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OCCUPATIONAL SAFETY AND HEALTH DIVISION

August 5, 2014

Mr. Kurt Petermeyer, Regional Administrator
United States Department of Labor
Occupational Safety and Health Administration
60 Forsyth Street, Southwest, Room 6T50
Atlanta, Georgia 30303

Re: North Carolina's Response to the FY 2013 Federal Annual Monitoring and Evaluation (FAME) Report

Dear Mr. Petermeyer:

North Carolina has received the findings and recommendations from the FY 2013 FAME report. The State does not believe that these findings rise to the level of requiring action in order for the State to maintain its "at least as effective" as status. Nevertheless, considerable time and effort have been spent and will continue to be spent to address Federal OSHA's concerns.

The actions taken by the State include:

- a review of every case file that was the basis for a FAME finding,
- meetings held with all compliance supervisors to discuss the FAME findings and observations,
- a review of state policies and procedures completed to determine adequacy,
- findings shared with OSHNC personnel during individual coaching sessions, at district meetings, and in the Division newsletter, and
- refresher training scheduled for all compliance personnel relating to violation classification.

We welcome Federal OSHA's continued monitoring of these findings to confirm the state's satisfactory corrective action and to support our belief that there are not a substantial number of case files requiring corrective action.

The following formal response is provided to you to specifically address the three findings in the FY 2013 FAME.

Finding 13-01: Air monitoring, as well as wipe and bulk sampling, was not conducted for several complaint and programmed inspection files.

Recommendation: Review current procedures to ensure that monitoring and sampling are used appropriately as part of an investigation.

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State Response: A compliance bureau chief reviewed all eleven health case files that were identified during the audit process as deficient relating to adequate sampling being conducted. Of these eleven case files, the State agreed with Federal OSHA's assessment in six case files and disagreed with five. The State shared the written results of its review with the Area Director and all of the case files were discussed at the closing conference on February 21, 2014. The specific action taken by the State to address the issues with the health case files included: discussing the specific case files with sampling issues with the affected district supervisors who in turn conducted coaching sessions with affected CSHOs, reviewing written sampling procedures to determine if they were adequate, a correction was sent to one employer as a result of a typo in the case file, and a follow-up was completed to address an initial lack of sampling.

To ensure that sampling is conducted when necessary, the State has implemented a revised sampling procedure that requires discussion with the supervisor, if the CSHO decides not to conduct sampling. The reason for not sampling must be documented in the case file. If the reason for not sampling had been included in every case file, this issue might not have risen to the finding level.

The State has also participated in the Region IV quarterly IH conference call. Issues affecting IHs are discussed during this call. This could include IH sampling protocol and technique.

Finding 13-02: Though OSHNC's procedures for determining classification of violations are identical to OSHA, OSHNC classifies a lower percentage of violations as serious.

Recommendation: Review classification of health and safety hazard violations in both Construction and General Industry to ensure consistency with the OSHNC Field Operations Manual.

State Response: The State will continue to take whatever action is necessary to ensure that each violation cited is classified properly. The State has provided ongoing training for compliance personnel and continues to review the classification of safety and health hazard violations in both construction and general industry to ensure compliance with the FOM. Before the end of next fiscal year, all compliance personnel will attend a revised Technical Writing course as a refresher. An area of emphasis in this course is violation classification. Violation classification is also included in the Initial Compliance Course which is attended by all new CSHOs. FAME findings will also continue to be shared with compliance personnel.

OSHNC case files receive extensive review. This includes review by the district supervisor, bureau chief and for high profile cases, review by the Citation Review Committee including the Director, Assistant Director and legal staff. The Citation Review Committee review includes fatalities, willful violations, high penalty, and media involved inspections. The mechanism for the review process will be simplified with the implementation of the data management system, OSHA Express. Management personnel will have easy access to all elements of the inspection process including violation classification.

Beginning on July 1, 2014, an additional level of case file review was initiated. Two Standards officers previously assigned exclusively to Education, Training, and Technical Assistance will now spend time in the Director's Office reviewing certain high profile case files. One of these officers has had over 30 years of experience with Federal and State OSHA monitoring program activity and the other has an industrial hygiene background and field experience. As part of the process, the officers will also conduct annual quality audits of case files. If they discover any trends relating to violation classification, appropriate corrective action can be taken. This could include remedial training or policy revision. The officers will also analyze and evaluate program data. If there is any inappropriate change in the percent serious or classification of violations, the possible cause can be pursued through the state's quality procedures. This includes a mechanism for initiating policy revision.

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However, of the 17 case files identified by Federal OSHA as having classification issues, the State only agreed with three of the determinations. The State shared its assessment and explanation in writing with Federal OSHA on the individual case files prior to the closing conference on February 21, 2014. There was not agreement on classification in all of the case files even after the face-to-face discussion at the closing conference.

The State and the Area Director have agreed to discuss the issue of violation classification as the monitoring process is ongoing. Agreement might best be reached on violations determined to be misclassified by Federal OSHA if specific misclassified items can be shared with the State by Federal OSHA. The difference in opinion about violation classification is not unique or limited to state offices. Previous review of violation classification within Federal OSHA indicated that there are also differences in classification between area offices and regions.

Finding 13-03: The Carolina Star policies and procedures manual does not address all enforcement activities at VPP sites.

Recommendation: Ensure that CSP 03-01-003 (VPP Policies and Procedures Manual), chapter VIII or similar language be incorporated into the Carolina Star Policies and Procedures Manual.

State Response: The State has submitted as a plan change a revised Star Program Policies and Procedures Manual to address enforcement activities at Star sites. The language in Section XIV of the state manual is similar to CSP 03-01-003. The Star Program Manager met with the Federal OSHA monitor during the audit, and they agreed on this appropriate response to the recommendation.

We look forward to discussing our strategies for addressing the findings in the FAME with you at any time, and working with you as you begin your new job as Regional Administrator for Region IV.

We have included a link to our 2013 SOAR document, <http://www.nclabor.com/osha/compliance/SOAR.pdf>, and request that the SOAR and this response to the FAME be posted along with the FAME report on the OSHA public website.

