

**U.S. Department of Labor**

Occupational Safety and Health Administration  
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Atlanta, Georgia 30303



**JUL 31 2013**

Allen McNeely, Deputy Commissioner  
North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101

Dear Commissioner McNeely:

OSHA has completed the FY 2012 Federal Annual Monitoring and Evaluation (FAME) of the North Carolina Occupational Safety and Health State Plan. Enclosed you will find the final report, which includes a listing of completed and continued findings from the FY 2011 enhanced FAME Follow-Up Report and any new findings and observations that were identified for FY 2012. All 27 FY 2012 FAME Reports, including the appendices, will be posted on OSHA's web site on August 16th.

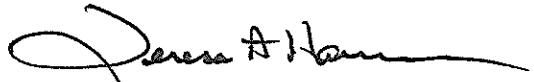
If you wish, North Carolina may provide a short statement responding to the report, which we will post on our public web site along with the FAME. This statement should not be confused with the Corrective Action Plan (CAP), which is discussed below. Inclusion of any corrective action information in this statement should not be construed as a fulfillment of the CAP requirement. Statements received by August 14<sup>th</sup> will be posted in conjunction with the FAMEs on August 16<sup>th</sup>. Statements submitted after August 14<sup>th</sup> will be processed in a timely fashion through OSHA's standard web update process.

This year, OSHA will not post any SOARs. Instead, OSHA will, upon request, add a link to your State's SOAR if you have made it available on your State Plan web site. If you would like OSHA to link to your SOAR, please provide me with the working web link at your convenience. Any SOAR linking requests received by Wednesday, August 14<sup>th</sup> will be posted in conjunction with the FAME. Requests made after August 14<sup>th</sup> will be processed in a timely fashion through OSHA's standard web update process. Additionally, as stated in the FAME, SOARs will be made available upon request. OSHA will inform you of any such requests prior to dissemination of the SOAR.

For FY 2012, North Carolina does not have any open findings and recommendations. As such, North Carolina is not required to complete and submit a CAP.

Thank you again for your continued cooperation. I am available to answer any questions you may have regarding either this report or the follow-up process.

Sincerely,



Teresa A. Harrison  
Acting Regional Administrator

Enclosure

cc: Kim Morton, OSHA Area Director, Raleigh

## **FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2011 – September 30, 2012**

**Initial Approval Date: January 26, 1973  
Program Certification Date: October 5, 1976  
Final Approval Date: December 10, 1996**

**Prepared by:  
U. S. Department of Labor  
Occupational Safety and Health Administration  
Region IV  
Atlanta, Georgia**



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## **I. Executive Summary**

The fiscal year (FY) 2012 FAME report is an abridged FAME report. This report is focused on the State's progress in making corrections in response to the FY 2011 FAME Report recommendations. In addition, this report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2012, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) reports ending September 30, 2012.

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 as responsible 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 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; Bureau of Education, Training, and Technical Assistance; Bureau of Consultative Services; Bureau of Planning, Statistics and Information Management; and the Agricultural Safety and Health Bureau. The main office and a 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 64 safety compliance officers and 47 health compliance officers assigned to district offices throughout the State. Additional safety and health professionals work in Education, Training, and Technical Assistance 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, 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 onsite 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 as the private sector. North Carolina's Carolina Star Program organizationally falls within the Education and Training Bureau.

This report was prepared under the direction of Teresa Harrison, Acting Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2011 through September 30, 2012. 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.

A total of ten findings and recommendations are documented in this evaluation report. The State has taken appropriate corrective action to effectively complete nine of these items. The remaining item is identified as an observation (Finding 11-08 has been carried over as Observation 12-01). An Observation is an item that has not proven to impact the effectiveness of the State's program, but for which the Region wishes to continue monitoring. Each of the findings, recommendations, as well as the State's response is addressed in detail below.

## **II. Major New Issues**

During FY 2012 the State implemented a heat stress initiative, which included training, publications, consultation and compliance activity. Additionally, Operational Procedure Notice (OPN) 141 was developed and implemented to provide guidance to compliance personnel tasked with conducting heat stress related inspections. Additional special accomplishments are included in the SOAR, Appendix E.

