

**The Disempowerment of the
NYS Public Employee Safety and
Health (PESH) Program**

***“Voices of the
Rank and File
PESH
Inspectors”***



Reported herein are the results of a survey of PESH inspectors regarding the status of the PESH program. The survey was conducted by the New York State Public Employees Federation, AFL-CIO during August – October, 1999.

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Background¹

The NYS Public Employees Federation (PEF) has a dual interest in the NYS Department of Labor (NYSDOL) Public Employee Safety and Health (PESH) Program:

- PEF represents 53,000 public sector workers who are covered by the requirements of the PESH Act.
- PEF represents the PESH inspectors who conduct workplace inspections and enforce the safety and health standards required by the Act.

Fifteen thousand PEF members work in health care and 8,000 in criminal justice agencies that are considered high risk for occupational injuries and illnesses. The protections and rights afforded to our members under the PESH Act are important to preventing needless deaths, injuries and illnesses caused by unsafe and unhealthy working conditions. Furthermore, workplace accidents disrupt operations and cost the state millions of dollars in worker's compensation and related costs.

PEF representatives within the NYS Department of Labor have received complaints from rank and file members working in the PESH program regarding short staffing and lack of appropriate training. These issues have been raised in the NYS DOL's / PEF Statewide Labor/Management Committee in several meetings during the past year. Although Department managers were sympathetic, it became clear that these issues are not going to be resolved at the agency level.

Complaints about the decline of the PESH program have also been articulated by health and safety representatives from other New York State public sector unions that participate in the New York State AFL-CIO Public Employee Safety & Health Committee. Representation on this committee includes AFSCME District Council 37 representing New York City workers, Civil Service Employees Association representing state, county, and municipal employees, Transportation Workers Union, Communications Workers, New York State United Teachers, Service Employees International Union, and others. These unions have reported lengthy delays in getting inspections and improper notice of employer conferences and modification of abatement date petitions. A particularly alarming issue has been the increase in work related deaths reported by DC-37. They reported at the last meeting of the Committee that there have been 8 work related deaths in New York City this year to date.

PESH is considered a "State Plan" under federal law and receives about 50% of its funding from federal OSHA. As a state plan PESH must be "at least as effective" as

¹ For a legislative background on the PESH Act, see Appendix A

OSHA in enforcing safety and health standards. OSHA has not certified PESH because of ongoing deficiencies in areas such as staffing, training, and adoption of new standards. PEF obtained the 1996 - 1997 OSHA Biennial Evaluation Report on the PESH program that documents significant deficiencies including 64.5% staffing for safety inspectors and 77.8% staffing for health (industrial Hygiene) inspectors. .At one point Division of Safety and Health Managers had sent out an ambiguous memo telling PESH inspectors not to perform activities where there are no OSHA standards or enforcement guidelines such as ergonomics or workplace violence. The memo also required management review of any proposed use of the "General Duty Clause"² to cite public employers. In many public sector institutions ergonomic problems cause back injuries, carpal tunnel syndrome and other serious repetitive trauma. Workplace violence is also a leading cause of lost time, injury, and worker's compensation cost in public sector facilities. Federal OSHA expressed its objections to this memo in a letter of deficiency leading PESH managers to withdraw it.

To gather more information on the problems occurring within the program, PEF surveyed all 58 PESH inspectors employed by the program. Forty-two responded for a 72% response rate.

Executive Summary

An overwhelming response to the survey indicates that the PESH program is grossly understaffed. Not only do the PESH inspectors report that there are insufficient numbers of inspectors, but many of the offices have been without any clerical support staff for more than a year. Furthermore, inspectors are no longer provided necessary training to carry out the duties of their jobs. Labor Department managers have often greatly restricted sending inspectors to the OSHA Training Institute courses that provide required training for enforcement personnel. The Niagara Community College courses that have been provided are not designed for enforcement personnel and have in some instances provided information that is contrary to PESH policies and procedures.