Sincerely,



Allen McNeely

cc: Lahaie.Eric@dol.gov

Morton.Kim@dol.gov

U.S. Department of Labor

Occupational Safety and Health Administration
61 Forsyth Street, SW, Room 6T50
Atlanta, Georgia 30303

**JUL 28 2014**

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:

The Occupational Safety and Health Administration (OSHA) has completed its FY 2013 Federal Annual Monitoring and Evaluation (FAME) Report for 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 2012 FAME Follow-Up Report and any new recommendations that were identified for FY 2013. **All 27 FY 2013 FAME Reports, including appendices, will be posted on OSHA's web site on August 8, 2014.**

State Plans with identified findings must provide a Corrective Action Plan (CAP) that addresses each open recommendation. CAPs require a clear and detailed response for each recommendation indicating how the State Plan will correct the identified deficiency, a timeframe for completion, and a current status. **I encourage North Carolina to use the attached template to complete and submit a CAP to me by Friday, August 22, 2014.**

Additionally, North Carolina has the opportunity to include the following documents alongside your FAME report:

1. A short statement responding to your FAME report
2. A web link to your State OSHA Annual Report (SOAR)

OSHA will include this information alongside the FAME reports at any time. Your electronic correspondence should be sent to me with a courtesy copy to Eric Lahaie (Lahaie.Eric@dol.gov) to facilitate posting of the information. Your response should be in Word or in a text-based PDF to facilitate web posting. **If you would like this information included in conjunction with the initial posting of the FAME reports, please provide your documentation no later than August 6, 2014.** Documentation provided after that date will be added to OSHA's web site at OSHA's earliest convenience.

Thank you again for your continued cooperation. I am available to answer any questions you may have regarding either the FAME report or the CAP.

Sincerely,

Kurt A. Petermeyer

for
Kurt A. Petermeyer
Acting Regional Administrator

Enclosure

cc: Kim Morton, OSHA Area Director, Raleigh

FY 2013 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

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



Evaluation Period: October 1, 2012 – September 30, 2013

**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

A. Summary of the Report

The purpose of the Federal Annual Monitoring Evaluation (FAME) is to assess the State's Plan's progress towards achieving their performance goals established in their Fiscal Year (FY) 2013 Strategic Management Plan and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of an onsite evaluation. This report assesses the current performance of the North Carolina Department of Labor, Occupational Safety and Health Division (OSHNC) 23(g) program.

A five-person Federal OSHA team was assembled to conduct the onsite evaluation in Raleigh, North Carolina, during the week of January 13, 2014. The OSHA team's evaluation consisted of case file reviews, a review of OSHNC's performance statistics, staff interviews and observations of OSHNC's strategic management plan committee meetings. A comparison of the FY 2011 case file reviews and the FY 2013 review showed improvement in overall documentation of case files, including appropriate coding and letters sent by the Supervisors and discrimination investigators. Specifically, the Complaint Chapter was revised to make it clear that all next-of-kin (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.

OSHNC has addressed all of the ten recommendations found in the FY 2011 FAME report, including nine that were resolved during the FY 2012 follow-up report. The State Plan completed action requests relating to the FY 2011 recommendations. Most of these action requests resulted in policy changes in the State's Field Operations Manual (FOM). Finding 11-08 was converted to an Observation during the FY 2012 review. However, effective October 1, 2013, OSHNC eliminated the 10% Cooperation Penalty Adjustment. The OSHNC Penalty Chapter of the FOM was revised to reflect this change.

A detailed explanation of current findings and recommendations of the OSHNC's performance evaluation is found in the Assessment of State Performance, Section III of this report. The summary of current findings and recommendations noted as a result of OSHA's study are found in Appendix A, FY 2013 Summary of Findings and Recommendations. One finding indicates that the State should adhere to their procedures and add additional procedures if required to ensure that health hazards covered by complaints or Special and National Emphasis Programs were appropriately addressed through air monitoring. A second finding was related to the classification of hazards. While OSHNC's hazard classification process was similar to OSHA's, the review found a number of serious hazards that were classified as non-serious. The third issue involved the Carolina Star Policies and Procedures Manual, which does not completely address enforcement activities at Voluntary Protection Program (VPP) sites.

Appendix B details the eight Observations identified during the onsite review. An Observation is an item that has not proven to impact the effectiveness of the State Plan, but should continue to be monitored by the Region.

During the on-site evaluation, OSHA was provided the opportunity to observe the State Plan's review process for advancing specific outcome goals included in the Strategic Management Plan. Each individual goal and area of special emphasis is administered by a specific committee made up of representatives from throughout OSHNC. The expertise on each committee is available to evaluate and revise program strategies as outcomes dictate. OSHA was able to participate with the Construction Special Emphasis Program Committee. The sharing of information between OSHA and the State Plan is beneficial in understanding how OSHNC operates.

B. State Plan Introduction

Historical Background:

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.

Current Background:

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 (ETTA); Bureau of Consultative Services; Bureau of Planning, Statistics and Information Management (PSIM), and the Agricultural Safety and Health Bureau. The main office and a district office are located in Raleigh, with four additional offices are 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 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.

Worker 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, Training and Technical Assistance Bureau.

C. Data and Methodology

This report was prepared under the direction of Teresa Harrison, Acting Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2012 through September 30, 2013. 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.

During this evaluation, a total of 101 inspection case files, comprised of safety and health, were randomly selected for review. Twenty fatality inspection files were reviewed, as well as twenty-two complaint investigation and inspection files were reviewed. The others were a random selection of files selected from the following categories: programmed general industry safety; programmed general industry health; programmed construction safety; programmed construction health; referrals; and public sector files. This was a small percentage of the 4,267 inspections conducted in FY 2013, but is believed by Federal OSHA to provide an accurate picture of the enforcement program throughout the State, when coupled with interviews and a review of procedures and data.

Data associated with the case files reviewed was representative of data for all types of inspections. Data referenced in this report was obtained from the State Activity Mandated Measures (SAMMs) Report, FY 2013 23(g) Grant, Complaints About State Program Administration (CASPAs), Integrated Management Information System (IMIS) reports, discussions with State staff, and onsite review conducted in January 2014. During the onsite evaluation, nine State Plan staff employees were interviewed, which included four safety and health Supervisors and five compliance officers. In addition, the State's Special Emphasis Program (SEP) Construction meeting and Action Request Review committee meeting were held and attended by the Federal staff.

D. Findings and Recommendations

The FY 2012 FAME follow-up report contained no new Findings or Recommendations. Finding and Recommendation 11-08 was converted into an Observation in FY 2012 (12-01). This Observation was resolved and closed as of October 1, 2013. During the FY 2013 evaluation period, three new Findings and eight Observations were identified. The summary of all Findings and Recommendations noted as a result of OSHA's study are

found in Appendix A, FY 2013 Summary of Findings and Recommendations. Appendix B details the eight Observations identified during the FY 2013 evaluation. The specific new Findings and Observations are as follows:

Findings and Recommendations:

Finding 13-01: Air monitoring, as well as wipe and bulk sampling was not conducted for several complaint and programmed inspection files.

Recommendation: Review current procedures to ensure that monitoring and sampling are used appropriately as part of an investigation.

Finding 13-02: Though OSHNC's procedures for determining classification of violations are identical to OSHA, OSHNC classifies a lower percentage of violations as serious.

Recommendation: Review classification of health and safety hazard violations in both Construction and General Industry to ensure consistency with the OSHNC Field Operations Manual.

