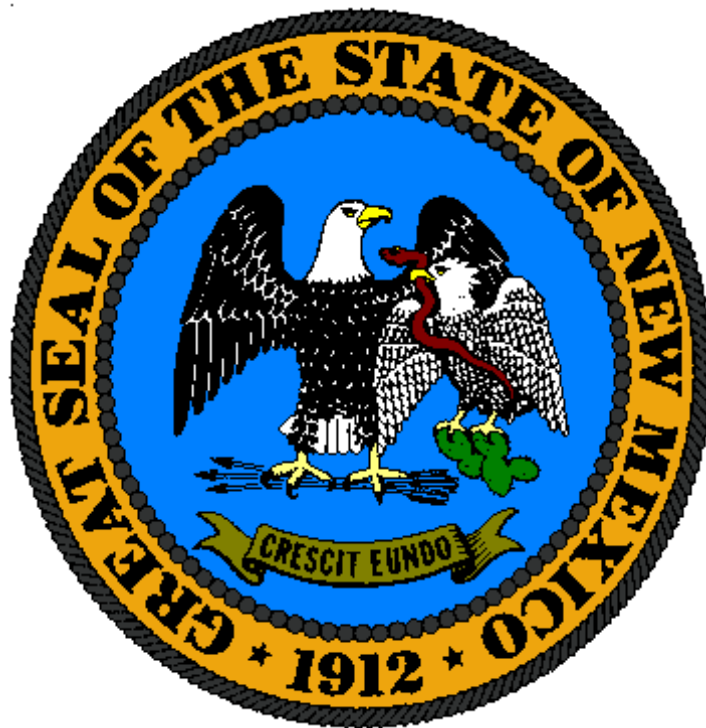


**New Mexico Environment Department  
Occupational Health and Safety Bureau**

**State OSHA Annual Report**



**Fiscal Year 2024**

**October 1, 2023 – September 30, 2024**

Michelle Lujan Grisham, Governor  
James C. Kenney, Cabinet Secretary  
Kristy Peck, Acting Bureau Chief

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## II. Executive Summary

**During fiscal year 2024 (FY24), the New Mexico Environment Department (NMED) Occupational Health and Safety Bureau (“OHSB” or “the Bureau”) focused on its mission to ensure healthy and safe working conditions for every employee working within the State of New Mexico.**

Through targeted enforcement, cooperative assistance, and outreach efforts, the OHSB used a broad approach to reach industries most in need of reductions in injuries and illnesses. New Mexico engaged in activities in its State Emphasis Programs (SEPs) and applicable National Emphasis Programs (NEPs). Targeted SEPs were within the industries of construction, primary and fabricated metals, oil and gas well drilling and servicing, hospitals and nursing care, and silica. The Bureau focused its SEP for silica exposure in the construction and earth products manufacturing industries. OHSB also participated in several OSHA NEPs including Primary Metals, Hexavalent Chromium, Process Safety Management in Chemical Processing Facilities, and Heat-Related Hazards. OHSB continued the process of developing a Heat Illness and Injury Prevention standard that will further protect New Mexico workers.

The OHSB Strategic Partnership for Construction (OSPC) and Alliance programs were integral to overall successes in sustaining low state injury rates. OHSB and the New Mexico Construction Safety Coalition (CSC) continued to improve partnership processes in the construction industry with sharing of information and ideas to promote worksite health and safety. The CSC is comprised of OHSB, the Associated Building Contractors (ABC), Associated Contractors of New Mexico (ACNM), Associated General Contractors (AGC), American Subcontractors Association of New Mexico (ASA), Mechanical Contractors Association of New Mexico (MCA), and the New Mexico Utilities Contractors Association (NMUCA). OHSB worked with established Alliances including the Southeast New Mexico Service, Transmission, Exploration, and Production Safety Network and renewed an existing Alliance with the Mexican Consulate in Albuquerque, New Mexico.

The OHSB continued to experience staff turnover throughout FY24 with an average compliance officer vacancy rate of 37%. This high turnover rate was due to compliance and enforcement section expansion, competitive job markets, and staff making career changes. To improve professional recruitment and retention in FY24, NMED completed a comprehensive Appropriate Placement initiative that will increase the OHSB budget. NMED will also continue its programs of new hire leave benefits, recruitment referral incentives, and rapid hire events.

With staffing challenges, OHSB assigned additional responsibilities to existing staff to work toward meeting programmatic goals. The Bureau updated enforcement processes, cross training strategies and training opportunities to develop new staff. In FY24, the Bureau scheduled over 140 courses and over 4,830 hours of combined OSHA Training Institute (OTI), University of Texas Arlington (UTA) and other supplemental training for enforcement, consultation, compliance assistance, whistleblower protection (WB), and administrative staff, enhancing their abilities to deliver services to the regulated public and keep New Mexico workers safe.

### III. Progress Toward Strategic Plan Accomplishment

Through effective strategic planning and regular collaboration among management, compliance, and cooperative programs staff, OHSB coordinated targeted efforts to reach industries and employees with the highest risk for injuries and illnesses. The Bureau's performance plan for FY24 concentrated on two key strategic areas, each encompassing initiative aimed at reducing injuries, illnesses, and fatalities.

### IV. Compliance & Enforcement Activities

The Environment Department's Occupational Health & Safety Bureau (OHSB) Compliance & Enforcement (C&E) efforts were focused on conducting inspections at industrial workplaces with high injury, illness, and fatality rates.

The bureau targeted industries identified as having a high number of health and safety hazards with the ongoing use of state emphasis programs. SEPs were implemented to emphasize enforcement activities within the following sectors:

Primary and Fabricated Metal Manufacturing

Oil and Gas Well Drilling and Servicing

Commercial and Residential Construction

Work Processes with Silica Exposures

Hospitals and Nursing Care Facilities



OHSB also engaged in training for and conducting programmed inspections at facilities through the adoption of national emphasis programs (NEP). NEPs provided guidance to enforce the NM Occupational Health and Safety Act within work sites identified by planning guides to contain hazards associated with primary metals processing, hexavalent chromium, process safety management (PSM) covered chemical facilities, trenching and excavation, heat-related illness, and combustible dust.

