The official designated with the responsibility for administering the program under the Occupational Safety and Health Act of North Carolina is the Commissioner of Labor, who, as a constitutional officer, is an elected official. The Commissioner of Labor currently and during the period covered by this evaluation is Cherie K. Berry. Within the NC Department of Labor, the Occupational Safety and Health Division (OSHNC) has responsibility for carrying out the requirements of the State Plan. Allen McNeely serves as Deputy Commissioner/Director of the Occupational Safety and Health Division and Kevin

Beauregard serves as Assistant Deputy Commissioner/Assistant Director of the OSH Division.

The Occupational Safety and Health Division is organized into the following operating units: East and West Compliance Bureaus; Education, Training, and Technical Assistance (ETTA) Bureau; Consultative Services Bureau; Planning, Statistics and Information Management (PSIM) Bureau; and the Agricultural Safety and Health (ASH) Bureau. The main office and one district office are located in Raleigh, with four additional offices located in Asheville, Charlotte, Winston-Salem, and Wilmington. There are a total of 231 positions funded under the 23(g) grant, with 98 of those positions being 100% state funded. This includes 114 compliance officers (CSHO), of which 64 are safety and 50 are health, assigned to district offices throughout the state. Additional safety and health professionals work in the ETTA Bureau with responsibilities related to training, development of outreach materials and standards.

Employee protection from discrimination related to occupational safety and health is administered by the Employment Discrimination Bureau (EDB), which falls under the Deputy Commissioner for Standards and Inspections, in the North Carolina Department of Labor. This Bureau covers several types of employment-related discrimination in addition to discrimination that falls under jurisdiction of the State Plan.

Private sector on-site consultative services are provided through a 21(d) Grant with the North Carolina Department of Labor. There are 31 positions funded under the 21(d) grant, including consultants, administrative staff, and managerial employees. Three of the 21(d) personnel are 100% state funded. Public sector 23(g) grant consultative services, enforcement, and compliance assistance activities, are carried out by the same staff, following the same procedures, with very few exceptions, as the private sector. The Carolina Star Program organizationally falls within the ETTA Bureau.

C. Data & Methodology

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2010 through September 30, 2011. The North Carolina Department of Labor, Occupational Safety and Health Division (OSHNC), administers the program under the direction of Cherie K. Berry, Commissioner of Labor, and Allen McNeely, Director of the Occupational Safety and Health Division.

This report on the operation and performance of OSHNC was compiled using information gained from North Carolina's State Office Annual Report (SOAR) for FY 2011, Integrated Management Information System (IMIS) reports, and the State Activity Mandated Measures (SAMM) report and State Indicator Report (SIR) for FY 2011. On-site monitoring for this evaluation included case file reviews, formal interviews with OSHNC staff, and interviews with stakeholders. Information obtained during routine monitoring of the North Carolina program by Federal OSHA's Regional and Raleigh Area Offices was also used as a basis for this evaluation.

D. Findings and Recommendations

The FY 2010 EFAME follow-up report contained three findings and recommendations that Region IV and OSHNC could not reach an agreement on corrective action from the recommendations in the FY 2009 EFAME. During this evaluation period seven new findings and recommendations were identified. The specific new recommendations are as follows:

Finding 11-01 (formerly 10-1, 09-01): Supporting documentation such as, photographs, sketches, and witness statements, is purged from (most) case files.

Recommendation 11-01 (formerly 10-1, 09-01): OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation to retain pertinent information.

Finding 11-02: Health case files that were reviewed, did not include sampling where concerns with potential exposures to asbestos, methylene chloride, hexavalent chromium and carbon monoxide were raised. In many cases sampling could not take place due to the work being finished; however serious citations were issued based upon what the CSHO believed to be on-site.

Recommendation 11-02: OSHNC should implement additional training to ensure that health files appropriately address potential exposures through full-shift monitoring.

Finding 11-03: All formal complaints reviewed were in fact non-formal complaints where an inspection had been conducted. Documentation of why the complaint was upgraded is not included in the case file. Coding is also not used consistently on the OSHA-7.

Recommendation 11-03: OSHNC should implement procedures to ensure case files include documentation as to why non-formal complaints are upgraded when the OSHA-7 indicates that an inspection will not be conducted. None of the complaint files reviewed included signed OSHA-7 forms.

Finding 11-04: Initial and final next-of-kin (NOK) letters are not consistently sent to the families for all fatality investigations. Letters should be sent to the NOK at the beginning and at the close of each investigation to ensure the family is made aware of the investigation and the results. In some instances, CSHOs are signing the letters and signed copies are not consistently maintained in the case file.

Recommendation 11-04: OSHNC should implement measures to ensure that initial and final NOK letters are signed by supervisors and sent at the beginning and end of fatality investigations and that signed copies are maintained in the case file.

Finding 11-05: In several of the case files reviewed, coding was found to be inaccurate and/or inappropriate for the inspections being conducted. Of the programmed health

construction case files reviewed all were coded as health programmed inspections, however only safety items were reviewed and documented. Safety CSHOs code their files as safety and note a health local emphasis program (LEP) code.

Recommendation 11-05: OSHNC should implement procedures to ensure that coding is uniform and appropriate. Employees should be provided with additional training on how codes should be applied.

Finding 11-06: Respiratory protection is not assigned to Health CSHOs for use when monitoring for potential overexposures to air contaminants.

Recommendation 11-06: OSHNC should assign Health CSHOs with respiratory protection. Procedures should be developed and implemented for CSHOs to indicate what type of PPE, to include respiratory protection was used during the inspection.

Finding 11-07 (formerly 10-02, 09-06): While OSHNC had a hazard classification and penalty assessment system that was similar to federal OSHA, they did not follow it in all cases. Penalty assessment and severity/probability ratings did not follow guidance established in accordance with OSHNC FOM.

Recommendation 11-07 (formerly 10-02, 09-06): OSHNC should provide additional training to CSHOs to ensure each violation is classified accurately for penalty assessment, severity and probability. Guidelines for rating the severity of the injury or illness being prevented should be reviewed and revised as needed to assure that they are consistent with the definitions of high, medium, and low severity in OSHNC's procedures. Supervisors should ensure that case files are reviewed more carefully to ensure this is being done.

Finding 11-08: The OSHNC Field Operations Manual (FOM), Chapter VI, permits a CSHO to give a "cooperation" penalty reduction to an employer of up to 10 percent. This reduction is applied by the CSHO at his/her discretion to a "cooperative" employer. A significant percentage of the case files reviewed was given the Cooperation penalty reduction with minimal written justification or no justification at all. There is no way to understand the rationale for these penalty reductions.

Recommendation 11-08: OSHNC should eliminate the Cooperation penalty reduction policy.

Finding 11-09: Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files.

Recommendation 11-09: OSHNC should ensure that informal conference notes documenting changes made to the citations and/or penalties are legible, organized and include the justification in the case file.

Finding 11-10 (formerly 10-3, 09-09A-D): The FY 2009 FAME report noted deficiencies in North Carolina's discrimination program, including the State policy that: complaints must be received in writing; almost all interviews are conducted by phone; not in person; the lack of closing conference information in case files; and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual. The EDB has already begun a review of the new Federal OSHA Whistleblower Manual and has assigned staff to specific issues.

Recommendation 11-10 (formerly 10-3, 09-09A-D): The State should continue their work toward the necessary modifications to the EDB's program to ensure procedures are at least as effective as Federal procedures. The State should develop and implement a tracking system with a final due date to ensure timely completion.

II. Major New Issues

The State did not experience any new significant issues during this fiscal year.

III. State Response to FY 2010 FAME Recommendations

The FY 2010 FAME follow-up report contained three findings and recommendations, which remain unresolved.

It was recommended that OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation. The State continues to disagree that the purging of a limited amount of case file information, for non-fatality and other routine inspections, limits the State's ability to conduct a complete review of a company history and to have sufficient information to support citations. Items deleted include photos, which require an operating expense, when they are converted to electronic format and disclosure requests are made.

A second recommendation indicated that OSHNC should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice. The State continues to ascertain that the State's procedures for determining the classification of violations are the same as those of federal OSHA and that North Carolina's procedures for assessing severity are also consistent with federal OSHA procedures. OSHNC's goal is to properly classify violations based on policies and procedures contained in the Compliance Operations Manual.

The third recommendation broken into four items noted deficiencies in North Carolina's discrimination program, including the State policy that: complaints must be received in writing; all interviews are conducted by phone; not in person; the lack of closing conference information in case files; and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual.

The State agrees that their discrimination investigation procedures are not identical to federal OSHA. However, the federal audit did not include any evidence that the quality of North Carolina's discrimination investigation process is negatively impacted by the difference in policies. State procedures do not require that all interviews be conducted by phone. Most complaints are initiated by phone and then reduced to writing as required by State statute. The State has been waiting on the new OSHA Whistleblower Investigation Manual before revising State discrimination policies and procedures. The federal document was released on September 20, 2011.

IV. Assessment of State Performance

A. Enforcement

For this evaluation, a total of 168 case files were reviewed, which includes 133 inspection case files, 26 fatality investigation files, and 9 complaint investigation files. A random selection of inspection case files was selected from the following categories: programmed general industry safety; programmed general industry health; programmed construction safety; programmed construction health; complaint inspections; and complaint investigations. This was a small percentage of the 4,254 inspections conducted in 2011 but is believed to provide an accurate picture of the enforcement program throughout the state, when coupled with interviews, a review of procedures, and collected data. Data associated with the case files reviewed was representative of data for all inspections. A comparison of IMIS data for FY 2009 through FY 2011 did not indicate any notable variations.

In accordance with North Carolina's procedures, there are specific documents that are purged from inspection case files at the time they are closed, due to the expense of processing and retaining this information. The State has stated that it is expensive to maintain every item in a closed case file because there is an expense associated with each document and photo that is scanned. Purged material includes photographs, sketches, witness statements, and other information that may have been obtained by the CSHO during the inspection. Except for the fatality files and high profiles cases, many of the case files reviewed had been purged per state retention procedures. Interviews and photographs were referenced in the file, but federal reviewers were not able to see the documentation that had been in the file when it was open.

Full-shift air or noise monitoring was not conducted for several programmed and complaints inspections. The diary sheet and/or case file narrative did not explain the rationale to conduct or not conduct sampling during the inspection. Some of the substance specific hazards included, but were not limited to: methylene chloride, asbestos and hexavalent chromium.