In addition, inspectors report that they are not provided with appropriate equipment to conduct their jobs. For example, some industrial hygiene inspectors do not have monitoring equipment to measure hazardous atmospheres. Confined spaces have been known to contain oxygen deficient or toxic atmospheres and have caused numerous fatalities of public employees. The lack of equipment is a serious deterrent

² The General Duty Clause requires all employers to provide a workplace free of recognized hazards that are causing or are likely to cause death or serious physical harm to employees. Inspectors use it when a specific OSHA standard does not exist addressing a hazardous situation that is recognized within an industry, is serious, and for which feasible abatement methods are available.

to PESH inspectors preventing needless injury and death-on-the job. Inspectors report that they have submitted numerous purchase orders that are not acted on by upper management. In some cases inspectors have encountered management interference or indifference in enforcing health and safety standards. Inspectors emphasized that the problems in the PESH program are based on actions by the Division Directors and above.

The result of these deficiencies has been erosion of the PESH program's ability to carry out its legislative mandate: to enforce OSHA's minimum safety and health standards for New York State's public employees.

Highlights of the survey are listed below:

1. Forty-two of fifty-eight inspectors currently employed in the enforcement or consultation program responded to the survey. This is an excellent 72% response rate.
2. Ninety percent of the responding inspectors indicated that PESH does not have sufficient staff to meet its legislative mandate.
3. The PESH staff reported that there are currently 59% of the safety and 81% of the industrial hygiene inspectors that are needed to carry out the requirements of the PESHAct. These numbers are remarkably close to the short staffing numbers reported in OSHA's annual report.
4. Fifty-five percent responded that there is insufficient clerical staff in their regional offices.
5. Sixty-one percent indicated excessive delays in getting inspection reports and citations typed up and approved.
6. Seventy-four percent replied that the PESH program does not carry out an adequate number of inspections to carry out its mission.
7. Forty-nine percent responded that the PESH program is not timely in answering complaints.
8. Twenty-seven percent affirmed that they were aware of instances where they or co-workers had been discouraged from responding to a complaint or providing a reasonable outcome by management.

- 9. Twenty-nine percent indicated that they had been discouraged from writing violations.
- 10. Fifty percent reported inadequate management support in enforcing abatement of violations cited.
- 11. Eighty-five percent reported insufficient access to training necessary to the job.
- 12. Eighty-three percent indicated that training, supervision, management, and time allocation were insufficient to accomplish the mission of the program.

Survey Design

PEF prepared a survey to get information directly from the PESH inspectors on the status of their program. Surveys were sent to 107 PEF members employed as health and safety inspectors. PEF's membership database was not able to distinguish between safety and health inspectors employed by PESH and within other Division of Safety and Health Programs such as Asbestos Control. However, of 44 surveys that were completed, only two were from non-PESH personnel. With only 58 inspectors employed by PESH statewide, the response rate of 72% was excellent. A copy of the survey and cover letter that accompanied it are in Appendix B.

Survey Results

Geographic Distribution of Survey Responses

Albany	10
Binghamton	4
Buffalo	6
Hempstead	3
New York City	5
Rochester	3
Syracuse	3
Utica	3
White Plains	3
Blank	4
Total	44

Twenty-one (47%) of the surveys were signed and the rest were anonymous. Although the cover letter promised confidentiality, the fact that such a large number

of inspectors signed their names shows their willingness to step forward and assert their concerns with the operation of the program they work in. The fact that 86% of the surveys included comments is further evidence of the level of concern among the PESH workers.

Distribution of Surveys by Job Title

Associate Industrial Hygienist	4
Senior Industrial Hygienist	6
Safety & Health Inspector	18
Senior Safety & Health Inspector	3
Supervising Safety & Health Inspector	2
Blank	11
Total	44

Note: throughout this document we refer to the inspectors as Industrial Hygiene (IH) Inspectors or Safety Inspectors. The IH group includes the Associate and Senior titles and the Safety group includes all three safety titles.

Voices of the PESH Inspectors

Below are the responses to the survey questions, followed by actual comments of the PESH inspectors.

1. Do you feel that PESH has sufficient numbers of inspectors to accomplish its mission as defined by the enabling legislation?