This year, OHSB also began implementing an NEP for outdoor and indoor heat-related hazards. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions. Additionally, the growing cannabis and hemp industry with producers and product manufacturers continued as an emerging sector requiring enforcement activity.

## A. FY24 Performance Metrics

As the need for pandemic prevention efforts decreased, OHSB resumed normal inspection operations. Focusing on targeted enforcement of the SEP, specialized inspection teams were deployed to various construction sites. This chart reflects the total inspections conducted in the construction industry, broken down into safety and health inspections.



Industry/Program	Total Inspections	Safety Inspections	Health Inspections
Construction Industry (Albuquerque, Santa Fe, Rio Rancho, Las Cruces)	41	35	6
Oil & Gas Operations (Southeastern & Northwestern Areas)	29	25	4
Silica Exposure Inspections	12	2	10
Fabricated Metals Industry	13	10	3
Hospital & Nursing Care Facilities (Health Compliance Team)	6	-	6

Although the number of inspections performed by C&E staff in FY24 decreased, OHSB considers this relatively low enforcement presence primarily resulting from a lack of experienced compliance officers in FY24 and increased training requiring travel. In FY25 the Bureau expects to onboard five additional safety and health Compliance Officers. The Bureau is engaging in ongoing efforts to improve staff competency, meet or exceed increased inspection goals, and decrease citation lapse times. OHSB continues efforts to standardize electronic case file systems. Significant improvements to the case file structure were developed and implemented in FY24, as noted during the FY24 FAME.

OHSB adjusted annual maximum and minimum penalties in FY24 in accordance with federal and state legislation to account for annual inflation based on the Consumer Price Index for All Urban Consumers (CPI-U) data.



With expanding the compliance and enforcement staff, OHSB focused efforts to hire and train staff for three teams of inspectors to provide state-wide coverage during the fiscal year. OHSB C&E staff consisted of a newly formed team of safety compliance officers and a compliance supervisor working in the Las Cruces and Roswell field offices, a second team of safety compliance officers and a compliance supervisor in the Santa Fe and Albuquerque field offices, and a team of health compliance officers and health supervisors based in Santa Fe, Albuquerque and Farmington field offices.

FY24 saw each team focused on developing and implementing internal work processes including inspection assignment and reviews, ongoing unprogrammed activity procedural changes, and continuing refinement of compliance inspection, documentation, and citation

issuance procedures, with an emphasis placed on increasing the number of inspections while decreasing citation lapse times. The Bureau also enhanced education and technical training of compliance officers and administrative support staff. OHSB expects to see a positive result for FY25 as a result of these improved work processes.

In FY24, OHSB focused on training staff to acquire skills and knowledge needed to effectively identify workplace hazards in the various industries in its jurisdiction. OHSB provided job-related guidance and training options to develop staff competencies and enforce NMED's authority with a high degree of professionalism and expertise using OTI and Bureau on-the-job training programs. Compliance officers and supervisors participated in various educational activities with coursework and field experiences to develop both safety and health career paths. The competency-based curriculum along with experiential and field training initiatives were maintained for each member of OHSB's compliance and enforcement teams.

## **B. Drone Inspection Program**

In FY24, NMED/OHSB procured five DJI Mavic 3 Enterprise Series drones equipped with optical and thermal imaging cameras for the anticipated use by our inspectors conducting PSM (program safety management) inspections and out in the Oil & Gas and Construction Industries. Next steps in launching the drone Inspection program will be to provide operator training for 10 pilots through Drone University in FY25.



### C. OHSB Makes Training Fun



The OHSB's Team Building and Staff Development training, held on July 3, 2024, was filled with laughter, learning, and camaraderie. The event provided employees with a unique opportunity to engage, share ideas, and strengthen connections. Key highlights included a captivating drone demonstration by Compliance Program Manager Gregory Marquez, showcasing the newly acquired DJI Mavic 3T drones, which will aid OHSB in its compliance and inspection efforts.



The training also featured a morale-building session focused on enhancing team communication, motivation, social relations, and stress reduction. Additionally, a review of the new electronic file process was conducted to introduce procedural changes aimed at improving efficiency and accountability. Overall, the day was a resounding success, achieving its primary goal of fostering employee development.

#### **D. OSHA Inspectors Find Dangerous Health Hazards in Santa Fe, Rio Rancho and Albuquerque**



While OHSB Compliance Officers were actively pursuing training to further develop their occupational health and safety hazard recognition skills, they also opened and conducted 154 inspections and investigations leading to 311 citations with \$2,267,591.00 in total initial penalties. Four of those citations accounted for \$621,768.00 in penalties for Willful-Serious violations of the New Mexico Occupational Health and Safety Act.

Inspectors identified a variety of health hazards to which employees were being exposed. These included airborne lead particulate at a cellular phone component manufacturing facility, ozone gas at a water diversion & treatment plant, and cadmium and chromium contaminants

generated during media blasting operations at an aerospace parts manufacturing facility. Additionally, various vapors of alcohols, acetates, benzene, and xylene chemicals used for epoxy spray finishing of anti-corrosive coating in above-ground steel tanks, respirable dust generated during clay mixing operations, isocyanate vapors generated while manufacturing foam mattresses, as well as hydrogen sulfide and carbon monoxide gases released during maintenance operations at a propane distribution center were identified and sampled for. Multiple overexposures were determined by several of the aforementioned personal air quality samples taken.

Additionally, OHSB worked closely with OSHA's Office of Occupational Medicine & Nursing physicians to provide case evaluations, medical record reviews and medical screening activities in support of worksite inspection activities leading to citations issued for both health and safety workplace hazards.



## E. OHSB Investigation of Health & Safety Hazards leading to Fatalities



In FY24, OHSB opened twelve fatality/catastrophe investigations within various private sector industries and public sector entities. Overall, OHSB Compliance Officers were tasked with determining root causes to identify the underlying health and safety hazards leading up to the fatal incidents.