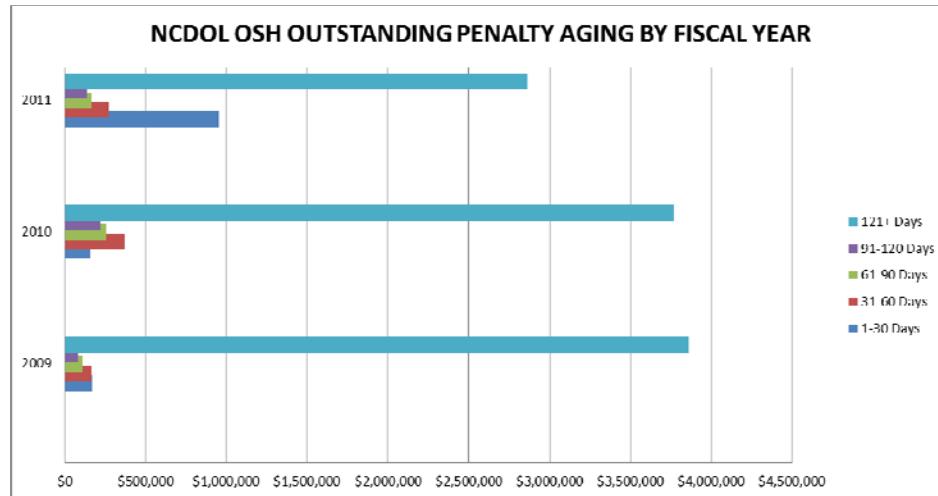
The State has made the collection of outstanding debt a high priority, and steady progress has been made in reducing the amount of outstanding penalties, managing the debt collection process, and ensuring the timely closing of cases with debt collection issues. Action taken is responsive to a recommendation included in the FY

2009 FAME. The program success is demonstrated by a reduction from 2010 to 2011 in the total amount of outstanding penalties over 121 days which decreased from \$3,769,881 to \$2,862,162.

The improvements are a by-product of the work initiated by a committee made up of the compliance bureau chief, field supervisor, legal counsel, and employees from the budget office. The committee initially evaluated the penalty collection process and revised procedures in an effort to reduce the number of outstanding penalties. Specific time limits were assigned to each step in the debt collection process. Once the CSHO and the budget office have been unsuccessful in securing the penalties within a prescribed time frame, a private collection agency is employed. Ultimately, a judgment can be filed to enhance the collection process. The final step in the process is to write off penalties that cannot be collected. The various deadlines in the process allow for the ultimate closing of cases in which the penalties cannot be collected.

OSH division personnel have been retrained in the penalty collection process. The FOM has been revised and updated and a formal State Plan updated was submitted to federal OSHA. The FOM revision includes a checklist for CSHOs to ensure that all necessary documentation is provided to the budget office to facilitate the collection process. A specific debt collection report was also developed to track progress in debt collection, and an additional report is being developed to track CSHO activity relating to debt collection and the timely submittal of information to the Budget Office. An employee in the budget office has been assigned the specific responsibility of managing the debt collection process. Appropriate action had been taken by the State relating to debt collection and the timely closing of cases when appropriate.

Below is a review of outstanding penalty aging from FY 2009-2011 year:



Findings and Recommendations

Finding 11-01 (formerly 10-1, 09-01): Supporting documentation such as, photographs, sketches, and witness statements, is purged from (most) case files.

Recommendation 11-01 (formerly 10-1, 09-01): OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation to retain pertinent information.

Finding 11-02: Health case files that were reviewed, did not include sampling where concerns with potential exposures to asbestos, methylene chloride, hexavalent chromium and carbon monoxide were raised. In many cases sampling could not take place due to the work being finished; however serious citations were issued based upon what the CSHO believed to be on-site.

Recommendation 11-02: OSHNC should implement additional training to ensure that health files appropriately address potential exposures through full-shift monitoring.

1. Complaints and Referrals

North Carolina's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of federal OSHA. These procedures are covered in Chapter IX of the State's FOM. Inspection data indicates that North Carolina handled 993 complaint investigations in 2011 and conducted 862 complaint inspections. According to the SAMM report, OSHNC responds timely to complaint inspections within an average of 6.34 days from the time of receipt which is within their negotiated goal of 15 days. Complaint investigations were initiated within an average of 2.9 days from the time of receipt, which is also within their negotiated goal of 5 days. The federal average for initiating a complaint investigation is one day.

OSHNC has a centralized complaint intake procedure, with complaints transferred to the district supervisor having geographic jurisdiction. The State's emphasis has been on customer service and assuring that each complaint is given attention consistent with the severity of the alleged hazards. As a result, OSHNC inspects a relatively high percentage of complaints that have not been formalized with the signature of a current employee. The source of the complaint, with those from a current employee having priority, and the severity of the alleged hazards, are primary considerations for supervisors when they decide whether to handle the complaint by letter or by inspection. However, the cases files did not contain documentation in the case file why the complaint was upgraded and coding was not used on the OSHA-7.

This evaluation also included reviews of nine complaint investigation files (those complaints handled by letter, or OSHNC's phone, fax and fix procedure) and 17 complaint inspection files. Written responses to the complainant were provided

timely, and procedures were in place for tracking the status of complaints and updating the IMIS with complaint activity.

The review indicated that OSHNC was following correct procedures during referral inspections. All referral items were fully investigated and properly documented in the case files reviewed.

Findings and Recommendations

Finding 11-03: All formal complaints reviewed were in fact non-formal complaints where an inspection had been conducted. Documentation of why the complaint was upgraded is not included in the case file. Coding is also not used consistently on the OSHA-7.

Recommendation 11-03: OSHNC should implement procedures to ensure case files include documentation as to why non-formal complaints are upgraded when the OSHA-7 indicates that an inspection will not be conducted. None of the complaint files reviewed included signed OSHA-7 forms.

2. Fatalities

In FY 2011, North Carolina investigated 66 workplace accidents, of which 54 were workplace fatalities. The number of general industry deaths decreased from six in 2010 to four in 2011, while the number of fatalities in construction increased from 24 in 2010 to 25 in 2011. Other fatalities experienced in the state were in the logging/arboricultural industry and public sector. North Carolina's procedures for investigation of occupational fatalities are effectively the same as those of federal OSHA. A review of the fatality inspection files showed that the correct fatality inspection procedures were followed. One hundred percent (100%) of fatality inspections reviewed were opened within one day and the Regional and National Offices were sent the OSHA-36 in a timely manner. During this evaluation 26 fatality investigation files were reviewed. North Carolina has implemented procedures to assure the quality of fatality investigations. However, it was identified that most fatalities involve only partial inspections. The State should consider conducting comprehensive inspections following a fatality.

The NC attorney's office works closely with the CSHO when a fatality case file is being prepared to assure that the case documentation is legally sufficient. Contacts between the CSHO and the attorney were documented in the case files. Fatality investigations are required by Administrative Procedure Notice (APN) 16D to go through a review by a Citation Review Committee, made up of senior management and legal staff prior to issuance of citations or determination of an in-compliance investigation. The determination must be reviewed and signed by the OSH Director. Informal settlement agreements related to fatality cases also receive a higher level review.

During the case file review, it was identified that next-of-kin (NOK) initial and final letters are not always being sent to the families. In addition, there were several times that the CSHO assigned to the investigation signed the letter. Files included statements and other documentation that supported the violations cited, and the cause of the accident was clearly explained. In the 26 cases, eight did not result in issuance of citations; the factors leading to this decision were well documented.

In FY 2011, the files resulted in the following number of violations:

| Number of Violations | OSHNC |
|----------------------|-------|
| Willful | 1 |
| Repeat | 0 |
| Serious | 97 |
| Non-serious | 26 |

For citations that were resolved by means of an informal settlement agreement, the percent of penalty reduction was approximately 13%.

Findings and Recommendations

Finding 11-04: Initial and final NOK letters are not consistently sent to the families for all fatality investigations. Letters should be sent to the NOK at the beginning and at the close of each investigation to ensure the family is made aware of the investigation and the results. In some instances, CSHOs are signing the letters and signed copies are not consistently maintained in the case file.

Recommendation 11-04: OSHNC should implement measures to ensure that initial and final NOK letters are signed by supervisors and sent at the beginning and end of fatality investigations and that signed copies are maintained in the case file.

3. Targeting and Programmed Inspections

According to inspection statistics run for this report, OSHNC conducted 4,254 inspections in FY 2011, 2,539 of which were programmed. This includes many of the 1,174 inspections conducted in the construction sector. According to the SIR, 59.4% of programmed safety inspections and 62.9% of programmed health inspections had violations. Additional data indicates that an average of 3.0 violations were cited per inspection, and that 70.39% of safety violations and 50.72% of health violations were classified as serious, repeat, and willful.

OSHNC has a variety of Special Emphasis Programs (SEP) for construction and general industry, some of which are associated with their strategic goals, and some of which are National Emphasis Programs (NEP). The current health hazard SEPs include: lead; silica; asbestos; hexavalent chromium; and isocyanates. During the

case file review, programmed health construction case files were coded as health programmed, however only safety items were reviewed.

The State has implemented safety and health general industry targeting procedures, and has adopted the federal Site-Specific Targeting (SST) procedures. The State's programmed general industry safety targeting procedure is based upon an establishment's injury and illness rates and serious safety violations per inspection for the industry they are in. The programmed general industry health targeting procedure selects establishments based on the serious health violations per inspection for their respective industry. These inspections have lower priority than SST inspections.

The following tables outline the total number of violations for programmed activity, as well as, the in compliance rate and the percentage serious, willful and repeat violations for construction and general industry:

| General Industry Programmed Inspections | OSHNC | Construction Programmed Inspections | OSHNC |
|---|-------|---|-------|
| Average number of violations | 4.4 | Average number of violations | 2.5 |
| In-Compliance Rate | 26% | In-Compliance Rate | 36% |
| % violations classified as Serious, Repeat, and Willful | 33% | % violations classified as Serious, Repeat, and Willful | 77% |

Findings and Recommendations

Finding 11-05: In several of the case files reviewed, coding was found to be inaccurate and/or inappropriate for the inspections being conducted. Of the programmed health construction case files reviewed all were coded as health programmed inspections, however only safety items were reviewed and documented. Safety CSHOs code their files as safety and note a health local emphasis program (LEP) code.