Finding 13-03: The Carolina Star policies and procedures manual did not address all enforcement activities at VPP sites.

Recommendation: Ensure that CSP 03-01-003 (VPP Policies and Procedures Manual), chapter VIII or similar language be incorporated into the Carolina Star Policies and Procedures Manual.

Observations:

FY13-OB-1: A few case files were identified where the Personal Protective Assessment standard usage was not appropriate.

FY13-OB-2: Case files were identified where the justification for good faith reduction was not documented or was inconsistent with the safety and health program review.

FY13-OB-3: When appropriate consider including interview statements and field notes in the file.

FY13-OB-4: In several case files, use of the confirmation of abatement form did not always provide sufficient evidence that corrective action was taken. Also, corrected during inspection violations were not always documented in the case file.

FY13-OB-5: In several case files, informal conference notes were missing when penalties were reduced.

FY13-OB-6: All OSH Discrimination cases where complainants request a "Right to Sue" letter prior to a determination being issued should be recorded in IMIS as "withdrawn."

FY13-OB-7: Table of contents in OSH Discrimination case files should be as detailed as possible and contain sections such as "Complainant Statement," "Complainant's

Rebuttal,” “Respondent Position Statement,” “Investigator Notes,” “Memorandum of Interview,” “OSHA Inspection” “Report of Investigation,” (not just sections “Complainant Information” and “Respondent information.”) Also, tabulation should clearly mark each item identified in the table of contents.

FY13-OB-8: In all OSH Discrimination cases, respondent should be asked to provide information concerning “similar situated employees.” If the information is not obtained, the investigator should document their efforts to do so and explain why it was not provided (i.e. Respondent refused, it did not exist, etc.).

II. Major New Issues

Budget uncertainties at both the State and Federal levels could continue to have substantial impact on the State Plan’s performance.

III. Assessment of State Plan Performance

OSHNC continues its outreach to employers and employees with hazard alerts, industry guides and posters, as well as focused training. The State’s latest injury and illness rate for private industry achieved an all-time low of 2.9 per 100 full-time workers in 2012. The U.S. Bureau of Labor Statistics compiles the injury and illness rate data. Based on the most recent data released by the BLS, North Carolina was one of 15 States with a rate statistically lower than the national average of 3.4.

The State has achieved a reduction in the workplace fatality rate by 5% and the injury and illness rate by 15%. With four years of statistical data available, the State has reduced the fatality rate by 16% and the injury and illness rate by nearly 13%. This reduction in the number of fatalities is due in part to appropriate goal setting, adequate resource allocation and outcome driven strategy development.

The Education, Training and Technical Assistance (ETTA) bureau continues to work on the redesign of all internal training courses. The goal is to create a blended course that captures the power and efficiency of on-line learning, which will improve training efficiency, maximize classroom hands-on activities, and allow Compliance Safety and Health Officers (CSHOs) to begin core course training immediately upon being hired. Completion of the first newly redesigned course is expected in the Fall 2014.

1. ENFORCEMENT

a. Complaints

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 OSHNC handled 1,039 complaint investigations in FY 2013 and conducted 827 complaint inspections. According to the SAMM report, OSHNC responds timely to complaints. Complaint investigations were initiated within an average of 2.74 days, and complaint inspections were initiated within an average of 5.37 days. A review of the IMIS reports showed that during FY 2013 approximately 9 percent of their complaint inspections were in-compliance.

OSHNC handles the intake of complaints with a central Complaint Desk Processing model. The CSHOs work at a specified location with computers to receive electronic complaints and with dedicated phone and fax lines to also receive complaints. Complaints can be filed by using the OSHNC internet complaint form, the Federal OSHA internet complaint form, mail, email, phone, or fax. After the complaint is received, the Complaint Desk CSHO provides the complaint information to the appropriate district office for evaluation by the district Supervisor.

Twenty-two Complaint investigations and inspections were reviewed to determine if they were processed in accordance with FOM Chapter IX, Complaint Policy and Procedures. Complaints were handled timely and in most cases following the requirements of the FOM. Abatement documentation was adequate and complaint allegations were tracked to ensure corrective action was completed and workers were protected from unsafe/unhealthful working conditions. Letters were sent to the complainants 100% of the time with the results of the inspection. It was determined that policies and procedures were followed during these inspections and final results to complainants were sent within required time frames. In addition, OSHNC issued hazard alert letters to warn employers about the dangers of specific industry hazards and provide information on how to protect workers exposed to those safety and health hazards when a specific standard could not be cited.

During the evaluation, it was noted in five complaint files and three programmed cases files, that CSHOs either relied on the employer's sampling or sampling was not performed to address complaint items, such as hazards involving isocyanates or hexavalent chromium. It was recommended that OSHNC review their process to ensure that hazards covered by complaints or Special Emphasis Programs are appropriately addressed through sampling. The evaluation also identified two case files where the personal protective equipment standard was cited instead of the respirator standard. If the employer has not made any effort to assess the respiratory hazards, and there is potential for an overexposure, the CSHO should cite section 1910.134(d)(1)(iii). The extent to which the employer explored ways to reasonably estimate exposures must be evaluated at each worksite. Inappropriate respirators (1910.134(d)(1)(i)) should be cited when the CSHO documents an overexposure is possible, and a suitable respirator is not being used for protection against that exposure. Unapproved ((1910.134(d)(1)(ii)) respirators can be cited even where an overexposure has not been established.

Finding 13-01: Air monitoring, as well as wipe and bulk sampling was not conducted for several complaint and programmed inspection files.

Recommendation: Review current procedures to ensure that monitoring and sampling are used appropriately as part of an investigation.

FY13-OB-1: A few case files were identified where the Personal Protective Assessment standard usage was not appropriate.

b) Fatalities

Workplace fatalities dropped 5.5% percent in FY 2013. Fatalities dropped from 36 in FY 2012 to 34 in FY 2013. The number of workplace fatalities in FY 2011 was 54. The Occupational Safety and Health 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 FY 2013 was struck-by events with 15. Seven workers died in falls from elevations, and five workers died after being caught in/between objects. None were electrocuted. Two workers died from inhalation of toxic fumes, which is not one of the big four hazards. In FY 2013, construction and agriculture, forestry and fishing were the two leading industries for fatal accidents with seven in construction and 10 in agriculture, forestry and fishing. The number of fatalities in construction decreased from 10 in 2012, and the number in agriculture, forestry and fishing increased from 7 in FY 2012. The seven construction fatalities in FY 2013 were a significant reduction from the baseline total of 24, and the fatality rate decreased by 60%.