OHSB identified that employees were exposed to trench collapse due to lack of cave-in protection, multiple struck-by hazards leading to crushing, lack of machine guarding, chemical asphyxiation, battery tank explosions leading to catastrophic burns, and respirable chemicals without adequate protective engineering controls, work procedures, and personal protective equipment. Additionally, Compliance Officers found less innocuous causes with deadly outcomes nevertheless, such as biological pests, workplace violence and non-work-related causes of death of New Mexico's workforce.

## F. Significant Cases

### **Office of General Counsel NMED's OHSB case upheld in court!**

During the pandemic, NMED/OHSB was responsible as a first response agency with NMDOH to work on Covid-19 safety matters. Two employers had fatalities that resulted in inspections/citations/contest/hearing/appeals of the General Duty Clause for failing to adequately protect employees. Posting a ruling in favor of OHSB before the Occupation Health and Safety Review Commission, the County sued the Commission in District Court, in the Court's appellate capacity, as required by statute. NMED sought to intervene, was granted permission, and filed response briefs with the 13th Judicial District Court.

On October 16, 2024, the District Court filed an order affirming the Occupational Health and Safety Commission's Final Decision and Order upholding the citations for Sandoval County.

After over a year of waiting for the completion of briefing with the court- the Opinion was received today. The earlier case was for O'Reilly Auto Parts, where the District Court affirmed the citations on April 8, 2024. It is important to NMED/OHSB that the decision of the Commission was affirmed on the substantial evidence challenge, AND that the transcribed employee interview statements were properly admitted into evidence as one of two exceptions to the hearsay rule. Both cases create solid precedent for admitting transcribed employee interviews into evidence.

The Commission's earlier ruling upholding OHSB's citation in the case of the second employer who appealed was also affirmed in the First Judicial District Court and the Court similarly ruled that transcribed employee interview statements properly allowed into evidence.

That concludes the appeals of the Commission's rulings upholding OHSB's citations to employers for failing to adequately protect employees from Covid-19 exposure- what sweet relief!

## **V. Certification and Assistance Program Activities**

### **A. Public Sector Consultation**

The OHSB Consultation Program conducted 26 visits in the public sector during FY 2024, including 14 health visits and 12 safety visits. Additionally, the Program completed 83 public sector compliance assistance activities. The Program exceeded their established goals for 2024.

<b>Consultation Program 23(g) Public Sector Visits for FY24 – Q1 - Q4</b>	
<b>Visit Type</b>	<b>Number of Visits</b>
Public Sector Visits Goal	20
Both	0
Health	14
Safety	12
Total Visits	26
Compliance Assistance Activities	83

### **B. Cooperative Programs**

#### **1. Zia Star Voluntary Protection Program (VPP)**

The Program experienced a withdrawal of one site due to high injury and illness rates that could not be lowered through a rate reduction plan. The following is a list of program participants in FY 2024:

New Mexico Zia Star VPP FFY2024	
Company	Location
Georgia-Pacific	Santa Teresa
Southwest Generation/Valencia Power, LLC/Onward Energy	Belen
NextEra Energy Resources/New Mexico Wind	House
NuStar Energy	Albuquerque
HF Sinclair Asphalt. LLC (Formally Holly Asphalt)	Artesia

## 2. Alliance Agreements and MOUs

New Mexico Active Alliance Agreements and MOUs	
Organization	
Consulate of Mexico in Albuquerque, New Mexico	
Southeast New Mexico Service, Transmission, Exploration, and Production Safety Network	

## C. Compliance Assistance and Outreach

### 1. NM OHSB Participates in Farmworker Workshops 2024 in Southern NM



NM OHSB presented and participated in farmworker workshops organized by New Mexico Workforce Connection in Deming, Anthony, and Hatch, NM. The farmworker workshop objective was to provide information about resources and services available to the farm working community in southern NM.

Over 400 farmworkers and representatives from agencies and organizations attended the events and presented information in Spanish and English. NM OHSB Consultant Brent Boden and Compliance Assistance Specialist/Voluntary Protection Program Coordinator Isidro Herrera

presented state specific regulations for employee occupational health and safety in agriculture (11.5.4 NMAC).

NM OHSB also emphasized the importance of heat stress prevention for farm workers and provided posters, OSHA Employee Rights & Employer Responsibilities, and fact sheets to attendees.

## **2. NM OHSB Compliance Assistance Specialist/ Voluntary Protection Program Coordinator attended Annual OSHA Updates for Region 6 in El Paso, TX.**

Federal OSHA in Region 6 El Paso, TX and the Risk Management Institute for El Paso Community College coordinated the event through an Alliance Agreement which gathered more than 250 attendees. OSHA Area Director Diego Alvarado Jr and Compliance Assistant Specialist Abraham Arzola presented information including fatality rates and outlook, penalties, record keeping requirements, and employee rights and employer responsibilities.



## **3. NM OHSB Supports Federal OSHA VPP Onsite Evaluation**

NM OHSB Compliance Assistance Specialist/Voluntary Protection Program Coordinator Isidro Herrera traveled to White Sands Missile Range to participate in the Federal OSHA VPP Audit of Raytheon MCVC. Raytheon MCVC provides system operations and maintenance, missile processing for field surveillance, flight test, and Patriot As A Target, and provides the necessary range interface for test plans and test management activities for on-range and environmental testing.

## **4. NM OHSB Presents Safety and Health Information in Santa Fe and Gallup, NM in Collaboration with Somos Un Pueblo Unido**

NM OHSB Compliance Assistance Specialist/Voluntary Protection Program Coordinator Isidro Herrera conducted presentations in Santa Fe and Gallup, NM in collaboration with Somos Un Pueblo Unido through an Alliance Agreement. The information presented included: common workplace hazards, construction hazards, falls, forklifts, agricultural safety, heat stress prevention, and deferred compensation.