## **III. State Progress in Addressing FY 2011 FAME Report Recommendations**

The FY 2011 FAME report contained ten findings and recommendations. Details regarding the State's progress in responding to each of the recommendations from the FY 2011 FAME report are provided below:

**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.

**Status- Completed:** 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.

**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.

**Status- Completed:** CSHOs have received refresher health inspection training including proper sampling requirements. In addition, a case file review was conducted to follow-up on this item. Health complaint files were reviewed and it was determined that sampling had been conducted.

**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.

**Status- Closed:** 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 non-formal complaints. This is a procedural difference in state policy, and does not result in the State being less effective than federal OSHA.

**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.

**Status- Completed:** 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 included requirements for communicating with the NOK. Adherence to NOK procedures is also verified through additional case file review during compliance internal audits.

**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. In addition, all fatality and accident inspections were coded FAT/CAT.

**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.

**Status- Completed:** CSHOs received refresher training in August and September of 2012 that included case file coding requirements. Health Compliance Officers will continue to code all inspections as health and safety Compliance Officers 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.

**Finding 11-06:** Respiratory protection is not provided to Health CSHOs for use when monitoring for potential overexposures to air contaminants. Overexposures have been documented in case files; however CSHOs are not wearing adequate personal protective equipment (PPE) to prevent their own exposure.

**Recommendation 11-06:** OSHNC should provide Health CSHOs with respiratory protection, training on its use, and ensure that they are medically fit to wear the respirator. Procedures should be developed and implemented for CSHOs to indicate what type of PPE, to include respiratory protection was used during the inspection.

**Status- Completed:** 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.

**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.

**Status- Completed:** In August 2012, 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.

**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 included the Cooperation penalty reduction with minimal written justification or no justification at all. OSHA is concerned that the lack of justification may result in non-uniform application of the reduction.

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

**Status- Observation:** According to the State, 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 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.

The OSHA Area Office will continue to effectively monitor the State’s performance in this area to determine if the policy, as presently documented and applied, may result in non-uniform application of the reduction. As such, Finding and Recommendation 11-08 has been converted into an observation (12-01). This modification, in conjunction with conversations with and actions taken by OSHNC as noted above, necessitated a reframing of the concern to fit the mold of an observation, and the revised language is captured in Appendix B of this report.

**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.

**Status- Completed:** 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.

**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; 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 Employment Discriminations Bureau (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.

**Status- Completed:** 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 2011 E-FAME.

## **IV. Assessment of State Performance**

### **A. Enforcement**

#### **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 Field Operations Manual. Inspection data indicates that North Carolina handled 957 complaint investigations in 2012 and conducted 901 complaint inspections. According to the SAMM report, North Carolina responds timely to complaints. Complaint investigations were initiated within an average of 3.13 days, and complaint inspections were initiated within an average of 5.48 days. A review of the IMIS reports showed that during 2012 approximately 38% of their complaint inspections were in-compliance.

#### **2. Fatalities**

In FY 2012, North Carolina investigated 36 workplace fatalities. The number of general industry deaths was unchanged at 5 in 2012, while the number of fatalities in construction decreased from 17 in 2011 to 10 in 2012. 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. OSHNC has taken a proactive approach to help prevent injuries, illnesses and fatalities in North Carolina workplaces by establishing partnerships with some of the most hazardous industries. The OSH Division has identified four hazards known as "the big four" that have caused 80 percent of the work-related deaths in North Carolina during the past decade. The leading cause of the work-related fatalities in 2012 was struck-by events with 14. Six workers were caught in/between objects, and five workers died in falls from elevations. Four were electrocuted. Six workers died in other fatal events. The OSH Division also issued hazard alerts regarding forklifts, struck-bys, heat stress and firefighter safety after identifying problems in those areas the previous year.

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.

### **3. Targeting and Programmed Inspections**

According to inspection statistics run for this report, OSHNC conducted 4,236 inspections in FY 2012, 2858 of which were programmed. This includes many of the 1,835 inspections conducted in the construction sector. According to the SIR, 61.8% of programmed safety inspections and 65.7% of programmed health inspections had violations. Additional data indicates that an average of 3.9 violations were cited per inspection, and that 54.51% of safety violations and 55.6% 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.