YES 4

NO 37 (90%)

Blank 3

“Overloaded with files (Inspections) with many of them never touched. We have not filled our Senior Position as well as other Inspector slots.”

“Two Safety & Health Inspectors positions have been vacant in the Hempstead office since 1995 and one since December of 1997. The Industrial Hygienist in Long Island also covers Putnam, Rockland, Westchester, and Orange Counties.”

“There is a greater need for Safety Positions, at present Health Inspectors are instructed to do both Safety and Health Inspections, apparently not a big demand for sampling, etc. There are new inspectors that have been in PESH almost 2 years and have not received Basic Safety Standards Course at OSHA Institute.”

"Also, the Department has been unable to fill the Supervisor Position to be drawn from a Senior Hygienist. In the past three years, program managers have been asked to assume control over departments where there have been two Program Managers. Now there is one fulfilling this role."

"There are no Industrial Hygienists in the Utica Office. Albany does not have the personnel to respond to the needs of the Utica District. There should be an Industrial Hygienist stationed in the Utica District Office."

"In the Department of Labor area (and PESH Bureau) many vacancies are generally created by: transfers, retirements, resignations, and deaths; but these vacancies stay unfilled which puts greater stress, workload, and pressure on the remaining PESH Safety and Health Enforcement Staff."

"PESH is extremely short staffed."

"Utica District should have own IH Position."

"I can only speak for the Utica District Office. Except for more training needed, I think Utica is doing an adequate job meeting the program goal with the good people we have in Utica. There is a definite need for at least one more Safety Inspector as one position has never been filled, and we have one inspector covering nine counties."

"Utica should have its own Industrial Hygienist Position (Health Position). Presently they are supplied from the Albany District Office. Much travel time and having an IH stationed out of this Office could save expense."

"Utica District Office should have its own Supervisory Position as I or one of the other staff members make most of the normal daily decisions."

"I believe Utica is on track and doing a good job, but we could use more training. At the minimum one additional Safety Inspector. Utica had two until about five or six years ago and one IH Position to cover our nine counties."

2. How many PESH inspectors are in your office?

Safety

Health

(See charts below)

3. How many PESH inspectors are necessary for full staffing in your office?

Safety

Health

(See charts below)

Safety Inspector Staffing Shortage Survey Responses

Location	Average Number of Safety Inspectors Employed	Average Number of Safety Inspectors Needed	Percent Staffing
Albany	1.8	2.8	65%
Binghamton	3.3	3.8	87%
Buffalo	2.3	2.7	85%
Hempstead	1.3	3.7	35%
New York City	2.6	5.8	45%
Rochester	2.0	2.7	74%
Syracuse	2.0	3.3	60%
Utica	1.7	2.5	68%
White Plains	2.3	4.0	58%
No Location	1.7	3.0	57%

Industrial Hygiene (Health) Inspector Staffing Shortage Survey Responses

Location	Average Number of IH Inspectors Employed	Average Number of IH Inspectors Needed	Percent Staffing
Albany	3.8	4.3	88%
Binghamton	2.0	2.3	87%
Buffalo	2.7	3.2	84%
Hempstead	2.0	3.0	67%
New York City	5.2	6.0	87%
Rochester	2.0	2.3	87%
Syracuse	1.3	2.7	48%
Utica	0.0	0.5	50%
White Plains	1.0	3.0	33%
No Location	1.5	2.7	56%

4. Are there an adequate number of clerical support staff in your office?

YES 19

NO 23 (55%)

Blank 2

"The main problem where I sit (Albany PESH) is a lack of support staff. The Albany PESH office has NO SUPPORT STAFF DIRECTLY INVOLVED WITH THE IH and Safety Inspector WORKLOADS. The Program Managers each have a secretary, but they are not involved with issuing citations, entering forms, typing report narratives, etc. IH's and SI's must enter their own data and do their own reports which slows the process

way down and prevents them from going into the field to do programmed inspections. Lack of adequate training is the second biggest problem next to lack of support staff. Lack of adequate IH and SI staffing is the third biggest problem."

"We're inundated with paperwork and reports that we almost always prepare, type, and file ourselves giving us little time to stay abreast of important issues. Besides we are seriously under staffed."