Recommendation 11-05: OSHNC should implement procedures to ensure that coding is uniform and appropriate. Employees should be provided with additional training on how codes should be applied.

4. Citations and Penalties

In FY 2011, the 4,254 inspections conducted resulted in an average of 1.98 violations per inspection, with 65% of safety violations and 35% of health violations classified as serious. OSHNC routinely places an emphasis on keeping citation lapse times low.

In 2011, the average lapse time from opening conference to citation issuance is identified below:

| Average Lapse Time | OSHNC | National |
|----------------------|-----------|-----------|
| Safety | 21.1 days | 43.2 days |
| Health | 26.1 days | 54.8 days |
| Total Average | 23.6 days | 49.0 days |

The case files reviewed included adequate documentation to support the violations, although due to the lack of photographs and other information that has been purged from the files, it was not possible to view all documentation the supervisor had at the time of case file review. Photographs are not printed and placed in the files, but are retained on compact discs (CD) due to printing costs. Supervisors indicated that they do review each case file before citations are issued, or prior to closing for in compliance cases, and they look at the photographs during their review. OSHNC conducted 3.5% follow-up inspections, which is below the goal of 5%, in FY 2011. Their current practice has not negatively impacted the State's program.

Although the State's procedures for determining the classification of violations are the same as those of federal OSHA, OSHNC classifies a lower percentage of violations as serious. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. It was noted that some violations that would most likely have been classified as serious by federal OSHA were classified as nonserious by the state, and severity and probability ratings were inconsistent with the associated hazards. Examples of hazards include lacerations, burns, carbon monoxide and bloodborne pathogen exposures.

Examples of misclassified violations are as follows:

- Electrical violations were routinely classified as nonserious. Violations including employee exposure to live parts greater than 50 volts were classified as nonserious. OSHNC provided Compliance Officer's a table for classifying electrical hazards. However, the table does not effectively address all serious electrical hazards. For example, electrical circuits do not always need a path to ground for hazardous current flow, e.g. phase to phase circuits. In addition, ground-fault circuit interrupters (GFCI) protect against fatal shock hazards, but not against all effects of electrical shock. Employees working on ladders or at other elevated heights can receive electrical shocks from GFCI protected circuits and the reaction could cause the employee to fall. Finally, "Gripping Condition" is only a mitigating factor for low voltages, e.g. 120 volts or less. Inadvertent and non-gripping contact with higher voltage (e.g. 240, 480, etc.) could be lethal.
- A respirator violation was issued as nonserious when an overexposure was expected.
- A hazard communication violation was issued as non-serious when an employee was exposed to crystalline silica.

- A steel erection violation was issued as lesser probability when the frequency was noted as happening “all of the time”.
- A rating of greater should have been considered for a forklift hazard that was identified in the description as a “regular monthly occurrence”.
- A rating of high/greater should have been considered for a 20 foot fall hazard when six employees were exposed.
- Several files reviewed identified hazards where a willful classification should have been considered. For example, falls, trenching, hexavalent chromium exposure and forklift hazards should have been sought to make it willful based on the information provided in the description.

North Carolina classifies a lower percentage of violations as Serious. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. It was noted that some violations that would most likely have been classified as serious by federal OSHA were classified as Other-Than-Serious by the State, and severity and probability ratings were inconsistent with the associated hazards.

Percent of Violations Cited Serious/Other Than Serious

| | OSHNC | Federal OSHA |
|----------------|--------------|---------------------|
| Serious | 49% | 73% |
| OTS | 49% | 22% |

In FY 2011, the average initial penalty per serious, repeat and willful violations for private sector inspections was as follows:

| Classification | OSHNC | OSHA | % difference |
|-----------------------|--------------|-------------|---------------------|
| Willful | \$35,833 | \$40,928 | -12% |
| Repeat | \$1,906 | \$7,487 | -75% |
| Serious | \$1,309.95 | \$1679.60 | -22% |

The OSHNC FOM, Chapter VI, permits a CSHO to give a 10% reduction to an employer. This is known as Cooperation and may be given by the CSHO at his or her discretion to a cooperative employer. The 10% reduction factor, which OSHNC offers is an additional reduction that is not offered by federal OSHA. The cooperation reduction policy should be eliminated because it is not as effective as the federal policy. A significant percentage of the case files reviewed was given the Cooperation reduction without or with minimal written justification and, as a result, it was difficult to understand the rationale for the reductions.

During the FY 2011 case file review, it was identified that the Health CSHOs are not assigned respiratory protection while conducting onsite evaluations regarding health exposures. In FY 2011, 1,477 health inspections were conducted, including 155 inspections involving sampling. Additionally, these files including documented

evidence of 17 overexposures to health contaminants, as well as 24 overexposures to noise.

Findings and Recommendations

Finding 11-06: Respiratory protection is not assigned to Health CSHOs for use when monitoring for potential overexposures to air contaminants.

Recommendation 11-06: OSHNC should assign Health CSHOs with respiratory protection. Procedures should be developed and implemented for CSHOs to indicate what type of PPE, to include respiratory protection was used during the inspection.

Finding 11-07 (formerly 10-02, 09-06): While OSHNC had a hazard classification and penalty assessment system that was similar to federal OSHA, they did not follow it in all cases. Penalty assessment and severity/probability ratings did not follow guidance established in accordance with OSHNC FOM.

Recommendation 11-07 (formerly 10-02, 09-06): OSHNC should provide additional training to CSHOs to ensure each violation is classified accurately for penalty assessment, severity and probability. Guidelines for rating the severity of the injury or illness being prevented should be reviewed and revised as needed to assure that they are consistent with the definitions of high, medium, and low severity in OSHNC's procedures. Supervisors should ensure that case files are reviewed more carefully to ensure this is being done.

Finding 11-08: The OSHNC Field Operations Manual (FOM), Chapter VI, permits a CSHO to give a "cooperation" penalty reduction to an employer of up to 10 percent. This reduction is applied by the CSHO at his/her discretion to a "cooperative" employer. A significant percentage of the case files reviewed was given the Cooperation penalty reduction with minimal written justification or no justification at all. There is no way to understand the rationale for these penalty reductions.

Recommendation 11-08: OSHNC should eliminate the Cooperation penalty reduction policy.

5. Abatement

Case file reviews, available procedures, and inspection data indicate that North Carolina obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. Compliance officers are responsible for following up on the abatement of violations for their inspections. North Carolina does a good job of ensuring and documenting abatement of hazards. The majority of case files contained written documentation, photos, work orders, or employer's certification of abatement. OSHNC should implement control measures to assure that abatement certification or documentation is identified for each violation. The State accepts either certification or documentation;

however it is not specified on the citations. Letters are sent to employers when needed and supervisors review IMIS reports frequently to track the abatement status.

6. Employee and Union Involvement

North Carolina's procedures for employee and union involvement are identical to those of federal OSHA. Case files reviewed disclosed that employees were included during fatality investigations and other inspections.

B. Review Procedures

2. Informal Conferences

North Carolina has procedures in place for conducting informal conferences and proposing informal settlement agreements, and these procedures appear to be followed consistently by District Supervisors. According to the SIR, 2.2% of violations were vacated and 1.9% of violations were reclassified as a result of informal settlement agreements. The penalty retention rate was 68.4%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and most cases were resolved with some penalty reduction. Informal settlements for cases that are required to go through the citation review committee process prior to the issuance of citations must also go through a review procedure prior to settling the case.

Several case files did not include rationale for modifying the penalty and classification. Specifically, one fatality file did not contain documentation for vacating the citation. Additional case files did not identify the rational for grouping the items and reducing penalty.

Findings and Recommendations

Finding 11-09: Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files.

Recommendation 11-09: OSHNC should ensure that informal conference notes documenting changes made to the citations and/or penalties are legible, organized and include the justification in the case file.

3. Formal Review of Citations

In FY 2011, 2.1% of inspections were contested compared to 4.6% in 2010. The Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The three members of the Review Commission are appointed to the part-time positions by the Governor and generally serve a six-year term, with one of the members serving as the Chairman. The North Carolina

Department of Labor has taken steps to reduce the lapse time between receipt of contest and first level decision, although that process is largely not within their control. The Attorney General for North Carolina provides legal representation for the Department of Labor. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. Compliance officers and supervisors stated that they have a very good working relationship with the attorneys assigned to them, and they are very knowledgeable of OSHA requirements and what is needed for a case to be legally sufficient. SIR data indicates that, for violations that were contested, 56.6% of penalties were retained 26.8% were vacated, and 9.7% were reclassified. The Review Commission provides a copy of each decision to the OSHA Area Director. No negative trends or problems with citation documentation have been noted.

C. Standards and Federal Program Change Adoption

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within a 6-month time frame. States that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, OSHNC adopted all of the federal directives and OSHA initiated standards, which required action, in a timely manner. The tables below provide a complete list of the federal directives and standards which required action during this period:

1. Standards Adoption

| Standards Requiring Action | Federal Register Date | Adopted Identical | Date Promulgated |
|--|------------------------------|--------------------------|-------------------------|
| Standards Improvement Project, Phase III | 06/08/2011 | Yes | 10/31/2011 |
| Working Conditions in Shipyards - Final Rule | 05/02/2011 | Yes | 09/01/2011 |

2. Federal Program/State Initiated Changes

| Federal Program Changes Requiring Action and Federal Directive Number | Date of Directive | Adopted Identical | State Adoption Date |
|--|--------------------------|--------------------------|----------------------------|
| Recordkeeping NEP - September 2010 Changes, CPL-02(10-06) 2011 401 | 09/28/2010 | Yes | 10/15/2010 |
| PPE in Shipyard Employment, CPL-02-01-049 2011 | 11/04/2010 | Yes | 12/13/2010 |
| Compliance Guidance for Residential Construction, STD - 03-11-002 2011 403 | 12/16/2010 | No | N/A |

| | | | |
|---|------------|-----|------------|
| NEP Microwave Popcorn Processing Plants, CPL-03 (11-01) 2011 423 | 01/18/2011 | No | N/A |
| PPE in General Industry, CPL-02-01-050 2011 422 | 04/11/2011 | Yes | 04/11/2011 |
| Revisions to Field Operations Manual - April 2011, CPL-02-00-150 2011 442 | 06/23/2011 | No | N/A |
| NEP Primary Metals, CPL – 03-00-013 2011 444 | 07/25/2011 | Yes | 08/01/2011 |
| Confined Spaces in Shipyards, CPL-02-01-051 2011 | 07/20/2011 | Yes | 08/01/2011 |
| Commercial Diving Operations, CPL-02-00-051 2011 | 07/20/2011 | Yes | 08/01/2011 |

D. Variances

North Carolina currently has eleven permanent variances, six of which are multi-state variances approved by federal OSHA and no temporary variances. The State shares variance requests with federal monitors and requests input prior to approval. The status of all variance requests are tracked by the State on the internet. No issues related to variances have been identified. The last variance issued by OSHNC was in 2002. The 2007 variance was a federal approved multi-state variance. Additionally, workers in North Carolina were properly protected by alternative safety and health measures in each case.