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 state's latest injury and illness rate for private industry remains at an all-time low at 3.1 per 100 full-time workers. The injury and illness rate has remained 3.1 for the past three years. The U.S. Bureau of Labor Statistics compiles the injury and illness rate data. North Carolina uses injury and illness rates and fatality rates in their strategic planning process to decide where their resources should be focused. Where possible, reductions in rates are used to measure outcome results.

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:

<b>Construction Programmed Inspections</b>	<b>OSHNC</b>	<b>General Industry Programmed Inspections</b>	<b>OSHNC</b>
Average number of violations	2.3	Average number of violations	5.3
In-Compliance Rate	37%	In-Compliance Rate	26%
% violations classified as Serious, Repeat, and Willful	81%	% violations classified as Serious, Repeat, and Willful	37%

#### **4. Citations and Penalties**

In FY 2012, the 4,236 inspections conducted resulted in an average of 3.6 violations per inspection, with 57.4% of safety violations and 46.1% of health violations classified as serious. OSHNC routinely places an emphasis on keeping citation lapse times low. In 2012, the average lapse time (in days) from opening conference to citation issuance is identified below:

<b>Average Lapse Time</b>	<b>OSHNC</b>	<b>Federal OSHA</b>
<b>Safety</b>	23.5	44.4
<b>Health</b>	26.3	57.2
<b>Total Average</b>	24.6	46.6

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.

#### **Percent of Violations Cited Serious/Other Than Serious**

	<b>OSHNC</b>	<b>Federal OSHA</b>
<b>Serious</b>	51%	73%
<b>OTS</b>	49%	23%

In FY 2012, the average penalty per serious, repeat and willful violations for private sector inspections was as follows:

<b>Classification</b>	<b>OSHNC</b>	<b>Federal OSHA</b>
<b>Willful</b>	\$44,333	\$35,982
<b>Repeat</b>	\$2,663	\$14,326
<b>Serious</b>	\$943	\$2,153

## **5. Abatement**

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.

## **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**

### **1. 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% of violations were vacated and 1.1% of violations were reclassified as a result of informal settlement agreements. The penalty retention was 72.6%.

### **2. Formal Review of Citations**

In FY 2012, 5.3% of inspections were contested compared to 2.1% in 2011. Seven Administrative Law Judges within the Occupational Safety and Health Review Commission hold hearings and issues decisions on contested citations. Appeals are heard by the three members of the Review Commission that 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, 65.8% of penalties were retained 22.6% were vacated, and 10.4% 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 or "as effective as" procedures 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
Hazard Communication - Globally Harmonized System of Classification	03/26/2012	Yes	09/26/2012
Revising Standards Referenced in the Acetylene Standard	03/08/2012	Yes	09/08/2012

### 2. Federal Program/State Initiated Changes

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Adoption Date
Compliance Policy for Manufacture, Storage, Sale, Handling, Use and Display of Pyrotechnics	10/27/2011	Yes	12/13/2011
National Emphasis Program - PSM Covered Chemical Facilities	11/29/2011	Yes	05/21/2012
Nursing Home NEP	04/05/2012	No	N/A
Communicating OSHA Fatality Inspection Procedures to a Victim's Family	04/17/2012	No	N/A
Longshoring and Marine Terminals Tool ShedDirective	09/12/2012	Yes	09/25/2012
Section 11(c) Appeals Program	09/12/2012	No	N/A

## D. Variances

North Carolina currently has 12 permanent variances, six of which are multi-state variances approved by federal OSHA. One variance was issued by the State in FY 2012. The recently issued variance grants permission to an employer to use an alternative supplied air respirator system, for entry and escape from certain immediately dangerous

atmospheres. North Carolina does not have any temporary variances and the State appropriately shares variance requests with federal monitors.

## **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 190 public sector inspections in FY 2012, which accounted for 4.5% of all inspections.

### **Public Sector On-site Consultation Program**

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

The bureau continued to provide services to the employers and employees in both the private and public sectors during FY 2012. For public sector visits, the State had a goal to reach 200 establishments and exceeded that goal by conducting 209. The number of hazards abated during on-site consultation public sector visits is listed in the chart below:

<b>Serious Hazards Confirmed Abated</b>	<b>Other Hazards Confirmed Abated</b>		
Public Safety	437	Public Safety	652
Public Health	226	Public Health	446
Total Public	663	Total Public	1,098

## **F. Discrimination Program**

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 Specialist. Five of the Investigators report to work at the EDB office in Raleigh, NC; the other two work from assigned flexiplace locations in North Carolina. The Information Specialist is assigned to the Raleigh office. The program is supervised by an Administrator/Bureau Chief, who also conducts investigations.