## VI. Whistleblower Protection Program Activities

In FY24, the Whistleblower (WB) section made significant improvements to its operations by adding a new inspector position and a part-time screener role to address the previous case backlog. The team, led by Abinaya Chandran and Karen Collins, brought a wealth of experience to the table, with a combined seven years of WB case management expertise.

Garth Hayden, the Operations and Planning Manager, collaborated with the WB team from Region 6 and the OHSB to streamline processes, further enhancing the overall performance of the program. Thanks to these improvements and the dedicated efforts of the team, the WB section successfully eliminated the case backlog, demonstrating a remarkable turnaround in operational efficiency.





WB Case Summary		
Description	Number of Cases	Total Amount (\$)
Cases Closed	57	
Cases Docketed for Further Investigation	73	
Cases Closed as Non-Merit	190	
Cases with Positive Outcomes through Settlements	3	242,153

## VII. Operations and Planning

### A. Performance Metrics

The Bureau's Operations & Planning Section historically provides necessary support functions including financial, information systems, and labor statistics management. Financial staff meets regularly with management to ensure budgets are properly projected and funds appropriately expended. OHSB continues to use the OSHA Information System (OIS) for enforcement data. Labor statistics staff continue to excel at injury, illness, and fatality data collection.

The retention of the administrative team through FY24 proved to be instrumental in the successful performance and goals achieved. In addition to providing customary support to the compliance leadership to ensure efficient processing of citations, the administrative team also focused on improving collection efforts, reducing open UPA's, responding to Inspection of Public Records Act (IPRA) requests from constituents and other general office support.

In FY24, the Administrative Team led an effort to reduce the number of open UPA's dating back to FY2018. In March 2024, the project started with more than 1100 open UPA's. The efforts of the administrative team resulted in a 96% closure rate of backdated UPAs by the end of FY24. The project success enabled the administrative and compliance team to implement streamlined processes to ensure timely closures or initiate inspections. The team has also striven to document vital processes in standard operating procedure documents to prevent knowledge loss.

In FY24, The Management Analyst Program (MAP) achieved some milestones to aid in the consistency of performance analysis for the Compliance Team. Performance metrics were standardized by identifying the performance metrics carrying the largest impacts and adjusting delivery frequencies. The objective of the frequency change is to obtain noticeable Return on Investments on the efforts of the Compliance Team.

The Management Analyst team also focused on process improvement suggestions derived from the most recent FAME and previous FAMEs to build in quality assurance practices in E-casefile and documentation management. The Management Analyst team joins the Compliance team in scheduled meetings to discuss suggestions and solicit feedback for other process improvement suggestions.

In concluding the MAP goals, the MAP team conducts quarterly case file reviews utilizing internally developed tools to provide analytics for Compliance leadership with case file documentation accuracy. The analysis provides suggestions to strengthen internal processes to address previous FAME findings.

## **B. Penalties**

In FY24, the OHSB Compliance & Enforcement team issued 311 violations, resulting in penalties totaling \$2,267,591.00. The OHSB Administrative team has collected \$677,896 of these penalties, achieving a collection rate of 30%. This rate does not include contested cases or those with active payment plans.

At the end of FY24, OHSB has an outstanding balance of approximately \$175,277 in arrears, dating back to FY231. For FY23, OHSB has been directed by NMED leadership to review its policies and procedures, with consideration given to adopting fees and interest as part of an enhanced collection strategy.

## **VII. Legislation**

FY24 marked the conclusion of a two-year effort to improve NMED recruitment and retention through the Appropriate Placement initiative. Led by Secretary James Kenney, the initiative secured a \$6.2M compensation package from the NM Legislative Finance Committee, resulting in pay increases for NMED employees. The initiative was well received, with a video link showcasing employee testimonies on the impact of the raises.

<https://youtu.be/Sh7yArZt5e4?si=pO4TPr27nZX3V8h0>

## **VIII. Federal Annual Monitoring Evaluation (FAME) Recommendations**

Federal OSHA conducts an annual review of OHSB programs through the Federal Annual Monitoring Evaluation (FAME). From the FY23 FAME, OSHA made the following recommendations for improvement of the New Mexico state plan. The following summarized OHSB actions toward implementing the federal recommendations during FY23 and FY24. The Bureau will continue to develop and implement continuous process improvement opportunities to resolve recommendations from FY23.

**Finding FY23-01:** Of the total 52 inspections reviewed, 24 inspections (46%) lacked documentation of employee contact or interviews where 100% were reportedly interviewed (SAMM 13).

**Recommendation:** Ensure compliance officers conduct and document employee interviews as required by OHSB FOM Chapter 3.

**Corrective Action:** OHSB implemented focused construction inspections to reduce case files without interviews by training compliance officers (COs) to document interviews utilizing multiple methods to document interviews in OIS. Additionally, training COs with proper placement of interview documentation in e-casefiles. The Management Analyst Team will conduct quarterly file reviews with employee interviews as one of the points of emphasis to validate.

**Finding FY23-02:** In FY23, OHSB conducted 218 (83%) out of their project goal of 264 (SAMM 7).

**Recommendation:** OHSB should implement corrective action to ensure yearly goals are met. Managers should monitor and adjust inspection assignments weekly and monthly if the current inspections are falling behind the inspection goal pace.

**Corrective Action:** OHSB will increase and retain trained staff to meet inspection goals by holding a 4-day OHSB CO training, increase inspection resources including redistribution of unprogrammed activities, and conduct monthly meetings with management, compliance officers and analysts to review program metrics; OHSB will review management analyst (MA) weekly and monthly reports.

**Finding FY23-03:** In FY23, the average lapse time for safety inspections was 108.94 days and the average lapse time for health inspections was 98.63 days. This exceeded the FRL range of 44.18 to 66.28 for safety and 55.78 to 83.66 for health. (SAMM 11a and 11b).