E. Public Employee Program

OSHNC's Public Employee Program operates identically as the private sector. As with the private sector, public sector employers can be cited with monetary penalties. The penalty structure for both sectors is the same. OSHNC conducted 163 public sector inspections in FY 2011, which accounted for 3.83% of all inspections. The same concerns noted in the private sector inspections regarding citations and penalties were also found in the public sector case files reviewed.

F. Discrimination Program – Special Study

The Employment Discrimination Bureau (EDB) of the North Carolina Department of Labor, is responsible for enforcing the North Carolina Retaliatory Employment Discrimination Act (REDA) (N.C.G.S. § 95-240 through§ 95-245). REDA prohibits discrimination against employees who engage in protected activities as defined by North Carolina law, including the Occupational Safety and Health Act of North Carolina (§ 95-151, Chapter 95, Article 16 of the General Statutes). This is comparable to federal OSHA protection from discrimination under Section 11(c) of the OSHA Act. This evaluation included a thorough review of North Carolina's discrimination program to determine whether EDB is following its own policy and procedures, and whether EDB is operating at least as effectively as OSHA. Organizationally, EDB falls under the

Standards and Inspections Division of the Department of Labor, not within the Occupational Safety and Health Division. The OSHNC Director is responsible for assuring federal OSHA grant support and effective coordination between EDB and OSHNC. The organizational structure has not had a detrimental effect on the ability of the state plan to carry out their responsibilities related to safety and health discrimination protection effectively.

The EDB currently employs seven Investigators and one Information Officer. Five of the Investigators report to work at the EDB office in Raleigh, NC; the other two work from assigned flexiplace locations throughout North Carolina. The Information Officer is assigned to the Raleigh office. The program is supervised by an Administrator/Bureau Chief.

In addition to investigating complaints alleging retaliation for raising safety and health concerns, EDB is responsible for investigating other discrimination complaints filed under the employee protection provisions the North Carolina Wage and Hour Act, Fair Labor Standards Act, Workers' Compensation Act, Mine Safety and Health Act; and portions of law prohibiting discrimination against employees on the basis of sickle cell/hemoglobin C trait(s), genetic testing information, North Carolina National Guard service, participation in the juvenile justice system, and employees who report domestic violence and agricultural pesticide exposure.

The EDB continues to work on a procedures manual that will be as effective as the Federal OSHA Whistleblower Manual. To complete this project, development of the state manual includes review of the federal manual.

The review process recently included a meeting with Federal OSHA to discuss specific issues and topics in the Federal Manual. Discrimination related recommendations included in the FY 2009 EFAME were also discussed in terms of addressing these issues in the state manual revision. This meeting confirmed that some important discrimination related issues might not be resolved by the time the manual revision is completed. Forty-eight percent (48%) of 11(c) whistleblower cases were completed within 90 days in FY 2011. OSHNC has continued to work on improving their completion rate of 11(c) investigations; however the State should continue to find ways to improve case management to ensure completion of all cases in a timely manner. For those cases over 90 days the State should require an explanation be documented in the case file and/or case file diary sheet.

A few days after meeting with Federal OSHA, EDB also met with OSHNC management and the NCDOL legal staff to discuss implementation of OSH discrimination program changes consistent with the Federal Manual. The discussion included topics such as an appeal process, the ability to reopen investigations as a result of recent legislation, and the sharing of information within the state guidelines for disclosure.

An experienced state discrimination investigator is working on the manual with expectations of meeting the March 20, 2012 deadline established for responding to the

federal OSHA Whistleblower Manual. The intent is to provide a subject by subject comparison between the State Manual and the Federal Manual with an explanation for any differences between state and federal policy. This is a similar approach the State used in reviewing the federal OSHA FOM.

A review of six whistleblower case files identified similar findings from the FY2009 audit. Complaints were received in writing and the date of any verbal complaints was not documented. Interviews were all telephonic or email. Closing conferences were documented in the case file; however, the documentation did not reflect the specific information related to the Complainant. In addition, guidance on settlement requirements, including waivers and confidentiality agreements were not as detailed as OSHA's Whistleblower Investigation Manual.

According to the State Activity Mandated Measures (SAMM) report, which uses cases closed during the fiscal year:

| Meritorious Complaints | | Merit Cases Settled | |
|------------------------|---|---------------------|----|
| FY 2011 | 1 | FY 2011 | 4 |
| FY 2010 | 4 | FY 2010 | 10 |
| FY 2009 | 2 | FY 2009 | 12 |

During FY October 1, 2010 through September 20, 2011 OSHNC received and opened 81 discrimination complaints. 73 of these cases were closed October 1, 2010 through September 20, 2011. The status of these cases and the percentages of total cases they represent are presented below:

| Status | Number of Cases | Percentage |
|---------------------------------|-----------------|------------|
| Dismissed Non-Merit | 56 | 77% |
| Dismissed – Lack of Cooperation | 0 | 0 |
| Settlement/Merit | 5 | 7% |
| 180 Day Right-to- Sue | 2 | 3% |
| Untimely Filed | 3 | 4% |
| Screened/Closed/Withdrawn | 7 | 9% |
| Prosecution by Attorney General | 0 | 0 |

Approximately 56 out of the 73 (76%) of 11(c) whistleblower cases were completed within 90 days in FY 2011.

Findings and Recommendations

Finding 11-10 (formerly 10-3, 09-09A-D): The FY 2009 FAME report noted deficiencies in North Carolina's discrimination program, including the State policy that: complaints must be received in writing; almost all interviews are conducted by phone; not in person; the lack of closing conference information in case files; and guidance on

settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual. The EDB has already begun a review of the new Federal OSHA Whistleblower Manual and has assigned staff to specific issues.

Recommendation 11-10 (formerly 10-3, 09-09A-D): The State should continue their work toward the necessary modifications to the EDB's program to ensure procedures are at least as effective as Federal procedures. The State should develop and implement a tracking system with a final due date to ensure timely completion.

G. Complaints About State Plan Administration (CASPA)

During this period there were no CASPAs filed with the federal OSHA Area Office in Raleigh, North Carolina.

H. Voluntary Compliance Program

ETTA is the bureau responsible for the Alliance and Partnership programs in North Carolina. Administrative Procedure Notice (APN) 18D addressing Cooperative Programs was modified to make clear the distinction between Alliances and Partnerships. Administrative Procedure Notice (APN) 18D addressing Cooperative Programs is the document used to establish the procedures to be followed for Alliance and Partnership agreements. Alliance and Partnership Committees meet quarterly to discuss new applications to determine if ETTA can support it, location, who are the parties involved, possible training for CSHOs and if they are related to any special emphasis programs.

Alliances

With two exceptions, the procedures defined in APN 18D are the same as federal OSHA procedures. Those exceptions are that generally, North Carolina will only renew an Alliance one time. This is due to limited resources and to afford opportunities for other groups to participate in Alliances. The other exception is that North Carolina has Alliances with certain safety and health groups within the state that have an indefinite time period set. A standard 30 day termination clause, which can be exercised by either party, is contained in these Alliances and the audit revealed that it is in the OSH Divisions best interests to have an indefinite expiration for these Alliances.

North Carolina currently has nine active Alliances focusing on special emphasis programs. Randomly selected Alliances were reviewed and found to contain the necessary information in the files, including the annual milestone reports.

| Active Alliances | |
|--|--|
| Builder's Mutual Insurance Company | Carolinas Associated General Contractors |
| Forestry Mutual Insurance Company (FMIC) | Lamar Advertising Company |
| North Carolina Forestry Association | Safety & Health Council of North |

| | |
|---|---------------------------|
| (NCFA) | Carolina |
| North Carolina State University Industrial Extension Service (NCSU-IES) | Sampson Community College |
| North Carolina Utility Contractors Association (NCUCA) | |

Partnerships

The only deviations from the federal OSHA Partnership requirements defined in APN 18D are that North Carolina's current Partnerships include only the construction industry and a particular company is limited to two partnerships within a ten year period unless a third partnership is approved at the Director or Commissioner level. This limit is set to allow other companies the opportunity to participate in a Partnership and to allow North Carolina to have Partnerships with varying types of construction projects.

Partnership agreements require that technical assistance visits be conducted quarterly and that the general contractor must provide monthly reports addressing their work site inspections and any hazards found as well as report of any recordable injuries and near miss events. ETTA also holds a quarterly meeting with its staff and compliance personnel serving as Partnership coordinators.

North Carolina currently has three active partnerships. A review of the three current Partnerships showed that the files contained results of the technical assistance visits and the monthly information sent from the general contractor.

| Current Partnerships | |
|--|-----------------------------|
| Barnhill Contracting Company and Balfour Beatty Construction, LLC | Wake County Justice Center |
| Western Wake Raleigh-Durham Roadbuilders with Archer Western-Granite | Western Wake Freeway |
| Flatiron Construction Corporation & Lane Construction Corporation | Yadkin River Bridge Project |

Voluntary Protection Programs (VPP)

The Consultation Services Bureau was previously responsible for administering the VPP/Carolina STAR Program in North Carolina, which has been in existence since 1994 and has grown to over 100 companies, placing North Carolina behind only Texas for the most VPP sites. At the beginning of FY 2012, duties have been transferred to the Education, Training and Technical Assistance (ETTA) Bureau. The North Carolina program requirements are more stringent than federal OSHA's in that Carolina Star sites must have injury and illness rates and lost time rates at least 50% below the national average for that industry. North Carolina was also the first to begin recognizing construction companies for VPP through their Building Star program and they were also the first to recognize public sector employers with their Public Star program. What federal OSHA calls a Merit site is known as a Rising Star in the Carolina Star program

and companies are allowed to be a Rising Star for only one year before a reevaluation of the company is performed. Another difference in terminology is that North Carolina uses Provisional status for what federal OSHA calls a One-Year Conditional status. A company is placed on a one year conditional status in the federal VPP program for failing to maintain all VPP elements at the Star level. In the Carolina Star program, a company may be placed in Provisional status for additional reasons, such as a rate increase or too much management involvement which would not trigger the One-Year Conditional in the federal program. The Carolina Star program also allows for the reevaluation to take place in less than one year.