North Carolina Retaliatory Employment Discrimination Act protects employees who in good faith engage in one of the "protected activities" under the law. REDA protects a wide number of areas and individuals, including wage and hour issues, workplace safety rights, mine safety and health, and sickle cell and hemoglobin C carriers. REDA also applies to areas covering genetic testing, National Guard service, juvenile justice system, domestic violence, pesticide exposure and employees reporting activities of their employers under the Paraphernalia Control Act. 32.43% of 11(c) whistleblower cases were completed within 90 days in FY 2012.

#### **G. Complaints About State Plan Administration (CASPA)**

During this period the State received two CASPAs filed with the federal OSHA Area Office in Raleigh, North Carolina. One complaint alleged that OSHNC did not provide adequate safety and health protection for migrant and seasonal farm workers. The second complaint indicated that the North Carolina, Department of Labor, Occupational Safety and Health Division did not conduct an adequate workplace safety and health inspection. Both investigations are now closed. The State responded to recommendations following both CASPA investigations.

<b>CASPA</b>			
<b>State CASPA Number</b>	<b>Date of Acknowledgement</b>	<b>Date of Final Report to State</b>	<b>Corrective Action Required</b>
2012-NC-21	11/04/2011	10/10/2012	Yes
2012 -NC-22	04/05/2012	09/06/2012	Yes

#### **H. Voluntary Compliance Program**

Education, Training and Technical Assistance (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.

<b>Active Alliances</b>	
Builder's Mutual Insurance Company	Carolinas Associated General Contractors
Forestry Mutual Insurance Company (FMIC)	Lamar Advertising Company
North Carolina Forestry Association (NCFA)	Safety & Health Council of North 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.

In FY 2012 North Carolina had three active partnerships:

<b>Current Partnerships</b>	
<b>Partnership Participants</b>	<b>Partnership Site</b>
Barnhill Contracting Company and Balfour Beatty Construction, LLC	Wake County Justice Center
Western Wake Raleigh-Durham	Western Wake Freeway

Roadbuilders with Archer Western-Granite	
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 147 companies, placing North Carolina behind only Texas for the most VPP sites. In 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 VPP level. In the Carolina Star program, a company may be placed in provisional status for additional reasons, such as a rate increase, lack of management commitment or other program elements falling below Carolina Star quality. 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. 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 enlisted 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 need.

ETTA also provides training to employers, associations, conference attendees etc, by request. During fiscal year 2012, ETTA trained 9,758 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.

## **Staffing**

Because of funding uncertainty, the State operated with six vacancies as of October 1, 2012. 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, but at an acceptable level based on the benchmark criteria. However, the State remains committed to staffing its program at the appropriate level, within the current budgetary constraints.

		<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Safety</b>	Benchmark	64	64	64	64	64
	Positions Allocated	64	64	64	64	64
	Positions Filled	55	54	56	50	61
	Vacancies	9	10	8	14	3

	Percent of Benchmarks Filled	85.9	84.3	87.5	78.1	95
Health	Benchmark	50	50	50	50	50
	Positions Allocated	50	50	50	50	47
	Positions Filled	47	45	44	44	44
	Vacancies	3	5	6	6	3
	Percent of Benchmarks Filled	94	90	88	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.

## State Internal Evaluation Program

North Carolina has an effective internal audit procedure, documented in Administrative Procedure Notice 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. In FY 2012, OSHNC did an internal audit of all fatality case files to determine if policies and procedures were being followed especially relating to required contact with victim's next of kin. OSHNC's internal audits are consistent with a third party audit. In addition in fiscal year 2012, the State also processed 44 Action Requests that were received relating to division activity. Action Requests are completed for observed non-conformities and 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

## 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 and injuries and illnesses rates. Fiscal Year 2012 was the fourth year of North Carolina's current five-year strategic plan, as described in the specific goals below. The State closely tracks data related to each area of emphasis. In FY 2012, the State conducted 4,236 inspections compared to 4,254 inspections in FY 2011.

