

The NJEA article “PEOSH Inspections Require Savvy” illustrates several important points. PEOSH would agree that the first line of defense in providing for a safe and healthy workplace is the establishment of an internal mechanism that provides for employers and employees to freely exchange information via a health and safety committee. PEOSH strongly encourages this and the NJEA’s 10 step approach is a great example of how employers and employees can work jointly to create an environment that promotes health and safety.

The NJEA article specifically addresses what the NJEA considers to be “limitations” of the PEOSH Program.

These stated limitations include:

**Understaffing:** *Despite Federal funding, PEOSH has been unable to fill over 15 vacant positions, due to the six-year freeze on hiring state workers. This has resulted in a several-month backlog of complaints about IAQ and sanitation.*

**PEOSH Response:**

**A hiring freeze remains in place, however PEOSH has made changes to better utilize staff by reassigning 2 consultation staff to the safety enforcement area. In addition, PEOSH has assigned crane inspectors to conduct PEOSH compliance inspections in safety enforcement. New Jersey Department of Health and Senior Services (NJDHSS) PEOSH has reassigned staff so that there are now six enforcement staff, increased from 5. Although NJDHSS has a backlog of complaints the additional staff will result in the reduction of the back log.**

**These personnel moves have allowed PEOSH to fill staffing gaps in the enforcement area.**

**PEOSH continues to respond to all safety complaints within 5 days and responds immediately to fatalities/catastrophes and reported imminent danger situations. NJDHSS PEOSH responds to all health complaints other than indoor air quality and sanitation within five days and immediately to fatalities/catastrophes.**

**Weak Standards:** *Many standards are too weak*

**PEOSH Response:**

**Under the New Jersey Public Employees’ Occupational Safety and Health Act, (N.J.S.A.34:6A-25), PEOSH is required to adopt and enforce all Federal standards in reference to general industry, construction, agriculture, marine terminals and long shoring.**

In addition, PEOSH enforces its own regulations for firefighting, indoor air quality, indoor firing ranges and hazard communication. These State standards go beyond the federal standards.

N.J.S.A. 34:6A-28 establishes the Public Employees' Occupational Safety and Health Advisory board.

In accordance with N.J.S.A 34:6A-29 the Commissioner of Labor and Workforce Development shall, in consultation with the Commissioner of Health, the Commissioner of Community Affairs and the PEOSH Advisory Board, promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and public employees, in accordance with section 18(c) of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.). The Department of Labor shall be the sole agency responsible for administering and enforcing this plan throughout the State. The plan shall:

- a. Provide for the development and enforcement of safety and health standards;
- b. Provide for the right of entry and inspection in all workplaces by the commissioner;
- c. Provide for the right of entry and inspection in all workplaces by the Commissioner of Health;
- d. Prohibit advance notice of inspections;
- e. Contain satisfactory assurances that the Department of Labor and the Department of Health have the legal authority and qualified personnel necessary to carry out their responsibilities under this act;
- f. Give satisfactory assurances that the State will devote adequate funds to the administration and enforcement of the standards;
- g. Contain satisfactory assurances that the State will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the corresponding provisions of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.);
- h. Provide that the Department of Labor shall make such reports to the secretary in the form and containing the information that the secretary from the Commissioner of Labor and Workforce Development shall in consultation with the Commissioner of Health, the Commissioner of Community Affairs and the Advisory Board promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employees.

i. Provide for such cooperation with the Department of Community Affairs in implementing the plan as is consistent with the provisions of P.L.1983, c.516 (C.34:6A-25 et seq.) and the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.).

The revised indoor air quality standard was developed through this mechanism.

When federal OSHA makes changes to an existing standard or adopts a new standard, PEOSH is required to adopt these revisions and or new standards by reference within 6 months of the publication of the final rule (N.J.S.A. 34:6A-30).

Weak Enforcement: PEOSH inspectors find few violations:

**PEOSH Response:**

Historically PEOSH enforcement has exceeded Federal OSHA in the number of violations found per inspection.

Below are statistics from school safety and health inspections for calendar years 2009-2010.

| <u>2009</u>                   | <u>Safety</u> | <u>Health</u> |
|-------------------------------|---------------|---------------|
| General Inspections:          | 69            |               |
| Total Violations:             | 317           |               |
| Avg. # violations/Inspection: | 5.4           |               |
| Complaint Inspections:        | 15            | 39            |
| Total Violations:             | 129           | 33            |
| Avg. # violations/Inspection: | 9             | 0.8           |
| Employees affected            | 6940          |               |
| Consultations                 |               | 21            |
| Consultation Hazards          |               | 12            |
| Avg. # Hazards/Consultation   |               | 0.6           |

**2010**

|                               |     |
|-------------------------------|-----|
| General Inspections:          | 27  |
| Total Violations:             | 173 |
| Avg. # violations/Inspection: | 6.4 |

|                               |      |     |
|-------------------------------|------|-----|
| Complaint Inspections:        | 12   | 35  |
| Total Violations:             | 108  | 24  |
| Avg. # violations/Inspection: | 9    | 0.7 |
| Employees Affected:           | 2791 |     |
| Consultations                 |      | 12  |
| Consultation Hazards          |      | 11  |
| Avg. # Hazards/Consultation   |      | 0.9 |

In 2009 there were 28 safety training courses presented in schools for 358 employees.

In 2010 there were 16 safety training courses presented in schools for 243 employees.