The Carolina Star Program Policies and Procedures Manual was revised in December 2011 as a result of the move to the ETTA Bureau and of the memos that were introduced by federal OSHA. The State continues to play an active role in developing, planning, and running the Carolina Star Conference, which was attended by over 600 people.

I. Public Sector On-site Consultation Program

The Consultative Bureau has continued to be vital piece of the OSHNC Performance Plan. Consultative Services activities meet or exceed all current goals while still focusing on the strategic initiatives outlined in the performance plan, in an effort to drive down the overall fatality rate along with injury and illness rates in North Carolina.

The Consultative Services Bureau continues to reach small employers and encourage participation in the Safety and Health Achievement Recognition Program. In FY 2011 the Bureau recognized 50 SHARP-related worksites. There are currently 102 SHARP related worksites.

The bureau continued to provide services to the employers and employees in both the private and public sectors during FY 2011. For public sector visits, the State had a goal to reach 200 establishments and exceeded that goal by conducting 211. The number of hazards abated during on-site consultation public sector visits is listed in the chart below:

| Serious Hazards Confirmed Abated | | Other Hazards Confirmed Abated | |
|---|-----|---------------------------------------|-----|
| Public Safety | 518 | Public Safety | 47 |
| Public Health | 253 | Public Health | 91 |
| Total Public | 771 | Total Public | 138 |

J. Program Administration

Training

The North Carolina OSH Division contains a separate bureau titled the Education, Training and Technical Assistance (ETTA) Bureau who are responsible for planning, developing, and conducting technical and specialized training courses and seminars. ETTA, among its other functions, conducts OSHA Technical Institute (OTI) equivalent

training for OSH Division compliance staff. A North Carolina OSH Division Directive, Operating Procedure Notice (OPN) 64D: *Initial Training Program for OSH Compliance Personnel* establishes the policies and procedures for the initial training of compliance staff and, with a few exceptions, mirrors OSHA's TED-01-00-018. The same core courses are required for OSH Division compliance officers and ETTA utilizes the former OTI course numbering system, i.e., 100 for the Initial Compliance course, 105 for the Safety Standards course, etc.

By conducting training internally, ETTA is able to train employees promptly and at a much lower cost than would be incurred by sending compliance staff to OTI for training. ETTA has conducted its own training courses since 1994. ETTA staff performs most of the training with assistance from senior compliance staff, who are used as subject matter experts for selected topics.

A review of selected training records showed that newly hired compliance officers are on track to receive all of the required initial training courses well within the three year period prescribed by both OSHA TED-01-00-018 and OPN 64D. More experienced compliance officers also receive formal training on a regular basis. North Carolina policies mandate formal training for experienced compliance officers at least every three years, and ETTA is able to accommodate that requirement with their training schedule. The Training Supervisor tracks all of the training for State personnel by using a database for records and an Excel spreadsheet for statistics. Not all courses are offered every year and specialized training may rotate on a three year basis depending on the capacity for need.

ETTA also provides training to employers, associations, conference attendees etc, by request. During fiscal year 2011, ETTA trained 7,429 in the following industries: logging; arboriculture; long-term care; food manufacturing; wood products; construction; health hazards and public sector.

For additional reference, training materials, such as PowerPoint presentations, are also available on the State's OSH One Stop Shop web-based program. These are all presentations from the ETTA training sessions, to include the initial compliance courses. Interviews with trainees and experienced compliance staff revealed that they think the training they receive is excellent and of a sufficient frequency. Overall, the review of North Carolina's training programs resulted in a very favorable impression of their efforts and no deficiencies were noted.

Funding

Financial visits are done every two years. During FY 2011, the total authorized award funding equaled \$17,855,571 (Federal funds equaled \$5,501,500 and non-federal funds equaled \$12,354,071). Actual federal expenditures recorded on the 2011, final Financial Status Report (SF-269), and amounts drawn down from the Health and Human Services Payment Management System (HHSPMS) equaled \$6,000,093. This included 498,593 in supplemental funds for amendment one. Per the U.S. Department of Labor,

Occupational Safety and Health Administration Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreement, Appendix B “Financial Monitoring Guidelines – Grants and Cooperative Agreements,” we have reviewed the above award and have no issues to report at this time.

Staffing

Because of funding uncertainty, the State operated with 20 vacancies as of October 1, 2011. Four noncompliance positions were cut from the program in FY 2009. From an activity level, reduced funding has an impact on activity throughout the Division including number of inspections, and reaching training goals. During this period, the OSHNC’s staffing levels were below the approved benchmarks for the program. However, the State remains committed to staffing its program at the benchmark level, within the current budgetary constraints.

| | | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|---------------|------------------------------|----------------|----------------|----------------|----------------|
| Safety | Benchmark | 64 | 64 | 64 | 64 |
| | Positions Allocated | 64 | 64 | 64 | 64 |
| | Positions Filled | 55 | 54 | 56 | 50 |
| | Vacancies | 9 | 10 | 8 | 14 |
| | Percent of Benchmarks Filled | 85.9 | 84.3 | 87.5 | 78.1 |
| Health | Benchmark | 50 | 50 | 50 | 50 |
| | Positions Allocated | 50 | 50 | 50 | 50 |
| | Positions Filled | 47 | 45 | 44 | 44 |
| | Vacancies | 3 | 5 | 6 | 6 |
| | Percent of Benchmarks Filled | 94 | 90 | 88 | 88 |

Information Management

The State has consistently used various IMIS reports to manage the program and track OSH Division activity. This includes both mandated activity and activity goals and outcome goals included in the Strategic Management Plan. The reports are utilized by all levels of management from senior management to, bureau chiefs, and district supervisors. The reports are used not only to track program activity but to also assess activity by individual CSHOs. The frequency of report runs can vary from weekly to quarterly as conditions dictate. By tracking activity, a potential outlier can be detected before it becomes a real issue.

Some of the micro reports used include the case audit report to determine the status of a specific case file, the complaint tracking report to indicate the status of all open complaints, open inspection report to determine the status of all open inspections, and the unsatisfied activity report that tracks activity that requires an inspection.

The successful utilization of IMIS reports is demonstrated by the state’s achievement of goals included in the Strategic Management Plan and activity including processing of

complaints, issuing citations, and reduction in the number of open cases by 21% since 2009.

IMIS reports are run to track activity and outcome goals included in the Strategic Management Plan. Division staff is made aware of the progress made in achieving activity and outcome goals through a monthly Performance Indicator Report and Newsletter.

The State has also developed its own reports to secure information that is not available through IMIS reports. This includes activity such as the debt collection process, complaint tracking, and fatality investigations.

State Internal Evaluation Program

North Carolina has an effective internal audit procedure, documented in Administrative Notices 14. The Director's office staff conducts regular comprehensive assessments of Bureaus within the Occupational Safety and Health Division, including case file reviews. In fiscal year 2011, Districts five & six were the subject of a comprehensive audit. OSHNC's internal audits are more consistent with a third party audit. In addition in fiscal year 2011, the state also processed 14 Action Requests that were received for compliance activity. An Action Requests are completed for observed non-conformities or other opportunities for improvement. Action Requests are submitted to the affected bureau's management representative. The Action Requests are reviewed during a quarterly management meeting with the Bureau Chiefs and Assistant Director. The Action Requests usually result in changes to the FOM. OSHNC also completed Action Requests as a result of a review of the federal FOM.

For example, the recent changes to the FOM are initiated by an Action Request. OSHNC also completed an Action Request as a result of the review of the federal FOM.

In prior years, the Consultative Services Bureau and Planning, Statistics, and Information Management Bureau and the Compliance Bureau were the subjects of internal audits. Audits of specific program areas are also conducted under these procedures. For example, audits were conducted of the strategic management planning process and of citation lapse times for fatality and catastrophe investigations. The proposed subjects of internal audits are discussed with the Federal OSHA Area Director during preparation of the annual monitoring plan and the results of internal audits are shared with federal OSHA. The Bureaus of Compliance and Consultative Services also routinely conduct case file audits as part of their quality procedures.

North Carolina also has an active quality assurance program, which is contained in APN 13. Any division employee may submit action requests which are reviewed by the quality team and a response is sent to the person submitting the action request. Action requests may also originate from a CASPA recommendation or an internal audit finding.

V. Assessment of State Progress in Achieving Annual Performance Goals

North Carolina had good results with previous strategic plans developed to meet their overall outcome goals of reducing fatalities, injuries and illnesses. Fiscal Year 2011 was the third year of North Carolina's new five-year strategic plan, as described in the specific goals below. The state closely tracks data related to each area of emphasis. Due to cutbacks in personnel and vacant positions, required because of budget cuts, the state experienced a reduction in training activity, as well as inspection totals in comparisons to previous years. In FY 2011, the state conducted 4,254 inspections compared to 4,500 inspections in FY 2010.

Goal 1.1: Reduce Construction Industry Fatality Rate Statewide by 5% by 2013.

This strategic area is continued from North Carolina's previous strategic management plans. Processes to decrease fatalities in construction include establishing a Special Emphasis Program, Operational Procedures Notice 123J, for counties in the state that have higher fatality rates or high levels of construction activity. The emphasis program was implemented to enable the state to better focus their enforcement, consultative and training resources, and to have a means to track the numbers and results of these activities.

With 24 baseline fatalities and a rate of 0.01020, this industry is still a leader in workplace deaths. By continued OSH compliance, consultative, and training interventions and maintaining strong working relationships with construction industry groups through partnerships, alliances and other outreach efforts, NC DOL will have a significant impact on the state's overall outcome goal of reducing the rate of workplace fatalities.

| | Baseline | 2009 | 2010 | 2011 |
|-------------------|-----------------|-------------|-------------|-------------|
| Fatalities | 24 | 11 | 18 | 17 |
| Rate | .01020 | .00400 | .00720 | .00850 |
| Hispanic | N/A | 7 | 6 | 8 |

Goal 1.2: Decrease fatality rate in logging and arborist activity by 5% by 2013.