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

As previously stated, this strategic area is continued from North Carolina's last strategic management plan. Processes to decrease fatalities in construction, once again, included 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. OSH compliance, consultative, and training interventions, as well partnerships and alliances should have a significant impact on the State's overall outcome goal of reducing the rate of workplace fatalities.

	<b>Baseline</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Fatalities</b>	24	11	18	17	10
<b>Rate</b>	.01020	.00400	.00720	.00850	.0006
<b>Hispanic</b>	N/A	7	6	8	4

**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. However, experience has shown that a reduction in OSH activity can translate into an increase in the number of injuries and fatalities in this industry. Therefore, the State's Special Emphasis Program for logging was initiated in FY 1994. In FY 2012, the total number of fatalities and the fatality rate was below the baseline rate. In fiscal year 2012, the state conducted 107 inspections and 18 consultation visits related to this performance goal.

	<b>Baseline</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Fatalities</b>	4	2	6	2	2
<b>Rate</b>	.01688	.01640	.02754	.0078	.0173

**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 strategic 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 2012, the state conducted 84 inspections and 93 consultation visits related to this performance goal.

	Baseline	2009	2010	2011	2012
<b>DART Rate</b>	3.3	2.5	2.6	2.6	TBD

**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 carried over from the last strategic plan, due to the continuing high DART rate in this industry. The State has procedures in their operations manual for addressing ergonomic hazards during inspections, including an emphasis on training, in order to reduce hazards to long-term care employees. In fiscal year 2012, the State conducted 83 inspections and 49 consultation visits related to this performance goal.

	Baseline	2009	2010	2011	2012
<b>DART Rate</b>	4.8	5.3	5.1	4.5	TBD

**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 2012, the state conducted 218 inspections and 129 consultation visits related to this performance goal.

Activity for Specific Hazards				
Hazard	Total Samples	Samples with overexposure	Total Inspections	Surveys
<b>Silica</b>	18	4	65	77
<b>Lead</b>	15	2	37	20
<b>Asbestos</b>	0	0	67	11
<b>Cr(VI)</b>	18	1	16	10
<b>Isocyanates</b>	8	0	33	11
<b>Totals</b>	59	7	218	129

**Goal 2.4: Reduce the injury and illness rate (DART) in establishments in food manufacturing (NAICS 311) by 12% by 2013.**

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 represent 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 2012, the state conducted 55 inspections and 14 consultation visits related to this performance goal.

	<b>Baseline</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>DART Rate</b>	4.3	2.9	3.0	3.1	TBD

**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 2012, North Carolina had 3 partnerships and 8 alliances.

<b>Activity for Partnerships and Alliances</b>				
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Partnerships</b>	4	4	5	3
<b>Alliances</b>	12	12	9	8
<b>Total</b>	16	16	14	11

**Appendix A – New and Continued Findings and Recommendations**  
FY 2012 North Carolina State Plan Abridged FAME Report

North Carolina does not have any new or continued findings and recommendations.

## Appendix B – Observations Subject to Continued Monitoring

FY 2012 North Carolina State Plan Abridged FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 11#
<b>OB 12-01</b>	<p>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 included the Cooperation penalty reduction with minimal written justification or no justification at all. OSHA is concerned that the lack of justification may result in non-uniform application of the reduction.</p>	<p>The OSHA Area Office will continue to effectively monitor the State’s performance in this area to determine if the policy, as presently documented and applied, may result in non-uniform application of the reduction.</p>	<b>Finding 11-08</b>

## Appendix C - Status of FY 2011 Findings and Recommendations

### FY 2012 North Carolina State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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.	Revise OSHNC record retention policy.	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.	Completed
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.	Conduct refresher health inspection training including proper sampling requirements.	CSHOs have received refresher health inspection training including proper sampling requirements.	Completed. A case file review was conducted to follow-up on this item. Health complaint files were reviewed and it was determined that sampling had been conducted.
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		Closed

## Appendix C - Status of FY 2011 Findings and Recommendations

### FY 2012 North Carolina State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status	
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.	federal OSHA.	Revise FOM Chapter and conduct refresher training. Adherence to NOK procedures is also verified through additional case file review during compliance internal audits.	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	Completed