**Recommendation:** OHSB should periodically review all open cases with compliance officers to prevent high lapse-times.

**Corrective Action:** Compliance & Enforcement is partnering with the Management Analyst team to develop and implement a casefile documentation SOP with timed events/ inspection casefile milestones. The milestones include CO inspection times and OIS entry; CO Documentation management; file reviews for compliance supervisors; and citation issuance for Compliance Program Manager, Compliance Section Chief and Bureau Chief. OHSB conducts scheduled meetings to review and prioritize case completion, provide updates and review program procedures, methods and directives. Additionally, Compliance leadership will utilize management analyst weekly and monthly reports to review program and individual CO performance.

**Finding FY23-04:** Unions not contacted: Out of a total of 52 files reviewed or FY23, five inspection case files had unions and three of the union's representatives were contacted during inspections.

**Recommendation:** Follow the policies in the OHSB FOM, Chapter 3. During the opening conference, the highest-ranking on-site union official or union employee representative shall designate who will participate in the walkaround. SAMM 13 shows that the percentage of initial inspections with worker walk-around representation of worker interview 100%. FRL is 100% fixed for all State Plans.

**Corrective Action:** OHSB will retrain Compliance Officers to include Union Representatives in the inspection walkaround to reinforce training provided in FY23. OHSB have modified inspection checklists to include data field to capture union representative name and contact information. Union representation on walkarounds is a focal point in the quarterly file review.

**Finding FY23-05:** OHSB lacks adequate written procedures for its whistleblower program. OHSB did not adopt federal program changes or equivalents to CPL 02-03-011 during FY23.

**Recommendation:** OHSB addresses this issue by adopting their draft Whistleblower Investigations Manual (WIM) which, upon review, is a sufficient equivalent of CPL 02-03-011. If

OHSB adopts their draft manual in FY24, this finding will be fully addressed and will be removed on the FY24 FAME.

**Corrective Action:** OHSB completed a draft WIM aligned with CPL 02-03-011 and New Mexico statute. NM staff currently uses the draft WIM as guidance for investigations with approval from the Bureau Chief. The draft WIM is pending legal approval. The anticipated approval time frame in start of FY25 Q2.

**Finding FY23-06:** OHSB is less effective than the federal program in its criteria for acceptance of whistleblower complaints because it places more stringent requirements on Complainants to file whistleblower complaints.

**Recommendation:** OHSB addresses this issue in their draft Whistleblower Investigations Manual, (Chapter 3, II A B, Page 26), which states:

“It is important to note that when taking a complaint over the phone that even though the New Mexico statute specifies in writing” and acknowledged by the employee that this does not require that the employee put the complaint in writing.”

When the Complainant offers a verbal complaint over the phone, the Whistleblower Investigator should take the verbal complaint and document it in writing. At the end of documenting the complaint, the Investigator should read back the information they have gathered, correcting any mistakes with the Complainant, and gaining verbal confirmation that the information is correct. This agreement constitutes *acknowledgement* for the purposes of 50-9-25 (B).”

If the OHSB manual is adopted and put into practice in FY24, this finding may be removed in the FY24 FAME Review.

**Corrective Action:** OHSB updated procedures in the draft New Mexico WIM to accept complaints in conformance with federal programs. NM staff currently use the draft WIM as guidance for investigations with approval from Bureau Chief. The draft WIM is pending legal approval. The anticipated approval time frame in start of FY23 Q2.

**Finding FY23-07:** OHSB management did not review Administrative Closures and Case Files. Of the 54 files reviewed, 32 cases contained no evidence of supervisory review or approval in the case file.

**Recommendation:** OHSB addresses supervisory review and approval of administrative closures and docketed cases in their draft Whistleblower Investigations Manual. If the OHSB manual is adopted and put into practice in FY24, this finding may be considered for removal in the FY24 FAME Review.

**Corrective Action:** OHSB revised its organizational structure to include a direct WB supervisor and an additional investigator position. Since this change all admin closures and docketing requests have been reviewed by a supervisor

**Finding FY23-08:** OHSB did not provide documentation that onsite verification activities were conducted as required in Section L- “Verification” of the New Mexico OHSB Directive-15-07- OHSB Strategic

Partnership for Construction. Additionally, no partnership verification activities were recorded in the OSHA Information System (OIS) as Compliance Assistance Activity.

**Recommendation:** OHSB should follow their internal directive titled OHSB Directive 15-07- OHSB Strategic Partnership for Construction specifically in Section N.- Recording Activities. In addition, as per OHSB Directive 15-07 Section N. Recording Activities- all information pertaining to this program shall be recorded in the OSHA Information System (OIS) following current instructions as a Compliance Assistance Activity.

**Corrective Action:** OHSB updated compliance assistance specialist OIS user access and verification activity reporting. OHSB assigned a business operations specialist to assist with OIS updates on activities. OHSB has completed OIS updates for 4th quarter FY24 verification activities. MA staff will provide quarterly compliance assistance activity reports for strategic construction partnerships.

**Finding FY23-09:** In two out of three (66%) files reviewed, NM OHSB did not send the List of Hazards to the union within twenty days after the closing conference. In the two case file reviews, visit no. 335507 and visit no. 316964, no union official sent a copy of the written report to the employer. (Reference 29 CFR 1908.6(e)(8) and CPPM (Consultation Policy and Procedures Manual) Chapter 4, Section III.E.)

**Recommendation:** Send the List of Hazards to union officials within 20 working days of the closing conference per Chapter 4, Section III.E. of the CPPM and 29 CFR 1908.6(e)(8).

**Corrective Action:** NM OHSB added union representation fields to the consultation request forms and the casefile protocol checklist to ensure union information is captured and updated in the OIS. Changes to the forms and checklist and union notification, including sending the list of hazards to a union official, were reviewed individually with consultants and discussed in team meetings.

## **IX. State Internal Evaluation Plan Recommendations**

### **State Internal Evaluation Program (SIEP)**

New Mexico's State Internal Evaluation Program (SIEP) was initiated to ensure that program operations conform to policies and procedures established by the State Plan. The SIEP also identifies areas which additional procedures should be developed in response to the demands of the organization.