There were four fatalities in manufacturing, a decrease from five in FY 2012. Retail trade experienced three fatalities, and wholesale trade experienced one in FY 2013. There was one fatality in the transportation and public utility industry as well as one in the services industry. There were no work-related fatalities in 80 of North Carolina’s 100 counties. One of the State’s outcome goals is to reduce the rate of workplace fatalities.

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 division also issued hazard alerts regarding forklifts, struck-by, heat stress and firefighter safety after identifying problems in those areas in previous years. Additionally, in FY 2013, OSHNC revised their FOM to require comprehensive inspections at establishments following fatal accidents.

The NC Attorney General’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.

A review of the fatality inspection files showed that the correct fatality inspection procedures were followed. Fatality inspections were opened in a timely manner and the Regional and National Office were sent the OSHA 36 in a timely manner. Case files contained police and corner's reports. In 20 of 20 (100%) files, the required initial and final NOK letters were sent. A comparison of the FY 2011 case file reviews and the FY 2013 reviews shows a marked improvement in sending out NOK letters. In 100% of the files reviewed, OSHA-36 and OSHA-170 forms were in all the files, as well as, all other required documentation. The Compliance Officers obtained statements and interviewed witnesses in the fatality case files.

c) Targeting and Programmed Inspections

According to inspection statistics run for this report, OSHNC conducted 4,267 inspections in FY 2013, 2,246 of which were programmed. A total of 1,222 programmed inspections were conducted in the construction sector. According to the State Indicator Report (SIR), 58.6% of programmed safety inspections and 65.4% of programmed health inspections had violations. Additional data indicates that an average of 3.7 violations were cited per inspection, and that 63% of safety violations and 37% of health violations were classified as serious, repeat, or willful.

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	5.0	Average number of violations	2.5
In-Compliance Rate	25%	In-Compliance Rate	43%
% violations classified as Serious, Repeat, and Willful	37%	% violations classified as Serious, Repeat, and Willful	79%

The State Plan has implemented safety and health general industry targeting procedures, and has adopted the federal Site-Specific Targeting (SST) procedures. The State Plan'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. In FY 2013, the PSIM Bureau analyzed private sector site specific inspection activities for FY 2008 –

2012. This five year statistical analysis completed by the PSIM Bureau documented a 47.01% DART rate reduction for employers participating in the Site Specific Targeting Program to include 897 establishments. The State expressed concern that the SST program was being eliminated by Federal OSHA since it was so successful.

The State Plan has also achieved its inspection goals in the specific areas of emphasis. Injury and illness rate reductions have been realized in Sawmills, Veneer, Manufactured Homes, and Other Wood Products; Long-Term Care; and Food Manufacturing. The fatality rate has also been reduced in construction. The State used the C-Target targeting program to schedule programmed construction inspections for commercial sites. In FY 2013, OSHNC discussed with the North Carolina Department of Commerce the opportunity to share employer and employment data to enhance the OSHNC targeting system.

In FY 2013, seven industry guides were prepared. This includes guides for medical and dental offices, safety and health management program development, and the accommodations industry. New hazard alerts were prepared for carbon monoxide hazards, and work zone safety. Hazard alerts were also updated for marina safety, 1-bromopropane, and diacetyl. A new Hazard Communication Awareness Program Booklet in both English and Spanish was prepared as an aid for employers in meeting the new labeling and safety data sheet training requirements of the revised Hazard Communication Standard. In addition, in one of the fastest growing industries in the State, a letter was sent to 81 distilleries, breweries, and wineries offering training and consultation to address possible workplace hazards and provide safety and health material.

Forty-two training documents were added to the State Plan's Field Information System including updates to the Compliance Operations Manual and adoption of Federal OSHA Instructions. A total of 17 field information system posters were developed for display in field offices including information on compliance directives, alerts, and standards notices.

d) Citations and Penalties

In FY 2013, the 4,267 inspections conducted resulted in an average of 3.5 violations per inspection, with 56.9% of safety violations and 45.9% of health violations classified as serious. OSHNC routinely places an emphasis on keeping citation lapse times low. According to the SAMM, in FY 2013, the average lapse time (in days) from opening conference to citation issuance is identified below:

Average Lapse Time	OSHNC	OSHA
Safety	24.3	43.4
Health	24.74	57.05

FOM Chapter VI 9.a.ii.A. includes specific instruction on designating a safety and health program as developmental, basic, or superior for a 10%, 25%, or 40% penalty reduction.

It is assumed when the safety and health program is evaluated that the elements included in the FOM are reviewed. These elements were not always restated in the case file. Seven case files reviewed did not have appropriate documentation relating to the evaluation of employer's safety and health programs and did not justify the good faith reductions provided by the compliance officers. None of the seven case files reviewed received the maximum credit of 40% for having a superior program.

In FY 2013, the average current penalty per serious, repeat and willful violations for private sector inspections was as follows:

Classification	OSHNC	OSHA
Willful	\$31,909	\$39,455
Repeat	\$2,499	\$6,473
Serious	\$984	\$1,897

One hundred and one case files reviewed included adequate documentation to support the violations with few exceptions. In several case files, field notes and interview notes were lacking in the files. However, most case files had supporting documentation in the narrative or OSHA 1b.

In FY 2013, OSHNC issued 22 Willful violations and 210 Repeat violations. All Willful violations were reviewed by the Bureau Chief and the Attorney General's office prior to issuance. According to the State IMIS data, OSHNC's percent Serious/Willful/Repeat/Unclassified is 53.5% in FY2013, compared to Federal OSHA Serious/Willful/Repeat/Unclassified at 79%.

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 non-serious by the State. It is recommended that OSHNC ensure that each violation is documented accurately and reviewed for proper classification. Examples include: hazards associated with chemicals, respirators, lead and forklifts,

Percent of Violations Cited Serious/Other-Than-Serious (OTS) or Non-Serious

	OSHNC	OSHA
Serious	51%	75%
OTS	46%	20.4%

Finding 13-02: OSHNC follows the same procedures as OSHA for determining classification of violations. The State classifies a lower percentage of violations as serious. Review classification of health and safety hazard violations in both Construction and General Industry to ensure consistency with the Field Operations Manual.

Recommendation: Evaluate the review process that ensures that classification corresponds to the type of injury or illness that could reasonably be expected to result.

FY13-OB-2 Case files were identified where the justification for good faith reduction was not documented or was inconsistent with the safety and health program review.

FY13-OB-3: When appropriate consider including interview statements and field notes in the file.

e) 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. The Bureau Chiefs run a weekly past due abatement report that is shared with supervisors and is sorted by CSHO's. Any abatement over two weeks overdue is highlighted and acted upon. Confirmation of abatement is also a measure in the work plan for each CSHO.

The new OSH Express system will also track abatement. OSHNC is currently working with Federal OSHA on the national level to make sure that measures are accurate and collecting the appropriate data. FOM Chapter III. E. has specific instructions for managing the abatement process. E.2.4. has specific guidance for the CSHO.