## Appendix C - Status of FY 2011 Findings and Recommendations

### FY 2012 North Carolina State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				that 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.	Conduct refresher training.	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.	Completed
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	Fit test, assign respirators, and provide refresher training in respirator use.	All Health Compliance Officers have been fit tested, assigned respirators, and provided refresher training in respirator use.	Completed

## Appendix C - Status of FY 2011 Findings and Recommendations

### FY 2012 North Carolina State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		of PPE, to include respiratory protection was used during the inspection.		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.	
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.	Provide refresher training in penalty assessment and violation classification. The training course outline was shared with the Area Director. Case files are also reviewed during internal audits and adherence to procedures relating to penalty assessment and violation classification is addressed.	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	Completed

## Appendix C - Status of FY 2011 Findings and Recommendations

### FY 2012 North Carolina State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				relating to penalty assessment and violation classification is addressed.	
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.	Provide refresher training on applying the cooperation credit. The inspection narrative must include how the employer cooperated to justify the 10% penalty reduction credit.	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 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.	Observation
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.	Revise Chapter XIII of the Compliance FOM. Hold a meeting to discuss the revision.	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	Completed

## Appendix C - Status of FY 2011 Findings and Recommendations

### FY 2012 North Carolina State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				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.	
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.	Revise OSH Discrimination Manual.	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.	Completed

## Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report

### FY 2012 North Carolina State Plan Abridged FAME Report

NOV 09, 2012

RID: 0453700

MEASURE	From: 10/01/2011	CURRENT		REFERENCE/STANDARD
	To: 09/30/2012	FY-TO-DATE		
1. Average number of days to initiate Complaint Inspections	5215 5.48 951	207 5.04 41		Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	3000 3.13 957	134 1.97 68		Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	908 99.23 915	43 100.00 43		100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	1 33.33 3	0 0 0		100%
5. Number of Denials where entry not obtained	1	0		0
6. Percent of S/W/R Violations verified				
Private	319 7.33 4353	8 .20 4037		100%
Public	5 3.76 133	0 .00 128		100%
7. Average number of calendar days from Opening Conference to Citation Issue	52118 30.65 1700	5395 34.80 155	2032800 55.9 36336	National Data (1 year)
Safety				
Health	34854 35.09 993	2784 32.00 87	647235 67.9 9527	National Data (1 year)

0\*NC FY12

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

## Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report

### FY 2012 North Carolina State Plan Abridged FAME Report

NOV 09, 2012  
RID: 0453700

MEASURE	From: 10/01/2011		CURRENT		REFERENCE/STANDARD
	To: 09/30/2012	FY-TO-DATE			
8. Percent of Programmed Inspections with S/W/R Violations					
	804	68	76860		
Safety	54.51	46.58	58.5	National Data (3 years)	
	1475	146	131301		
	417	43	9901		
Health	55.60	65.15	53.0	National Data (3 years)	
	750	66	18679		
9. Average Violations per Inspection with Violations					
	5340	493	367338		
S/W/R	1.98	1.99	2.1	National Data (3 years)	
	2694	247	175950		
	4386	381	216389		
Other	1.62	1.54	1.2	National Data (3 years)	
	2694	247	175950		
10. Average Initial Penalty per Serious Violation (Private Sector Only)	5741330	591600	624678547		
	1147.34	1369.44	1990.5	National Data (3 years)	
	5004	432	313826		
11. Percent of Total Inspections in Public Sector	190	24	472		
	4.52	11.65	3.6	Data for this State (3 years)	
	4208	206	12979		
12. Average lapse time from receipt of Contest to first level decision	43932	300	3197720		
	430.70	300.00	187.0	National Data (3 years)	
	102	1	17104		
13. Percent of 11c Investigations Completed within 90 days*	24	4			
	32.43	50.00	100%		
	74	8			
14. Percent of 11c Complaints that are Meritorious*	12	0	1619		
	16.22	.00	23.4	National Data (3 years)	
	74	8	6921		
15. Percent of Meritorious 11c Complaints that are Settled*	12	0	1444		
	100.00		89.2	National Data (3 years)	
	12	0	1619		

\*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013

0\*NC FY12

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

**Appendix E - State OSHA Annual Report (SOAR)**  
FY 2012 North Carolina State Plan Abridged FAME Report

*[Available Upon Request]*