This program is designed to encompass a five-year period. On an annual basis, areas of vulnerability for the OHSB are determined. The specific portions of this evaluation program pertaining to the areas of vulnerability will be implemented each year. Regardless of vulnerability determination, all areas of the program will be executed at least once every five years.

### **Field Operations Manual**

- The OHSB Field Operations Manual (FOM) requires a revision update to modify procedures to improve operational readiness and efficiencies for administrative and Compliance Officers. Develop a tiger team of CSHOs and admin to work on FOM revisions; projected completion time frame is 6 months to 1 year.



- Develop a training strategy to review the revisions of the FOM with CSHOs and administrative, as required. All training topics on the FOM revisions should be documented with the roster of staff attended and administered when a specific chapter or topic has been revised. The training could be recorded for current and future OHSB staff can view for initial or refresher training.

### **Petitions to Modify Abatement (PMA)**

- Familiarization with PMAs would be the primary training focus for the C & E and administrative staff. PMAs need to be inserted into a regular training schedule (preferably annually) and have staff understand the primary objective of a PMA and what the eligibility requirements are.

General knowledge training in PMAs should be provided for all staff, with detailed and specialized training for supervisors and managers. Additionally, training for CO's and Administrative staff should be provided to ensure proper resolution and case documentation of PMAs.

- OHSB shall attempt all goodwill efforts to ensure employers are providing acceptable and sustainable solutions to provide their employees with a safe working environment. However, an effort should be made with leadership to propose ways to mitigate employers with PMAs with deliberate attempts to avoid abatement with unwarranted extensions to close violations. A recommendation would be to add the violation penalty amount back to the citation amount on failure to abate a violation according to the PMA agreement.

### **Equipment Maintenance, Calibration and PPE**

- A 2022 Complaint About State Plan Administration (CASPA) responds to the safety concerns and illustrates the corrective actions that have been taken for procurement and distribution of equipment and PPE; efforts to keep equipment maintained and calibrated.

Leadership should have frequent and proactive discussions with the C & E team on upcoming equipment maintenance concerns, future PPE requests, technology upgrades and best practices. Additionally, working with the administrative staff on timely procurement of PPE and equipment.

### **Denial of Entry and Warrant Application**

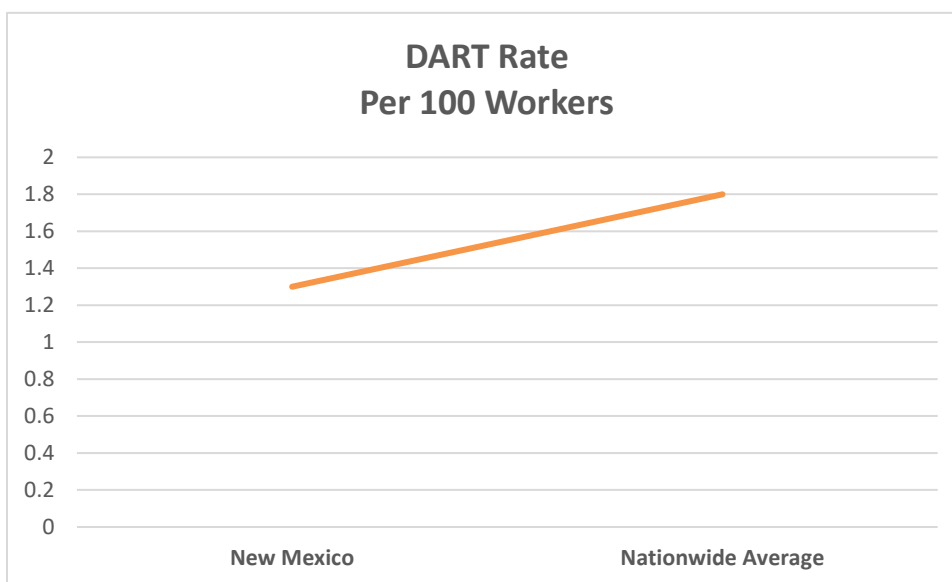
- The Compliance Team should incorporate various training settings where different scenarios can be discussed and trained to provide the Compliance Officers with intangible tools to place them in a favorable position when encountering possible hostile scenarios. These trainings can occur as stand-alone training, discussions in scheduled team meetings, or any creative way to place the Compliance Officers in a win-win situation.
- Training for Compliance Officers on gathering viable and standardized information from the inspection location that would aid leadership / legal counsel obtaining the required legal documents for inspection more effectively and efficiently.

## OSHA Discriminations Activities

- In discussions with the whistleblower staff, the topic of conversations with employers and employer representatives was brought up and the contention that may occur with employer management and/or representatives in case discussions. It would be valuable for the whistleblower staff to attend some type of de-escalation training to provide the tools necessary to direct conversations into productive resolute conclusions.

## Training of Staff

- OSHA Training Institute (OTI) and University of Texas – Arlington (UTA) continues to be the primary training platforms for initial and continued training for OHSB Compliance and Consultation Officers, as well as support staff.



- Scheduled internal training should be added to the OHSB training curriculum. The training syllabus would focus on internal operations and execution of OHBS policies and procedures. A deliberate focus on internal processes would support the efforts of processing OHSB cases timely and more efficiently. Utilizing prior performance reviews would be pivotable for OHSB to improve internal procedures to meet internal and OSHA directed Key Performance Indexes (KPIs).

## X. Conclusion

OHSB utilized available resources to deliver enforcement and compliance assistance activities to target industries where workers are most at risk of injury and illness. The OHSB analyzed the need for enforcement and compliance assistance activity in various industries, and adjusted emphasis programs to affect positive changes in injury and illness experience in those industries.

Private industry employers reported 12,400 nonfatal workplace injuries and illnesses in New Mexico in 2022. (See [table A.](#)) Assistant Commissioner for Regional Operations Michael Hirniak noted that this resulted in a total recordable cases (TRC) incidence rate of 2.3 cases per 100 full-time equivalent workers;

the national rate was 2.7. (See [Technical Note](#) at the end of this release for more information about the Survey of Occupational Injuries and Illnesses.)