The majority of case files reviewed contained written documentation, photos, work orders, or employer's certification of abatement. Petitions for Modification (PMA) of Abatement were appropriately provided when the employer requested an extension for their corrective action timeframe. Interim protection was provided in the case file. However, on two case files corrected during inspection, abatement was not documented and one case file, the confirmation of abatement, did not provide sufficient evidence that corrective action was taken.

OSHNC conducted follow-up inspections according to their policy and procedures. Supervisors assign follow-up inspections to CSHO's based on the criteria listed in the FOM, Chapter III. G. In FY 2013, OSHNC added language in the FOM to include overexposures. Specifically if an employer receives a citation for an overexposure, the CSHO will conduct a follow-up inspection to verify and document that the employer properly abated the overexposure. The CSHO documents abatement for an overexposure in the case file by conducting additional sampling or establishing that an equivalent level of protection is provided, such as chemical substitution, process elimination, etc. In FY 2013, 3.7% of inspections conducted were follow-ups compared to Federal OSHA at 3%.

FY13-OB-4: In several case files, use of the confirmation of abatement form did not always provide sufficient evidence that corrective action was taken. Also, corrected during inspection violations were not always documented in the case file.

f) Worker and Union Involvement

North Carolina's procedures for worker and union involvement are identical to those of Federal OSHA. Case files reviewed disclosed that workers were included during fatality investigations and other inspections. 100% of OSHNC's initial inspections were present with employee walk around representation or employee interviews.

2. REVIEW PROCEDURES

a) 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, 1.3% of violations were vacated and 1.2% of violations were reclassified as a result of informal settlement agreements. The penalty retention was 76.53%, compared to Federal OSHA at 66%. For citations that were resolved by means of an informal settlement agreement, the percent of penalty reduction was approximately 36.5%.

While the informal conference sheet was primarily used to express the reason for the changes to the violations, it did not always contain enough detail to be clear as to why reductions were done. Three case files reviewed did not document modifications to the violations.

FY13-OB-5: In several case files, informal conference notes were missing when penalties were reduced.

b) Formal Review of Citations

In FY 2013, 4.6% of inspections were contested compared to 5.3% in 2012. The North Carolina OSH Division is represented by attorneys in the North Carolina Attorney General's Office (AG). The attorneys are assigned exclusively to represent the Division, and they receive specific training on legal issues relating to occupational safety and health.

The Attorneys participate in organizations such as the State OSHA Litigators Organization (SOLO), where State and Federal high profile cases, and cases with special legal issues, are shared and discussed. The Division also utilizes the Department of Labor's in-house attorneys who advise on various legal issues. All fatalities and high profile cases are considered by a citation review committee before citations are issued. This committee is made up of OSH management, staff attorneys, and attorneys in the AG's Office.

The North Carolina Review Commission is an independent body that hears and issues decisions on appeals relating to the issuance of citations and assessment of penalties by the OSH Division. Commission members are appointed by the Governor for terms that

usually run for six years. All commission hearings are open to the public and decisions are available for public review on the Commission's web page.

The OSH Division can request judicial review of decisions made by the Review Commission. The Division is advised on these matters by the Attorney General's Office with input from the Commissioner of Labor's Office.

In an effort to reduce the lapse time from the receipt of a contested case file to the first level decision, a special pre-hearing conference pilot program was initiated in FY 2013. These conferences are scheduled through the Review Commission. Attorneys representing the OSH Division select cases for a pre-hearing conference which have the greatest potential to be settled because of the limited issues involved. This process takes less time than scheduling and completing a formal hearing. SIR data indicates that, for violations of private companies that were contested, 47.3% of penalties were retained 21.3% were vacated, and 10.4% were reclassified. The Review Commission provides a copy of each decision to the Federal OSHA Area Director. No negative trends or problems were noted.

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

a) Standards Adoption

In accordance with 29 CFR 1902, states are required to adopt standards and federal program changes within a six-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:

Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Updating OSHA Standards Based on National Consensus Standards; Head Protection	11/16/2012	Yes	2/5/2013
Direct Final Rule - Cranes and Derricks in Construction: Underground Construction and Demolition	4/25/2013	Yes	6/18/2013

b) OSHA/State Plan-Initiated Changes

Federal Program/State-Initiated Changes

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Adoption Date
Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	9/30/2013	Yes	11/18/13
[CPL-02-00-155] Federal Program Change Memo	09/6/2013	Yes	11/1/13
[CPL 03-00-017] - National Emphasis Program Occupational Exposure to Isocyanates	6/20/2013	Yes*	2/13/2006
Site-Specific Targeting 2012 (SST-12)	1/04/2013	Yes	1/24/2013
Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	10/16/2012	Yes	2/28/2013

*CPL 03-00-017 will be used for inspection guidance to supplement OPN 135F which is the State's Isocyanates SEP policy document. An Isocyanates SEP was adopted in NC on 2/13/2006. A plan change was previously submitted and approved by Federal OSHA. Final identical adoption was effective on 2/4/14.

4. VARIANCES

North Carolina currently has 13 permanent variances, seven of which are multi-State variances approved by Federal OSHA. No variances were issued by the State in FY 2013. North Carolina does not have any temporary variances and the State appropriately shares variance requests with Federal monitors.

5. 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 192 public sector inspections in FY 2013, which accounted for 4.51% of all inspections. In FY 2013, there were a total of 3,189 surveys mailed to public sector employers by the PSIM Bureau to collect 2012 injury and illness data. As of the end of FY 2013, 3,166 survey responses have been received, where the data as provided can be used to calculate injury and illness rates and for targeting purposes.

The following table outlines the total number of violations for programmed activity, as well as, the in compliance rate and the percentage serious, willful and repeat violations for the public sector:

General Industry Programmed Inspections	OSHNC
Average number of violations	3.7
In-Compliance Rate	21%
% violations classified as Serious, Repeat, and Willful	38%

6. 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 eight 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. The EDB Discrimination Manual was updated August 5, 2013 and established procedures that are as effective as the Federal ones.

During October 1, 2012 through September 20, 2013 EDB received and opened 88 discrimination complaints. However, 94 cases were closed October 1, 2012 through September 30, 2013. The status of these cases and the percentages of total cases they represent are presented below:

Status	Number of Cases	Percentage
Dismissed Non-Merit	74	79%
Settlement/Merit	13	14% (national rate was 31% for the same time period)
Withdrawn	7	7%

Prosecution by Attorney General	0	0
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Approximately 38 out of the 94 (40%), which exceeded the national rate of 31%, 11(c) whistleblower cases were completed within 90 days in FY 2013.