North Carolina has had an emphasis program aimed at reducing fatalities in this industry since 1994, and their established educational, outreach, and enforcement programs have been successful. North Carolina's historically close associations with industry groups were precursors to more recent alliances.

The State has had success in the past reducing the number of fatalities in logging and arboriculture. Experience has shown that a reduction in OSH activity can translate into an increase in the number of injuries and fatalities in this industry. The first state Special Emphasis Program for logging was initiated in FY 1994 in response to 13 logging fatalities in FY 1993. In FY 2011, the total number of fatalities and the fatality rate was below the baseline rate. In fiscal year 2011, the state conducted 72 inspections and 16 consultation visits related to this performance goal.

| | Baseline | 2009 | 2010 | 2011 |
|-------------------|-----------------|-------------|-------------|-------------|
| Fatalities | 4 | 2 | 6 | 2 |
| Rate | .01688 | .01640 | .02754 | .0078 |

Goal 2.1: Reduce the injury and illness rate in sawmills, veneer, manufactured home and other wood products, furniture and related products manufacturing (NAICS 321) by 15% by 2013.

North Carolina's strategy approach to effectively addressing this industry's high incident rate incorporates the use of enforcement, consultation, training, as well as cooperative programs. The baseline DART rate of 3.3 is higher than the industry average rate of 1.9. The DART rate has decreased during the first two years of the planning cycle. In fiscal year 2011, the state conducted 82 inspections and 85 consultation visits related to this performance goal.

| | Baseline | 2009 | 2010 |
|-----------------|-----------------|-------------|-------------|
| DART 321 | 3.3 | 2.5 | 2.6 |

Goal 2.2: Reduce the days away, restricted, or transferred (DART) rates in long-term care facilities by 15% by 2013.

This is another goal that has been carried over from previous strategic plans, due to the continuing high DART rate in this industry. The state has procedures in their operations manual for addressing ergonomic hazards during inspections. They also place an emphasis on training, in order to reduce hazards to long-term care employees. In fiscal year 2011, the state conducted 127 inspections and 67 consultation visits related to this performance goal.

| | Baseline | 2009 | 2010 |
|------------------|-----------------|-------------|-------------|
| DART Rate | 4.8 | 5.3 | 5.1 |

Goal 2.3: Conduct emphasis inspections, training, and consultation activity in establishments where employees might be exposed to health hazards such as lead, silica, asbestos, hexavalent chromium and isocyanates.

North Carolina established this goal in order to focus program resources on industrial hygiene activities, and to reduce employee exposure to known health hazards. Procedures for NC's Special Emphasis Program related to this goal are contained in North Carolina's Operational Procedures Notice 135C. A reduction in illnesses relating to the emphasis health hazards could influence the primary outcome goal of reducing the overall injury and illness rate by 15% during the five year cycle of the strategic plan. In fiscal year 2011, the state conducted 252 inspections and 171 consultation visits related to this performance goal.

| Activity for Specific Hazards | | | | |
|-------------------------------|---------------|---------------------------|-------------------|---------|
| Hazard | Total Samples | Samples with overexposure | Total Inspections | Surveys |
| Silica | 24 | 4 | 73 | 103 |
| Lead | 8 | 1 | 50 | 33 |
| Asbestos | 3 | 0 | 83 | 8 |
| Cr(VI) | 4 | 1 | 18 | 14 |
| Isocyanates | 8 | 2 | 28 | 13 |
| Totals | 56 | 8 | 252 | 171 |

Goal 2.4: Reduce the injury and illness rate (DART) in establishments in food manufacturing (NAICS 311) by 15% by 2013.

Fiscal year 2009 was a developmental year for this goal, and directed activities began in fiscal year 2010. The strategic planning process is intended to allocate limited resources in those areas of emphasis with above average injury and illness rates in an attempt to impact the overall State injury and illness rate. The food manufacturing DART rate was 3.5 in FY 2007 which was more than the overall industry DART rate of 1.9. The baseline rate for this industry was 4.3 which represents the three year average DART rate for the period 2005-2007. The first year of the five year cycle for this SEP was a planning year. Intervention relating to the strategic plan began on 10/1/09. Operational Procedure Notice 140B establishes the special emphasis program (SEP) for food manufacturing facilities and specific inspection guidelines. In fiscal year 2011, the state conducted 61 inspections and 13 consultation visits related to this performance goal.

| | Baseline | 2009 | 2010 |
|------------------|----------|------|------|
| DART Rate | 4.3 | 2.9 | 3.0 |

Goal 2.5: Develop/sustain partnership and alliances supporting OSHNC mission.

North Carolina continues to conduct partnerships and alliances, which are similar to those performed by federal OSHA. North Carolina uses these programs as tools to enhance efforts related to specific strategic goals and objectives. They limit the number of construction partnerships due to the program resources required to manage them. In fiscal year 2011, North Carolina had 5 partnerships and 9 alliances.

| Activity for Partnerships and Alliances | | | |
|---|------|------|------|
| | 2009 | 2010 | 2011 |
| Partnerships | 4 | 4 | 5 |
| Alliances | 12 | 12 | 9 |
| Total | 16 | 16 | 14 |

Appendix A
FY 2011 North Carolina State Plan FAME Report
Findings and Recommendations

| Rec # | Findings | Recommendations | FY 10 # |
|-------|--|--|---------|
| 11-01 | Supporting documentation such as, photographs, sketches, and witness statements, is purged from (most) case files. | OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation to retain pertinent information. | 10-01 |
| 11-02 | Health case files that were reviewed did not include sampling where concerns with potential exposures to asbestos, methylene chloride, hexavalent chromium and carbon monoxide were raised. In many cases sampling could not take place due to the work being finished; however serious citations were issued based upon what the CSHO believed to be on-site. | OSHNC should implement additional training to ensure that health files appropriately address potential exposures through full-shift monitoring. | New |
| 11-03 | All formal complaints reviewed were in fact non-formal complaints where an inspection had been conducted. Documentation of why the complaint was upgraded is not included in the case file. Coding is also not used consistently on the OSHA-7. | OSHNC should implement procedures to ensure case files include documentation as to why non-formal complaints are upgraded when the OSHA-7 indicates that an inspection will not be conducted. None of the complaint files reviewed included signed OSHA-7 forms. | New |
| 11-04 | Initial and final next-of-kin (NOK) letters are not consistently sent to the families for all fatality investigations. Letters should be sent to the NOK at the beginning and at the close of each investigation to ensure the family is made aware of the investigation and the results. In some instances, CSHOs are signing the letters and signed copies are not consistently maintained in the case file. | OSHNC should implement measures to ensure that initial and final NOK letters are signed by supervisors and sent at the beginning and end of fatality investigations and that signed copies are maintained in the case file. | New |
| 11-05 | In several of the case files reviewed, coding was found to be inaccurate and/or inappropriate for the inspections being conducted. Of the programmed health construction case files reviewed all were coded as health programmed inspections, however only safety items were reviewed and documented. Safety CSHOs code their files as safety and note a health local emphasis program (LEP) code. | OSHNC should implement procedures to ensure that coding is uniform and appropriate. Employees should be provided with additional training on how codes should be applied. | New |
| 11-06 | Respiratory protection is not assigned to Health CSHOs for use when monitoring for potential overexposures to air contaminants. | OSHNC should assign Health CSHOs with respiratory protection. Procedures should be developed and implemented for CSHOs to indicate what type of PPE, to include respiratory protection was used during the inspection. | New |
| 11-07 | While OSHNC had a hazard classification and penalty assessment system that was similar to federal OSHA, they did not follow it in all cases. Penalty assessment and severity/probability ratings did not follow guidance established in accordance with OSHNC FOM. | OSHNC should provide additional training to CSHOs to ensure each violation is classified accurately for penalty assessment, severity and probability. Guidelines for rating the severity of the injury or illness being prevented should be reviewed and revised as needed to assure | 10-02 |

| | | | |
|-------|---|--|-------|
| | | that they are consistent with the definitions of high, medium, and low severity in OSHNC's procedures. Supervisors should ensure that case files are reviewed more carefully to ensure this is being done. | |
| 11-08 | The OSHNC Field Operations Manual (FOM), Chapter VI, permits a CSHO to give a “cooperation” penalty reduction to an employer of up to 10 percent. This reduction is applied by the CSHO at his/her discretion to a “cooperative” employer. A significant percentage of the case files reviewed was given the Cooperation penalty reduction with minimal written justification or no justification at all. There is no way to understand the rationale for these penalty reductions. | OSHNC should eliminate the Cooperation penalty reduction policy. | New |
| 11-09 | Notes documenting informal conferences did not include the rationale to support or explain the reason changes were made to the violations and penalties in some case files. | OSHNC should ensure that informal conference notes documenting changes made to the citations and/or penalties are legible, organized and include the justification in the case file. | New |
| 11-10 | The FY 2009 FAME report noted deficiencies in North Carolina's discrimination program, including the State policy that: complaints must be received in writing; almost all interviews are conducted by phone; not in person; the lack of closing conference information in case files; and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual. The EDB has already begun a review of the new Federal OSHA Whistleblower Manual and has assigned staff to specific issues. | The State should continue their work toward the necessary modifications to the EDB's program to ensure procedures are at least as effective as Federal procedures. The State should develop and implement a tracking system with a final due date to ensure timely completion. | 10-03 |