In the past, New Mexico, experienced Days Away, Restricted, or Transferred (DART) rates significantly lower than nationwide rates. OHSB will be going into FY25 with positive trajectory in staffing, operations and performance strategies. Both Consultation and Compliance & Enforcement teams have recently completed significant hirings, putting OHSB in a favorable position to achieve FY23 Grant application goal projections. Additionally, Appropriate Placement has placed OHSB in a competitive market to aid with reducing the vacancy rate. OHSB anticipates positive trends to continue throughout FY25.

## **XI. Appendices**

### **Strategic Goal 1**

The first goal, described as “Reduce injuries, illnesses, and fatalities by working with employers to reduce occupational hazards and exposures,” will be accomplished in five specific performance areas, which are identified as Goal 1.1 through Goal 1.5.

The means and strategies that OHSB will utilize include the following:

1. Maintain a strong enforcement presence as an effective deterrent for employers who fail to meet their safety and health responsibilities. OHSB will continue to explore ways to improve inspection targeting, identification of workplace hazards, and abatement of those hazards.
2. Leverage the Bureau’s enforcement resources using data and results-driven approaches to identify and address hazards for industries and occupations.
3. Provide compliance assistance with special emphasis on high hazard and special emphasis programs, VPP, targeted industries and occupations.
4. Provide technical training for Consultants, Compliance Assistance Specialists, and Compliance Officers in hazard identification, hazard correction techniques, standards, regulations, assessment of risk, assessments of exposure, and safety and health program requirements.
5. Deliver effective outreach, education, and training, and increase employer and employee awareness of health and safety issues by:
  - a. Providing outreach and training to reduce hazards, injuries, and illnesses in targeted industries;
  - b. Providing staff to serve as advisors to oil and natural gas organizations including STEPS networks;
  - c. Sponsoring, as resources permit, training seminars and continuing to develop and implement courses designed for other New Mexico health and safety professionals;
  - d. Implementing a target-specific outreach program with the following elements:
    1. State website outreach that is reviewed and updated to inform the public of current OHSB services;
    2. Coordination with New Mexico small business assistance programs to increase awareness of health and safety regulations; and

3. Promote health and safety programs to new employers and employees through the local Chamber of Commerce, community colleges, and technical/vocational schools.

<b>Five-Year Strategic Goal 1.1</b>	Reduce the total New Mexico injury and illness DART rates by 5% through 2024 by targeting serious health and safety hazards.	FY24 Year End Results
<b>FY24 Performance Goal 1.1</b>	Experience a total injury and illness DART rate of less than 1.3 for CY2024 by conducting 350 enforcement inspections and, and 100 compliance assistance activities (including VPP, alliances, and Partnership activities). (Note: it will not be possible to measure the DART rate until BLS releases data in late 2024)	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Number of enforcement inspections.</li> <li>• Number of 23g compliance assistance activities.</li> </ul> <p>Primary Outcomes:</p> <ul style="list-style-type: none"> <li>• Injury and illness DART rate of less than 1.3 for CY2024.</li> </ul>	<ul style="list-style-type: none"> <li>• 134 enforcement inspections conducted</li> <li>• 242 Compliance Assistance Activities Conducted</li> <li>• DART for FY232 is 1.3 <a href="https://www.bls.gov/regions/southwest/news-release/workplaceinjuryandillness_newmexico.htm">https://www.bls.gov/regions/southwest/news-release/workplaceinjuryandillness_newmexico.htm</a></li> </ul>
<b>Data Source(s):</b>	<p>Activity Measures: OIS</p> <p>Primary Outcomes: BLS Survey</p>	
<b>Baseline:</b>	The DART for the most recent reporting year prior to the 5-year plan was 1.3 in 2017.	

	Reduce the 5-year average rate of OHSB investigated workplace fatalities by 5%	FY24 Year End Results
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<b>Five-Year Strategic Goal 1.2</b>	through scheduled inspections and visits at workplaces in targeted industries.	
<b>FY24 Performance Goal 1.2</b>	Experience fewer than 10 workplace fatalities requiring OHSB investigation in FY24.	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Number of enforcement inspections in Oil &amp; Gas.</li> <li>• Number of enforcement inspections in Construction.</li> <li>• Number of fatalities in Oil &amp; Gas.</li> <li>• Number of fatalities in Construction.</li> <li>• Number of consultation visits in the SEPs.</li> <li>• Number of 23g compliance assistance activities in the SEPs.</li> </ul> <p>Primary Outcome Measure:</p> <ul style="list-style-type: none"> <li>• Records with fewer than 10 OHSB investigated fatalities.</li> </ul>	<ul style="list-style-type: none"> <li>• 34 Inspections were conducted in Oil &amp; Gas</li> <li>• 102 inspections were conducted in Construction</li> <li>• 1 fatality occurred in Oil &amp; Gas</li> <li>• 2 fatalities occurred in Construction</li> <li>• 30 consultations were performed in SEPs</li> <li>• 70 CAS activities were conducted in SEPs</li> <li>• 12 fatalities were investigated in FY24</li> </ul>
<b>Data Source(s):</b>	<p>Activity Measures: OIS</p> <p>Primary Outcomes: OIS</p>	
<b>Baseline:</b>	<p>For the 5-Year period from FY14 to FY18, there were:</p> <ul style="list-style-type: none"> <li>• An average of 9.6 OHSB investigated fatalities (48/5).</li> </ul>	

<b>Goal 1.3</b>	Redacted per Region 6 Request due to 21(d) grant reference
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<b>Five-Year Strategic Goal 1.4</b>	Improve the quality of participant health and safety programs by achieving average DART rates for combined top-level members in the OHSB Strategic Partnership for Construction (OSPC) at	FY24 End of Year Results
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	more than 20% below rates in respective industries by 2024.	
<b>FY24 Performance Goal 1.4</b>	Achieve average DART rates for combined top-level OSPC members at more than 4% below DART rates in respective industries.	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Verification activities for each Partnership.</li> </ul> <p>Primary Outcomes:</p> <ul style="list-style-type: none"> <li>• Overall DART for all top-level members.</li> </ul>	<ul style="list-style-type: none"> <li>• 33 Partnership Verifications were conducted</li> <li>• 0.62</li> </ul>
<b>Data Source(s):</b>	<a href="https://www.env.nm.gov/occupational_health_safety/strategic-partnerships/">https://www.env.nm.gov/occupational_health_safety/strategic-partnerships/</a>	
<b>Baseline:</b>	The 2017 NM DART rate for Construction was 1.6.	