After reviewing 16 files selected for the evaluation and three investigators interviewed, three observations were identified:

FY13-OB-6 All OSH Discrimination cases where complainants request a “Right to Sue” letter prior to a determination being issued should be recorded in IMIS as “withdrawn.”

FY13-OB-7 Table of contents in OSH Discrimination case files should be as detailed as possible and contain sections such as “Complainant Statement,” “Complainant’s Rebuttal,” “Respondent Position Statement,” “Investigator Notes,” “Memorandum of Interview,” “OSHA Inspection” “Report of Investigation,” (not just sections “Complainant Information” and “Respondent information.”) Also, tabulation should clearly mark each item identified in the table of contents.

FY13-OB-8 In all OSH Discrimination cases, respondent should be asked to provide information concerning “similar situated employees.” If the information is not obtained, the investigator should document their efforts to do so and explain why it was not provided (i.e. Respondent refused, it did not exist, etc.).

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

North Carolina has developed a Strategic Management Plan with outcome goals that are consistent with Federal OSHA activity. In addition to specific outcome measures, the plan includes activity goals for each major component of the State program. The plan’s various areas of emphasis are managed by a specific committee made up of OSHNC employees. Strategies to achieve outcome goals are continuously reviewed and can be altered to enhance program performance. Any changes to the plan are documented annually, and the revised plan is submitted to Federal OSHA as part of the 23(g) grant application process.

The targeting program special study conducted by Federal OSHA focused on two specific programs: Construction Special Emphasis Program and Public Sector Programmed Inspections. During the onsite evaluation, eighteen Public Sector case files were reviewed and twenty-six Programmed Construction files were reviewed. In addition, Federal OSHA was able to participate with the Construction Special Emphasis Program Committee during the week of the evaluation.

CPL 04-00-001 includes program evaluation items for SEPs. The Planning, Statistics and Information Management Bureau conducted an annual evaluation of the Public Sector Targeting System. The Public Sector Targeting System is mirrored after Federal

OSHA's Site Specific Targeting System. The State has also adopted CPL 02-00-155 for construction targeting.

Construction inspection goals were reached in FY 2013. The inspection goal for construction in FY 2013 was 1,075 inspections and 1,417 inspections were conducted. For the five year planning cycle completed in FY 2013, the goal was to complete 6,220 inspections and 7,143 inspections were actually conducted.

The State's specific inspection goal for the Public Sector in FY 2013 was 205 inspections. The State usually conducts around 4% of the total number of inspections in the public sector. The State conducted 187 public sector inspections in FY 2013 or 4.4% of the total number of inspections.

Each targeting program relating to a SEP has a recording and tracking component. This could include a specific IMIS code or inspections might be identified by a NAICS code unique to the targeting program. A special IMIS code is not required for Public Sector inspections. These inspections are identified as public sector by the completion of the "ownership" block on the OSHA -1.

8. Complaints About State Plan Administration (CASPAs)

During this period the State received two CASPAs filed with the Federal OSHA Area Office in Raleigh, North Carolina. In both cases, the complainants alleged workplace discrimination and disputed the State's determination in their cases. Both investigations are now closed. The Region concurred with the State's determinations in both cases. The complainant appealed the latter case to the Regional Office; however, the Regional Office also concurred with the State's determination. In the latter case, a recommendation was made to the State that the complainant be interviewed in person and a signed statement be obtained.

CASPA

State (OSH Discrimination) CASPA Number	Date of Acknowledgement	Date of Final Report to State	Corrective Action Required
2013-NC-23	12/10/2012	1/17/2013	N/A
2013 -NC-24	2/19/2013	4/5/2013	Yes

9. VOLUNTARY COMPLIANCE PROGRAM

The Education, Training and Technical Assistance (ETTA) and the Compliance Bureaus are responsible for the administration of the training and compliance programs. Administrative Procedure Notice (APN) 18I addressing the cooperative agreement programs has been modified to make clear the distinction between alliances and partnerships. APN 18I, Cooperative Agreement, is the document used to establish the procedures to be followed for Alliance and Partnership agreements and is designed to enhance the ability of the Occupational Safety and Health Division to meet its strategic

goals. The primary focus of Alliances and Partnership is toward Special Emphasis Programs identified in North Carolina.

Alliances

The alliance team leader is responsible for coordinating the alliance program. With two exceptions, the procedures defined in APN 18I are the same as Federal OSHA procedures. Those exceptions are that in most instances, 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. 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 ten active alliances focusing on special emphasis programs. The Special Emphasis Program's chairs hold quarterly meetings in which alliances related activities are address. Randomly selected alliances were reviewed and found to contain the necessary information in the files.

Active Alliances	
N.C. Home Builders Association	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)	Caswell Development Center
North Carolina Utility Contractors Association (NCUCA)	Mexican Consulate

Partnerships

A team leader is responsible for coordinating the partnership program activity in North Carolina. The only deviations from the Federal OSHA Partnership requirements defined in APN 18I are that North Carolina's current partnerships only include 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 contractors provide monthly reports addressing their work site inspections and any hazards found as well as report of any recordable injuries and near miss events. The Construction SEP meetings are held quarterly and includes the Team

Leaders (Compliance Officer which are assigned to the partnership for the duration of the agreement) for all active partnerships. A new procedure was implemented as part of the application process requiring the applicant to prepare a presentation for the Partnership Committee. The presentation must cover specific topics for example: applicant safety and health programs; information on subcontractor that will be working at the site and their safety and health programs; injury and illness rates; disciplinary policy; etc.

In FY 2013 North Carolina had three active partnerships with two of those completed in FY 2013. A review of the completed partnerships agreements were found to contain the necessary information in the files including the quarterly technical assistance visits and monthly reports.

Carolina Star (Voluntary Protection Programs (VPP))

The Education, Training and Technical Assistance (ETTA) Bureau is responsible for administering the Carolina STAR Program in North Carolina, which has been in existence since 1994 and has grown to over 152 companies. The North Carolina program requirements are as effective and in some cases more stringent than Federal OSHA's VPP. The Carolina Star sites must have injury and illness rates and lost time rates at least 50% below the national average for that industry. Their provisional status (conditional) allows for participants to be placed in a provisional membership status for a rate increase (even if below the National BLS average), lack of management commitment or other program elements falling below Carolina Star quality. Star Consultant Employees (NCOSH) conducts the onsite evaluation. Teams are augmented with Special Star Team Members (the equivalent to the Special Government Employee Program) when conducting onsite evaluations. The Special Star Team Members are trained to conduct the evaluations by OSHNC. They are required to attend this training every 36 months in order to maintain their status.

The review of selected files revealed that evaluations are conducted in accordance with the Carolina Star Programs policies and procedures. All required documentation was in the files reviewed. During the review it was determined that OSHNC is actively evaluating incentive programs during the application process, at onsite evaluations, and annual self-evaluations. Applications are maintained for all sites until their first re-evaluation.