Appendix B
FY 2011 North Carolina State Plan FAME Report
Status of FY 2010 Findings and Recommendations

| Rec # | Findings | Recommendations | Corrective Action Plan | State Action Taken | Status |
|----------------|--|---|---|---|---------|
| 10-01 09-01 | Supporting documentation such as, photographs, sketches, and witness statements, is purged from (most) case files. | OSHNC should revise their records retention policy with respect to OSHNC inspection case file documentation to retain pertinent information. | N/A | The State continues to disagree that the purging of a limited amount of case file information, for non-fatality and other routine inspections, limits the State's ability to conduct a complete review of a company history and to have sufficient information to support citations. Items deleted include photos, which require an operating expense, when they are converted to electronic format and disclosure requests are made. | Pending |
| 10-07 09-06 | The State's penalty calculation and adjustment policies result in lower penalties for serious violations. Several of the violations in the case files were not classified as serious or as severe as Federal OSHA would have classified them. Revised: <i>While OSHNC had a hazard classification and penalty assessment system that was similar to federal OSHA, they did not follow it in all cases. Penalty assessment and severity/probability ratings did not follow guidance established in accordance with OSHNC FOM.</i> | NC should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice. | Continue to conduct case file review by supervisors, during the citation review process for high profile cases, and the internal audit process. Provide refresher training for CSHOs when needed. Review case files identified by federal OSHA that might contain improperly classified violations. | The State continues to ascertain that the State's procedures for determining the classification of violations are the same as those of federal OSHA and that North Carolina's procedures for assessing severity are also consistent with federal OSHA procedures. OSHNC's goal is to properly classify violations based on policies and procedures contained in the Compliance Operations Manual. | Pending |

| | | | | | |
|-----------------------|--|---|--|--|--|
| 10-03 09-09 A-D | <p>The FY 2009 FAME report noted deficiencies in North Carolina's discrimination program, including the State policy that: complaints must be received in writing; all interviews are conducted by phone; not in person; the lack of closing conference information in case files; and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual.</p> | <p>The State should continue their work toward the necessary modifications to the EDB's program to ensure procedures are at least as effective as Federal procedures. The State should develop and implement a tracking system with a final due date to ensure timely completion.</p> | <p>Review the state's discrimination procedures in consideration of the newly released Federal OSHA Whistleblower Investigation Manual. OSHNC discrimination personnel attended the Federal OSHA discrimination training on September 20-23, 2011.</p> | <p>The State agrees that their discrimination investigation procedures are not identical to federal OSHA. However, the federal audit did not include any evidence that the quality of North Carolina's discrimination investigation process is negatively impacted by the difference in policies. State procedures do not require that all interviews be conducted by phone. Most complaints are initiated by phone and then reduced to writing as required by State statute. The State has been waiting on the new OSHA Whistleblower Investigation Manual before revising State discrimination policies and procedures. The federal document was released on September 20, 2011.</p> | <p>Pending- EDB has already begun a review of the new Federal OSHA Whistleblower Manual and has assigned staff to specific issues. Anticipated completion date was March 20, 2011.</p> |
|-----------------------|--|---|--|--|--|

Appendix C
North Carolina State Plan
FY 2011 Enforcement Activity

| | NC | State Plan Total | Federal OSHA |
|--|---------------------|----------------------|-----------------------|
| Total Inspections | 4,254 | 52,056 | 36,109 |
| Safety | 2,777 | 40,681 | 29,671 |
| % Safety | 65% | 78% | 82% |
| Health | 1,477 | 11,375 | 6,438 |
| % Health | 35% | 22% | 18% |
| Construction | 1,809 | 20,674 | 20,111 |
| % Construction | 43% | 40% | 56% |
| Public Sector | 163 | 7,682 | N/A |
| % Public Sector | 4% | 15% | N/A |
| Programmed | 2,539 | 29,985 | 20,908 |
| % Programmed | 60% | 58% | 58% |
| Complaint | 783 | 8,876 | 7,523 |
| % Complaint | 18% | 17% | 21% |
| Accident | 114 | 2,932 | 762 |
| Insp w/ Viols Cited | 2,633 | 31,181 | 25,796 |
| % Insp w/ Viols Cited (NIC) | 62% | 60% | 71% |
| % NIC w/ Serious Violations | 72.0% | 63.7% | 85.9% |
| Total Violations | 9,764 | 113,579 | 82,098 |
| Serious | 4,739 | 50,036 | 59,856 |
| % Serious | 49% | 44% | 73% |
| Willful | 11 | 295 | 585 |
| Repeat | 183 | 2,014 | 3,061 |
| Serious/Willful/Repeat | 4,933 | 52,345 | 63,502 |
| % S/W/R | 51% | 46% | 77% |
| Failure to Abate | 19 | 333 | 268 |
| Other than Serious | 4,812 | 60,896 | 18,326 |
| % Other | 49% | 54% | 22% |
| Avg # Violations/ Initial Inspection | 3.7 | 3.4 | 2.9 |
| Total Penalties | \$ 6,537,093 | \$ 75,271,600 | \$ 181,829,999 |
| Avg Current Penalty / Serious Violation | \$ 1,088.70 | \$ 963.40 | \$ 2,132.60 |
| % Penalty Reduced | 40.6% | 46.6% | 43.6% |
| % Insp w/ Contested Viols | 5.3% | 14.8% | 10.7% |
| Avg Case Hrs/Insp- Safety | 20.1 | 17.1 | 19.8 |
| Avg Case Hrs/Insp- Health | 32.4 | 26.8 | 33.1 |
| Lapse Days Insp to Citation Issued- Safety | 21.1 | 35.6 | 43.2 |
| Lapse Days Insp to Citation Issued- Health | 26.1 | 43.6 | 54.8 |
| Open, Non-Contested Cases w/ Incomplete Abatement >60 days | 98 | 1,387 | 2,436 |

Note: Federal OSHA does not include OIS data.

The total number of inspections for Federal OSHA is 40,684.

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011.

Appendix D

U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
PAGE 1 OF 2

State: NORTH CAROLINA

RID: 0453700

| MEASURE | From: 10/01/2010 | CURRENT | | REFERENCE/STANDARD |
|--|------------------------|----------------------|--------------------------|--|
| | To: 09/30/2011 | FY-TO-DATE | | |
| 1. Average number of days to initiate Complaint Inspections | 5469 6.34 862 | 250 4.54 55 | | Negotiated fixed number for each State |
| 2. Average number of days to initiate Complaint Investigations | 2880 2.90 993 | 180 1.89 95 | | Negotiated fixed number for each State |
| 3. Percent of Complaints where Complainants were notified on time | 830 98.57 842 | 54 100.00 54 | | 100% |
| 4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger | 2 66.67 3 | 0 0 | | 100% |
| 5. Number of Denials where entry not obtained | 0 | 0 | 0 | |
| 6. Percent of S/W/R Violations verified | | | | |
| Private | 301 7.21 4177 | 10 .26 3885 | | 100% |
| Public | 0 .00 131 | 0 .00 131 | | 100% |
| 7. Average number of calendar days from Opening Conference to Citation Issue | 49849 28.42 1754 | 4965 24.57 202 | 2631708 51.9 50662 | National Data (1 year) |

| | | | | |
|--------|-------|-------|--------|------------------------|
| Health | 31039 | 2976 | 767959 | |
| | 33.88 | 33.06 | 64.8 | National Data (1 year) |
| | 916 | 90 | 11844 | |

*NC FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
PAGE 2 OF 2

State: NORTH CAROLINA

RID: 0453700

| MEASURE | From: 10/01/2010 | CURRENT | | REFERENCE/STANDARD |
|---|------------------|------------|-----------|-------------------------------|
| | To: 09/30/2011 | FY-TO-DATE | | |
| 8. Percent of Programmed Inspections with S/W/R Violations | | | | |
| Safety | 898 | 107 | 90405 | |
| | 52.00 | 70.39 | 58.5 | National Data (3 years) |
| | 1727 | 152 | 154606 | |
| Health | 381 | 35 | 10916 | |
| | 49.80 | 50.72 | 51.7 | National Data (3 years) |
| | 765 | 69 | 21098 | |
| 9. Average Violations per Inspection with Vioations | | | | |
| S/W/R | 5303 | 590 | 419386 | |
| | 1.98 | 2.00 | 2.1 | National Data (3 years) |
| | 2675 | 294 | 198933 | |
| Other | 4684 | 534 | 236745 | |
| | 1.75 | 1.81 | 1.2 | National Data (3 years) |
| | 2675 | 294 | 198933 | |
| 10. Average Initial Penalty per Serious Violation (Private Sector Only) | 6467226 | 580250 | 611105829 | |
| | 1309.95 | 1096.88 | 1679.6 | National Data (3 years) |
| | 4937 | 529 | 363838 | |
| 11. Percent of Total Inspections in Public Sector | 163 | 11 | 420 | |
| | 3.83 | 4.03 | 3.0 | Data for this State (3 years) |
| | 4257 | 273 | 13940 | |

| | | | | |
|--|-----------------------|----------------------|---------------------------|-------------------------|
| 12. Average lapse time from receipt of Contest to first level decision | 32160 353.40 91 | 6869 528.38 13 | 3533348 199.7 17693 | National Data (3 years) |
| 13. Percent of 11c Investigations Completed within 90 days | 36 48.00 75 | 0 | 100% | |
| 14. Percent of 11c Complaints that are Meritorious | 5 6.67 75 | 0 | 1517 23.0 6591 | National Data (3 years) |
| 15. Percent of Meritorious 11c Complaints that are Settled | 5 100.00 5 | 0 | 1327 87.5 1517 | National Data (3 years) |

*NC FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E

QQQQ Q SIR Q4SIR37 SIR37 111011 111845 PROBLEMS - CALL Y Goodhall 202 693-1734

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U. S. DEPARTMENT OF LABOR

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS ----- | | ----- 6 MONTHS ----- | | ----- 12 MONTHS ----- | | ----- 24 MONTHS ----- | |
|---|----------------------|-------|----------------------|-------|-----------------------|-------|-----------------------|-------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| C. ENFORCEMENT (PRIVATE SECTOR) | | | | | | | | |
| 1. PROGRAMMED INSPECTIONS (%) | | | | | | | | |
| A. SAFETY | 3694 | 408 | 8169 | 854 | 18137 | 1650 | 40070 | 3385 |
| | 61.3 | 61.9 | 61.4 | 64.5 | 62.5 | 62.9 | 63.7 | 63.6 |
| | 6026 | 659 | 13312 | 1325 | 29042 | 2625 | 62876 | 5325 |
| B. HEALTH | 480 | 191 | 1020 | 332 | 2126 | 736 | 4357 | 1673 |
| | 39.7 | 55.4 | 36.4 | 52.8 | 34.6 | 54.1 | 34.7 | 55.9 |
| | 1208 | 345 | 2806 | 629 | 6150 | 1360 | 12569 | 2994 |
| 2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 3378 | 292 | 7266 | 614 | 14959 | 1126 | 32614 | 2445 |
| | 73.7 | 58.5 | 72.4 | 59.6 | 70.1 | 59.4 | 69.1 | 60.9 |
| | 4583 | 499 | 10036 | 1030 | 21330 | 1896 | 47196 | 4014 |
| B. HEALTH | 456 | 149 | 890 | 300 | 1723 | 532 | 3487 | 1211 |
| | 57.0 | 68.7 | 57.2 | 67.4 | 56.2 | 62.9 | 55.3 | 61.3 |
| | 800 | 217 | 1555 | 445 | 3068 | 846 | 6309 | 1975 |
| 3. SERIOUS VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 11703 | 893 | 23768 | 1683 | 48704 | 3052 | 109064 | 6156 |
| | 79.6 | 59.1 | 77.4 | 57.2 | 76.7 | 53.2 | 78.4 | 51.4 |
| | 14698 | 1511 | 30703 | 2943 | 63528 | 5735 | 139117 | 11967 |
| B. HEALTH | 2634 | 487 | 5290 | 859 | 10266 | 1549 | 21598 | 3073 |
| | 66.6 | 46.8 | 64.7 | 41.9 | 64.4 | 42.4 | 66.7 | 40.5 |
| | 3957 | 1040 | 8180 | 2051 | 15930 | 3657 | 32380 | 7586 |