<b>Five-Year Strategic Goal 1.5</b>	Recognize employers with outstanding health and safety programs, illness and injury rates through participation in the NM Zia Star Voluntary Protection Program.	FY24 End of Year Results
<b>FY24 Performance Goal 1.5</b>	Complete all new and renewal onsite reviews, and issue participation awards within prescribed timeframes during FY24.	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Number of new and renewal applications.</li> </ul> <p>Intermediate Outcome Measures:</p> <ul style="list-style-type: none"> <li>• Number of current participants.</li> </ul> <p>Primary Outcomes:</p> <ul style="list-style-type: none"> <li>• Percent of awards issued timely.</li> </ul>	<ul style="list-style-type: none"> <li>• There were no new approvals or reapprovals in FY24</li> <li>• There are currently 5 VPP sites for FY24.</li> </ul>
<b>Data Source(s):</b>	<a href="https://www.env.nm.gov/occupational_health_safety/voluntary-protection-program/">https://www.env.nm.gov/occupational_health_safety/voluntary-protection-program/</a>	

<b>Baseline:</b>	100% of reviews are completed within the prescribed timeframe.	
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## Strategic Goal 2

The second goal, defined as “Maximize OHSB effectiveness by striving for continuous improvement in all areas of service delivery”, will be measured in three specific areas.

The methods and strategies that OHSB will employ to achieve these goals include the following

- Provide enhanced investigation interviewing training to sharpen the skills of the field staff to ensure comprehensive investigations of fatalities and catastrophes.
- Maintain remote staffing of Enforcement Officers in order to respond quickly to all parts of the State.
- Incorporate ideas and procedures obtained during Discrimination Investigator training into the investigation and documentation process for discrimination investigations.

<b>Five-Year Strategic Goal 2.1</b>	Initiate inspections for reported fatalities within 1 working day 100% of the time.	FY24 End of Year Results
<b>FY24 Performance Goal 2.1</b>	Initiate inspections for reported fatalities within 1 working day 100% of the time.	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Number of fatality reports in fiscal year.</li> </ul> <p>Intermediate Outcome Measures</p> <ul style="list-style-type: none"> <li>• Number of fatality reports under OHSB jurisdiction in fiscal year</li> <li>• Number of fatality reports under OHSB jurisdiction responded to within 1 working day</li> </ul> <p>Primary Outcomes:</p> <ul style="list-style-type: none"> <li>• Percent of response to fatality reports under OHSB jurisdiction initiated within 1 working day</li> </ul>	<ul style="list-style-type: none"> <li>• 12 Fatalities reported in FY24</li> <li>• 12 fatality reports were responded to within 1 working day.</li> <li>• 100% of fatality reports under OHSB jurisdiction have been initiated within 1 working day</li> </ul>
<b>Data Source(s):</b>	<p>Activity Measures: OIS</p> <p>Intermediate Outcome Measures: OIS</p> <p>Primary: OIS</p>	
<b>Baseline:</b>	100%	

<b>Five-Year Strategic Goal 2.2</b>	Promptly investigate complaints and referrals alleging serious health or safety hazards.	FY24 End of Year Results
<b>FY24 Performance Goal: 2.2</b>	Initiate investigations of complaints and referrals alleging serious hazards within the following timeframes 95% of the time: <ol style="list-style-type: none"> <li>1. Investigations by inquiry within 3 days of receipt;</li> <li>2. Investigations by inspection within 5 days of receipt.</li> </ol>	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Number of complaints alleging serious hazards were responded to during the year.</li> </ul> <p>Intermediate Outcome Measures:</p> <ul style="list-style-type: none"> <li>• Average number of working days to conduct investigations for complaints alleging serious hazards.</li> </ul> <p>Primary Outcomes:</p> <ul style="list-style-type: none"> <li>• Percent of investigations initiated within 5 working days.</li> </ul>	<ul style="list-style-type: none"> <li>• 20 complaints alleging serious hazards were responded to in FY24</li> <li>• 2.71 working days to conduct investigations for complaints alleging serious hazards</li> <li>• 48.5% of inspections initiated within 5 working days</li> </ul>
<b>Data Source(s):</b>	<p>Activity Measures: OIS</p> <p>Intermediate Outcome Measures: OIS</p> <p>Primary: OIS</p>	
<b>Baseline:</b>	90%	

<b>Five Year Strategic Goal 2.3</b>	Notify complainants of discrimination investigation determinations within 60 days 90% of the time.	FY24 End of Year Results
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<b>FY24 Performance Goal 2.3</b>	Notify complainants of discrimination investigation determinations within 60 days 90% of the time.	
<b>Performance Indicators:</b>	<p>Activity Measures:</p> <ul style="list-style-type: none"> <li>• Number of discrimination cases opened</li> </ul> <p>Intermediate Outcome Measures:</p> <ul style="list-style-type: none"> <li>• Number of discrimination investigations completed within 60 days</li> </ul> <p>Primary Outcomes:</p> <ul style="list-style-type: none"> <li>• Percent of complainants notified of determinations within 60 days</li> </ul>	<ul style="list-style-type: none"> <li>• 73 Cases were opened and docketed in FY24</li> <li>• 13 cases were completed within 90 days In Accordance With OIS</li> <li>• 22.81% of cases were closed and complainants notified within 90 days</li> </ul>
<b>Data Source(s):</b>	Discrimination worksheet located at: P:\Occupational Health & Safety Bureau\Whistleblower\Discrimination Information\DiscCases10	
<b>Baseline:</b>	90%	