Finding 13-03: The Carolina Star policies and procedures manual did not address all enforcement activities at VPP sites.

Recommendation: Ensure that CSP 03-01-003 (VPP Policies and Procedures Manual), chapter VIII or similar language be incorporated into the Carolina Star Policies and Procedures Manual.

10. 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 2013. For public sector visits, the State had a goal to reach 200 establishments and exceeded that goal by conducting 269. 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	423	Public Safety	56
Public Health	345	Public Health	73
Total Public	768	Total Public	129

11. STATE PLAN ADMINISTRATION

Training

The Education, Training and Technical Assistance (ETTA) bureau is responsible for training the North Carolina Occupational Safety and Health Division personnel and employers across the State. ETTA conducted 286 training sessions to outside interest and trained a total of 10,673 employers and employees. Also, an additional 7,162 were trained on Special Emphasis Programs. The 10 most frequently taught topics were: hazard communication; inspection process; PPE; struck-by/caught in between; OSHNC overview/reading the CFR; bloodborne pathogens; fall protection; confined spaces; recordkeeping; and electrical safety. The hazard communication training was conducted 70 times in different training venues in 2013.

ETTA conducts OSHA Technical Institute (OTI) equivalent training for OSH Division compliance staff. The North Carolina OSH Division Directive, Operating Procedure Notice (OPN) 64D, establishes the policies and procedures for the initial training of compliance staff and with few exceptions mirrors OSHA's TED-01-00-018. By conducting internal training, ETTA trains its employees at the appointed times and at a lower cost. They utilize their senior compliance officers to augment the ETTA staff to conduct the training. They also hire outside subject matter experts to conduct specialized training as needed.

A review of selected training records revealed that newly hired compliance officers are on pace to complete all their required initial training courses within the specified three year period as outline in the OSHA Ted-01-00-018 and the OPN 64D. Senior compliance officers also received formal training on a regular basis.

Interviews with both newly hired and senior compliance officers indicated that the training received was excellent and at the appropriate time. Federal Compliance personnel attended the State's Maritime training courses in FY 2013 which resulted in a well presented and structured course. Overall, the review of the North Carolina's training programs yield a well-executed and run program with no deficiencies noted.

Funding

During the program's last financial audit in FY 2010, a review of the 23(g) State Grant revealed that the grantee expended 100% of authorized federal funds for the period ending December 30, 2009. Total 23(g) Grant authorized funding was \$15,753,398 (federal funds amounted to \$5,294,558 and non-federal funds equaled \$10,458,840). For the quarter ending December 30, 2009, the actual federal expenditures reported in the Health and Human Services Payment Management System (HHSPMS) and recorded on the Certified Closeout Financial Status Report were \$5,294,558. No financial concerns or issues were reported as a result of the financial audit.

Staffing

Because of funding uncertainty, the State operated with 19 vacancies as of October 1, 2013. During this period, the OSHNC's staffing levels were below the established 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.

		FY2009	FY 2010	FY2011	FY2012	FY2013
Safety	Benchmark	64	64	64	64	64
	Positions Allocated	64	64	64	64	64
	Positions Filled	54	56	50	61	51
	Vacancies	10	8	14	3	13
	Percent of Benchmarks Filled	84.3	87.5	78.1	95	80
Health	Benchmark	50	50	50	50	50
	Positions Allocated	50	50	50	47	47
	Positions Filled	45	44	44	44	41
	Vacancies	5	6	6	3	6
	Percent of Benchmarks Filled	90	88	88	88	87

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. In FY 13 OSHNC contracted with Assured Consulting Services, Inc. to develop a NCR replacement system. OSHNC will be utilizing OSHA Express (OE) for Consultation and Compliance. The project began in FY 2013 with implementation tentatively scheduled for Spring 2014.

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. OSHNC's internal audits are consistent with a third party audit. In addition, a total of 43 action requests were processed by the OSH Division to address opportunities for improvement identified by customers, division employees and as a result of internal and Federal OSHA audits. 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 often result in changes to the FOM

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

1.1 Reduce Construction Industry Fatality Rate Statewide by 5% by the end of FY 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 and can have a significant impact on the State's overall outcome goal of reducing the rate of workplace fatalities. The seven construction fatalities in FY 2013 were a significant reduction from the baseline total of 24, and the fatality rate decreased by 60%.

Outcome	Baseline	2009	2010	2011	2012	2013
Fatalities	24	11	18	17	10	7
Rate	.01020	.00400	.00720	.00850	.0060	.0042
Hispanic	N/A	7	6	8	4	3

1.2 Decrease Fatality Rate in Logging, and Arboriculture by 5% by the end of FY 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 Plan has had success in 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 SEP for logging was initiated in FY 1994 in response to 13 logging fatalities in FY 1993. In three of the five years of the strategic plan, the total number of fatalities was below the baseline number. In fiscal year 2013, the State Plan conducted 99 inspections and 17 consultation visits related to this performance goal.

Outcome	Baseline	2009	2010	2011	2012	2013
Fatalities	4	2	6	2	2	5
Rate	.01688	.01640	.02754	.0177	.0173	.0420

2.1 Reduce the Injury and Illness Rate in Sawmills, Veneer, Manufactured Home, and Other Wood Products Manufacturing (NAICS 321) by 15% by the end of FY 2013

The baseline DART rate of 3.3 for this industry was higher than the industry average rate of 1.9. However, the DART rate has decreased during this strategic planning cycle by 6%. In fiscal year 2013, the State conducted 106 inspections and 93 consultation visits related to this performance goal.

Outcome	Baseline	2009	2010	2011	2012	2013
DART	3.3	2.5	2.6	2.6	3.1	TBD

2.2 Reduce the DART Rate in Long-Term Care (LTC) by 15% by the end of FY 2013

While progress has been made in this industry group during previous planning cycles, the baseline rate of 4.8 is still more than twice the overall DART rate. For this reason, this emphasis area has been carried over from the previous strategic plan. The current SOAR documents an 8% reduction in the DART rate from the baseline rate and the lowest rate during the five year planning cycle. In fiscal year 2013, the State conducted 83 inspections and 53 consultation visits related to this performance goal.

Outcome	Baseline	2009	2010	2011	2012	2013
DART	4.8	5.3	5.1	4.5	4.4	TBD

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

The State has established a special emphasis program to address health hazards in the work place. The current health hazards include lead, silica, asbestos, hexavalent chromium, and isocyanates. Tracking mechanisms have not been developed to allow for the establishment of specific outcome measures in this area of emphasis. The State will continue to monitor

the progress of OSHA in developing reliable outcome measures for health issues. A reduction in illnesses relating to the emphasis health hazards identified 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 2013, the State conducted 246 inspections and 105 consultation visits related to this performance goal.