4. ABATEMENT PERIOD FOR VIOLS

| | | | | | | | | |
|----------------------------|-----------------------|--------------------|-----------------------|--------------------|------------------------|--------------------|-------------------------|--------------------|
| A. SAFETY PERCENT >30 DAYS | 2394 16.6 14465 | 104 8.9 1167 | 4978 16.8 29573 | 191 8.4 2262 | 10776 17.9 60243 | 336 8.2 4119 | 23693 17.9 132414 | 581 7.2 8052 |
| B. HEALTH PERCENT >60 DAYS | 259 6.5 4006 | 20 2.7 745 | 711 8.6 8234 | 36 2.8 1283 | 1451 9.4 15507 | 154 6.6 2331 | 3159 10.0 31619 | 208 4.7 4418 |

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U. S. DEPARTMENT OF LABOR

PAGE 2

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NORTH CAROLINA

PERFORMANCE MEASURE

| | 3 MONTHS | | 6 MONTHS | | 12 MONTHS | | 24 MONTHS | |
|--|----------|-------|----------|-------|-----------|-------|-----------|-------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |

C. ENFORCEMENT (PRIVATE SECTOR)

5. AVERAGE PENALTY

A. SAFETY

| | | | | | | | | |
|--------------------|-------------------------|----------------------|---------------------------|----------------------|---------------------------|------------------------|---------------------------|------------------------|
| OTHER-THAN-SERIOUS | 505479 1181.0 428 | 26025 565.8 46 | 1258835 1195.5 1053 | 43850 476.6 92 | 2803637 1126.9 2488 | 127850 603.1 212 | 5086228 1055.2 4820 | 267538 571.7 468 |
|--------------------|-------------------------|----------------------|---------------------------|----------------------|---------------------------|------------------------|---------------------------|------------------------|

B. HEALTH

| | | | | | | | | |
|--------------------|-------------------------|----------------------|-------------------------|----------------------|------------------------|------------------------|--------------------------|------------------------|
| OTHER-THAN-SERIOUS | 219203 1184.9 185 | 16650 378.4 44 | 441915 1077.8 410 | 69775 758.4 92 | 853346 980.9 870 | 111000 593.6 187 | 1667151 958.7 1739 | 195315 514.0 380 |
|--------------------|-------------------------|----------------------|-------------------------|----------------------|------------------------|------------------------|--------------------------|------------------------|

6. INSPECTIONS PER 100 HOURS

| | | | | | | | | |
|-----------|---------------------|-------------------|----------------------|--------------------|----------------------|--------------------|-----------------------|---------------------|
| A. SAFETY | 6874 6.0 1138 | 781 4.0 197 | 15417 5.6 2730 | 1536 4.1 378 | 33850 5.5 6145 | 3037 4.2 726 | 73070 5.4 13476 | 6199 4.1 1507 |
|-----------|---------------------|-------------------|----------------------|--------------------|----------------------|--------------------|-----------------------|---------------------|

| | | | | | | | | |
|-----------|--------------------|-------------------|---------------------|-------------------|---------------------|--------------------|----------------------|---------------------|
| B. HEALTH | 1458 2.4 615 | 391 2.8 140 | 3330 2.2 1501 | 718 2.5 293 | 7311 2.2 3390 | 1567 2.6 601 | 14958 2.0 7404 | 3449 2.8 1246 |
|-----------|--------------------|-------------------|---------------------|-------------------|---------------------|--------------------|----------------------|---------------------|

7. VIOLATIONS VACATED %

| | | | | | | | | |
|--|----------------------|-------------------|----------------------|--------------------|----------------------|---------------------|------------------------|---------------------|
| | 1270 5.6 22608 | 49 1.6 3130 | 3026 6.6 46128 | 107 1.8 5981 | 6577 7.0 93448 | 243 2.2 11020 | 12352 6.2 200310 | 566 2.5 22551 |
|--|----------------------|-------------------|----------------------|--------------------|----------------------|---------------------|------------------------|---------------------|

| | | | | | | | | |
|------------------------------|------------------------------|----------------------------|------------------------------|----------------------------|-------------------------------|----------------------------|--------------------------------|----------------------------|
| 8. VIOLATIONS RECLASSIFIED % | 737 3.3 22608 | 42 1.3 3130 | 1997 4.3 46128 | 99 1.7 5981 | 4456 4.8 93448 | 211 1.9 11020 | 9147 4.6 200310 | 474 2.1 22551 |
| 9. PENALTY RETENTION % | 19478404 61.0 31918969 | 1209522 70.7 1709849 | 40012395 61.6 65001782 | 1868728 69.7 2679799 | 77322520 62.8 123124542 | 3574009 68.4 5225498 | 134938244 62.8 214845679 | 6447512 69.4 9290076 |

U. S. DEPARTMENT OF LABOR

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS ----- | | ----- 6 MONTHS ----- | | ----- 12 MONTHS ----- | | ----- 24 MONTHS ----- | |
|---------------------|----------------------|--------|----------------------|--------|-----------------------|--------|-----------------------|--------|
| | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC |

D. ENFORCEMENT (PUBLIC SECTOR)

1. PROGRAMMED INSPECTIONS %

| | | | | | | | | |
|-----------|--------------------|------------------|---------------------|------------------|----------------------|------------------|----------------------|--------------------|
| A. SAFETY | 408 61.9 659 | 34 81.0 42 | 854 64.5 1325 | 40 81.6 49 | 1650 62.9 2625 | 64 76.2 84 | 3385 63.6 5325 | 101 70.6 143 |
| B. HEALTH | 191 55.4 345 | 8 66.7 12 | 332 52.8 629 | 9 36.0 25 | 736 54.1 1360 | 29 40.3 72 | 1673 55.9 2994 | 42 32.8 128 |

2. SERIOUS VIOLATIONS (%)

| | | | | | | | | |
|-----------|---------------------|------------------|----------------------|------------------|----------------------|-------------------|-----------------------|--------------------|
| A. SAFETY | 893 59.1 1511 | 33 47.8 69 | 1683 57.2 2943 | 43 50.6 85 | 3052 53.2 5735 | 83 48.3 172 | 6156 51.4 11967 | 102 43.8 233 |
| B. HEALTH | 487 46.8 1040 | 14 50.0 28 | 859 41.9 2051 | 24 54.5 44 | 1549 42.4 3657 | 67 45.9 146 | 3073 40.5 7586 | 75 41.7 180 |

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U. S. DEPARTMENT OF LABOR

PAGE 4

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = NORTH CAROLINA

| PERFORMANCE MEASURE | ----- 3 MONTHS---- | | ----- 6 MONTHS----- | | ----- 12 MONTHS---- | | ----- 24 MONTHS---- | |
|------------------------------|--------------------|--------|---------------------|--------|---------------------|--------|---------------------|---------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| E. REVIEW PROCEDURES | | | | | | | | |
| 1. VIOLATIONS VACATED % | 579 | 38 | 1131 | 58 | 2220 | 149 | 4270 | 317 |
| | 22.8 | 35.2 | 23.4 | 32.6 | 23.5 | 26.8 | 23.0 | 29.6 |
| | 2542 | 108 | 4834 | 178 | 9442 | 557 | 18586 | 1071 |
| 2. VIOLATIONS RECLASSIFIED % | 328 | 12 | 620 | 29 | 1259 | 54 | 2360 | 90 |
| | 12.9 | 11.1 | 12.8 | 16.3 | 13.3 | 9.7 | 12.7 | 8.4 |
| | 2542 | 108 | 4834 | 178 | 9442 | 557 | 18586 | 1071 |
| 3. PENALTY RETENTION % | 3616720 | 286590 | 9500018 | 305545 | 16062961 | 532169 | 28079915 | 773021 |
| | 56.1 | 49.0 | 62.4 | 49.8 | 62.3 | 56.6 | 60.6 | 64.5 |
| | 6443756 | 584788 | 15212620 | 613238 | 25766759 | 940814 | 46371522 | 1199286 |

APPENDIX F

FY 2011 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix G
North Carolina State Plan FY 2011 23(g) Consultation Activity

| | NC Public Sector | Total State Plan Public Sector |
|--|---------------------|-----------------------------------|
| Requests | 119 | 1,328 |
| <i>Safety</i> | 11 | 576 |
| <i>Health</i> | 6 | 560 |
| <i>Both</i> | 102 | 192 |
| Backlog | 1 | 123 |
| <i>Safety</i> | - | 51 |
| <i>Health</i> | - | 58 |
| <i>Both</i> | 1 | 14 |
| Visits | 207 | 1,632 |
| <i>Initial</i> | 189 | 1,336 |
| <i>Training and Assistance</i> | 9 | 175 |
| <i>Follow-up</i> | 9 | 121 |
| <i>Percent of Program Assistance</i> | 100% | 67% |
| <i>Percent of Initial Visits with Employee Participation</i> | 100% | 96% |
| Employees Trained | 490 | 5,030 |
| <i>Initial</i> | 471 | 2,144 |
| <i>Training and Assistance</i> | 19 | 2,886 |
| Hazards | 848 | 6,063 |
| <i>Imminent Danger</i> | - | 3 |
| <i>Serious</i> | 722 | 4,804 |
| <i>Other than Serious</i> | 124 | 1,171 |
| <i>Regulatory</i> | 2 | 85 |
| <i>Referrals to Enforcement</i> | - | 6 |
| Workers Removed from Risk | 10,733 | 171,075 |
| <i>Imminent Danger</i> | - | 55 |
| <i>Serious</i> | 8,553 | 136,884 |
| <i>Other than Serious</i> | 2,108 | 26,046 |
| <i>Regulatory</i> | 72 | 8,090 |

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011