**One federal OSHA measure of PEOSH effectiveness is the number of violations per inspection that PEOSH issues on a quarterly basis. PEOSH has always exceeded the Federal OSHA national average of violations issued per inspection.**

**PEOSH has attained employer compliance for all violations issued with the exception of two Orders to Comply that have been contested.**

**PEOSH violations have resulted in improved working conditions in schools including the repairing of structural defects, equipment, leaking roofs and the elimination of many other hazards.**

**PEOSH inspections have also resulted in public school employers revising or writing emergency action plans, fire prevention plans and written indoor air quality plans that were either obsolete or never existed.**

**Complaints have also led to inspections involving unsafe asbestos abatement through the Office of Asbestos Control and Licensing within LWD. PEOSH has also made numerous case referrals to Federal OSHA where private contractors exposed public school employees to hazards created by their work.**

**In addition to enforcement activities the NJDHSS PEOSH Program undertakes other activities to improve the workplace environment. The PEOSH Program includes recommendations with**

inspection reports, we provide consultation to public workplaces, we have occupational safety and health information available on our web sites, and we do outreach and training.

Since May 2007 NJPEOSH has been offering “Designated Person Training”. The purpose of this training is to provide basic IAQ knowledge and to help employers comply with the PEOSH indoor air quality standard. We have conducted 130 designated persons training sessions and trained approximately 3469 people. Many of the people trained are school staff.

**Limited inspections:** Complaint inspections are not comprehensive but limited to complaint items only. PEOSH does not evaluate whether or not school staff have work-related health problems. Nor do they evaluate school HVAC systems.

**PEOSH Response:**

NJDHSS PEOSH expands the scope of complaint inspections when the employee, employee representative or employer request that PEOSH staff evaluate an area outside the scope of the original inspection. In addition, PEOSH staff will expand the scope of an inspection if a hazard is observed outside the scope of the original complaint during the inspection. PEOSH evaluates HVAC systems by reviewing maintenance records, measurement of ventilation indicators and through visual inspection.

**PEOSH initiates no inspections of schools:** Because they are considered low hazard, inspections of schools take place only when complaints are filed by employees or unions. Parents cannot file complaints. PEOSH conducts no school inspections on their own initiative.

**PEOSH Response:**

In 2009 PEOSH performed 69 general inspections and 27 general inspections in schools in 2010 (see inspection statistics above). Because of the current complaint backlog NJDHSS PEOSH is not able to conduct general inspections at schools.

The PEOSH law states that only employees and employee representatives have the right to file complaints (N.J.S.A.34:6A-38).

NJDHSS PEOSH receives calls from parents and responds to their concerns. The parents are encouraged to contact the school district and local School Board to make them aware of their concerns. After a discussion with the parent, PEOSH will recommend to parent that we contact the school district superintendent’s office. The call to the superintendent’s office is to make the school district aware of the concerns expressed by the parent and request that the school investigate the issue and respond to NJDHSS PEOSH. Any response from the school district is shared with parents. Also we advise the school district that they can request a PEOSH consultation.

PEOSH is currently following a mandatory strategic plan which was agreed to by Federal OSHA. This strategic plan is required under the Federal State plan grant funding agreement.

The strategic plan is based on inspecting the highest hazard work places in the State. Federal OSHA also follows a similar initiative in their site specific targeting plan.

The rate for school illness and injury was 5.9 in 2009 and in 2008, 6.3 in 2007, 5.8 in 2006, and 6.4 in 2005. 2005 was the reference year when PEOSH set the latest industry targets. The industries currently targeted all have rates higher than 10. Police in local government was 12.3 in 2005, fire was 13.8, and nursing homes in local government was 16.5 & 15.1 in state government. Support Activities for Transportation – North American Industrial Classification System (NAICS) 488 & had a rate of 19.5 in 2005.

The strategic plan is based on addressing those workplaces where employees are incurring the largest number of injuries and illnesses as demonstrated by the most recent BLS data. The basis for setting these procedures in place is to provide for the most effective use of resources in an effort to reduce illness and injury rates in places where they most frequently occur.

According to BLS data, schools are far below the strategic plan illness and injury rates of the above referenced industries.

Unclear reports: The letters sent to employers and complainants after inspections do not clearly say whether or not the complaint items were found to be valid.

**PEOSH Response:**

All compliance inspections that have violations result in an Order to Comply that is sent to the employer, complainant and employee representative. Orders to Comply specifically spell out violations and established abatement due dates.

Complaint items are listed in field notes and are a permanent part of each case file. Complaint items are discussed with the complainant and employee representatives. Inspection findings are always discussed at the closing conference with employers and employee representatives.

Inspection formats follow Federal OSHA guidelines and describe hazards, employee exposure and employer knowledge.

After all hazards are abated, close out letters are issued to the employee and employee representative. All safety inspections include follow up inspections to insure that hazards are corrected and involve employer/employee participation.

On all fatality investigations, next of kin are involved from the inception of the inspection until the final outcome.

Weak fines: PEOSH assesses no monetary penalties the first time a violation is cited.

**PEOSH Response:**

**Not issuing first instance fines has resulted in PEOSH gaining compliance in every instance except for the two contested cases previously mentioned. If PEOSH issued first instance sanctions, employers would routinely contest as evidenced by the number of Federal contested cases. This would create a legal “log jam,” backlog of unresolved cases, unabated violations and continued exposure by employees to these hazards.**

**PEOSH issues first instance penalties for willful and repeat violations. Penalties are also issued for failure to abate violations.**

**As a result of penalty issuance, PEOSH has successfully engaged in numerous health and safety penalty settlement conferences which have led to on-site consultation agreements. These consultations have occurred when public employers agree to engage in full health and safety consultations in exchange for a reduction in assessed penalties.**

**Employers are required to successfully complete all of these health and safety consultations and abate all violations in order to receive the agreed upon penalty reduction.**

**Full health and safety consultations that were a result of penalty settlements have occurred and are ongoing including several major school districts throughout the State.**