Activity for Specific Hazards

Hazard	Inspections	Samples	Overexposures	Surveys
Silica	83	38	12	31
Lead	40	17	7	25
Asbestos	77	0	0	15
Cr(VI)	21	16	1	12
Isocyanates	28	10	1	22
Totals	249	81	21	105

2.4 Reduce the DART Rate in Establishments in Food Manufacturing (NAICS 311) by 12% by the end of FY 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 DART rate of 1.9. For this reason, food manufacturing was added to the current five year Strategic Management Plan. The baseline rate for this industry was 4.3 which is 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 to establish goals and strategies. Intervention relating to the strategic plan began on 10/1/09. Operational Procedure Notice 140 was developed to establish the special emphasis program (SEP) for food manufacturing and provide specific inspection guidelines. The DART rate has dropped to 2.6 in FY 2012 which is a 40% reduction from the baseline rate of 4.3. In fiscal year 2013, the State conducted 53 inspections and 18 consultation visits related to this performance goal.

Outcome	Baseline	2009	2010	2011	2012	2013
DART	4.3	2.9	3.0	3.1	2.6	TBD

2.5 Develop/Sustain Partnerships and Alliances Supporting Strategic Plan

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. Partnerships and alliances with companies and associations allow the department to leverage resources and to promote employee safety and health. This includes partnerships at high profile construction sites. Partnerships are performance based and have been terminated in the past when partnership participants did not adhere to requirements of the partnership. In fiscal year 2013, North Carolina had three partnerships and ten alliances.

Activity for Partnerships and Alliances

	2009	2010	2011	2012	2013
Partnerships	4	4	5	3	3
Alliances	12	12	9	8	10
Total	16	16	14	11	13

V. Other Special Measures of Effectiveness and Areas of Note

During FY 2013, North Carolina participated in a number of efforts to improve the monitoring process and more clearly define State Plan effectiveness. This included participation on the CASPA State Plan Policies and Procedures Manual review committee, and work on an additional State/Federal committee that was involved in the review, revision, and updating of SAMM measures.

The Assistant OSH Director Kevin Beauregard continues to be actively involved in reviewing specific SAMM measures, assuring that data collected is accurate and that specific SAMM measures are comparing identical State and OSHA activity. This task must be coordinated in conjunction with the implementation of the OSHA Information System by Federal OSHA and the OSHA Express in the State.

During the on-site monitoring process, OSHA was able to observe and participate in the State's process for continuous improvement. Recommendations and program improvement ideas advance through the submittal of action requests that are reviewed by management personnel. A change in State procedures as a result of a OSHA recommendation would follow the same action request process, and this action has taken place with previous FAME reports. Through the action request process, appropriate action is taken and a system is in place to document what corrective action has taken place.

OSHA and North Carolina have utilized an active monitoring system that encourages on-going program involvement by OSHA. Program knowledge is acquired over a period of time and this information is used as a basis to address any program issues that may arise at any given time. An active monitoring plan is intended to ensure that there are no surprises on a quarterly basis or revelations when the FAME report is released.

Appendix A – New and Continued Findings and Recommendations
FY 2013 North Carolina State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 2012
13-01	Air monitoring, as well as wipe and bulk sampling was not conducted for several complaint and programmed inspection files.	Review current procedures to ensure that monitoring and sampling are used appropriately as part of an investigation.	
13-02	Though OSHNC's procedures for determining classification of violations are identical to OSHA, OSHNC classifies a lower percentage of violations as serious.	Review classification of health and safety hazard violations in both Construction and General Industry to ensure consistency with the OSHNC Field Operations Manual.	
13-03	The Carolina Star policies and procedures manual does not address all enforcement activities at VPP sites.	Ensure that CSP 03-01-003 (VPP Policies and Procedures Manual), chapter VIII or similar language be incorporated into the Carolina Star Policies and Procedures Manual.	

Appendix B – Observations Subject to New and Continued Monitoring
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[FY13-OB-1]	[FY12-OB-1]	Observation	Federal Monitoring Plan	Current Status
	FY12-OB-1	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.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	Closed
FY13-OB-1		A few case files were identified where the Personal Protective Assessment standard usage was not appropriate.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-2		Case files were identified where the justification for good faith reduction was not documented or was inconsistent with the safety and health program review.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-3		When appropriate consider including interview statements and field notes in the file.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-4		In several case files, use of the confirmation of abatement form did not always provide sufficient evidence that corrective action was taken. Also, corrected during inspection violations were not always documented in the case file.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-5		Informal conference notes were missing in a few instances when penalties were reduced.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-6		All OSH Discrimination cases where complainants request a “Right to Sue” letter prior to a determination being issued should be recorded in IMIS as “withdrawn.”	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-7		Table of contents in OSH Discrimination case files should be as detailed as possible and contain sections such as “Complainant Statement,” “Complainant’s Rebuttal,” “Respondent Position Statement,” “Investigator Notes,” “Memorandum of Interview,” “OSHA Inspection” “Report of Investigation,” (not just sections “Complainant Information” and “Respondent information.” Also, tabulation should clearly mark each item identified in the table of contents.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-8		In all OSH Discrimination cases, respondent should be asked to provide information concerning “similar situated employees.” If the information is not obtained, the investigator should document their efforts to do so and explain why it was not provided (i.e. Respondent refused, it did not exist, etc.).	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New

Appendix C – Status of FY 2012 Findings and Recommendations
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FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status

No findings were identified in FY 2012.

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
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OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor

Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: North Carolina		FY 2013		
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	5.37	(Negotiated fixed number for each State) - 10	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	2.74	(Negotiated fixed number for each State) - 4	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	1.92	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	1.54	Other: .88	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
11	Percent of total inspections in the public sector	4.51	(Negotiated fixed number for each State) - 3.5%	State data taken directly from SAMM report generated through IMIS.

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13	Percent of 11c Investigations completed within 90 calendar days	43	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	14	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	65.1	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	2637/1621	(Negotiated fixed number for each State) - 3013/1499	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 -25 Employees	a. 628.65		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Employees	b. 944.33		
18c	Average current serious penalty - 101-250 Employees	c. 1685.03		
18d	Average current serious penalty - 251+ Employees	d. 2432.43		
18e	Average current serious penalty - Total 1 - 250+ Employees	e. 967.68		
19	Percent of enforcement presence	2.48%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 35.04	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and Federal OSHA for FY
20b	20b) Percent In Compliance – Health	Health - 35.70		

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				2009-2011.
21*	Percent of fatalities responded to in 1 work day	76%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	28.3	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and Federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	28.74	57.05	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and Federal OSHA for FY 2009-2011.
24	Percent penalty retained	76.53	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and Federal OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.