"Inspectors and Supervisor doing clerical work at expense of inspections and other functions."

"There is no support staff."

"The Albany District Office has not had support staff (typing, word processing, issuance of citations, data entry, etc.) for ten (10) months. At one time the Albany Office had four staff members providing support. At this time over sixty (60) inspections and complaints from as far back as January await processing and issuance of citations. Professional staff's field activities have been limited, and they were assigned to keyboard specialist and data entry duty in order to reduce our backlog of unprocessed inspections. While other Divisions and Bureaus in Department of Labor have been hiring support personnel, Our Commissioner and Director, in order to show how much money they have saved by "reducing the size of Government", have never made an attempt to convince Division of Budget how imperative it is to the protection of lives and safety of public sector employees that these vacant items be filled."

"We have no support staff in our District Office. This has been the case since October 1998. Citations for inspections conducted during December 1998 still have not been issued. Without having received "Basic Accident Investigation" Training, I am expected to complete and have completed accident and fatality Investigations."

"PESH professional safety and health staff are spending a considerable amount of time tied up doing clerical things (i.e. answering phone and tasks normally done by support staff). There is no support."

"I am doing a higher-grade work (Program Manager) with no extra compensation. I am asking for STATE Review of our operations. We are spending twenty to forty per cent (20%-40%) of our time doing clerical work."

"The lack of clerical staff is a great handicap. Professional Safety and Health Staff spend considerable time addressing tasks that are clerical such as answering phones,

typing, dealing with mail, etc. This is such a waste of time and greatly curtails enforcement and consulting contributions. Additionally, the paperwork and administrative tasks tie up a lot of time. These tasks could be streamlined and/or done by a support staff person. There needs to be at least two support staff to provide clerical support in the Albany District Office."

6. Have there been excessive delays in getting inspection reports and citations typed up and approved?

YES 25 (61%)

NO 16

Blank 3

"Reports were being sent to Long Island and Utica to be typed up, then sent back to Albany to be approved, and then sent back to LI or Utica for corrections."

7. Does the PESH program perform an adequate number of public sector inspections to carry out its mission?

YES 10

NO 29 (74%)

Blank 5

"PESH is a skeleton operation, going through the motions, but not impacting the public sector like it used too."

"The demand outweighs the tools and manpower currently available."

"This usually leads (eventually) to more accidents, and injuries (PEF and CSEA complaints filed, etc.). Which then, has the "Domino Effect"-more accidents, injuries, and deaths to public employees; because we can not continue programmed inspections. This results in our getting behind on our follow-up for complaints for previously cited Public Employers."

"All inspectors are in the Albany District Office typing and entering reports, no one is in the field doing inspections."

8. Is the PESH program timely in answering complaints?

YES 19

NO 20 (49%)

Blank 5

"The time inspectors are available for field work has been further reduced by inspectors recently being directed to generate orders on the OSHA IMIS System in addition to standard report preparation. In the past (prior to October 1998), this work was done by dedicated support staff. As a result, inspection productivity has been reduced by at least forty per cent (40%). It is not uncommon for thirty days to elapse before complaint investigations are initiated (from the date of receipt); by that time, alleged hazards often no longer exist. Not all PESH Offices are without support

staff. Problems at individual offices may be local in nature, due in most part to political infighting (This does not make it acceptable).

9. Are you aware of any instances where you or your co-workers have been discouraged from responding to a complaint, or providing a responsible outcome?

YES 11 (27%)

NO 29

Blank 4

"Regarding management (i.e. Deputy Commissioner's and Director's Office) hindering the inspection process: All complaints alleging hazards relating to "Workplace Violence" and "Ergonomics" (two terms the Director's Office will not recognize) must be reviewed by the Director prior to conducting an inspection. Past experience has shown that citations regarding these two "unspeakable" issues are stalled politically and are scrutinized and revised by the Director's Office and are negotiated with the agencies involved prior to District Office authorization to issue citations (eg. OMH-Hudson River Psychiatric Center, and DOCS-Washington Correctional Facility)."

"Politics play an overwhelming role in case determination."

"However, if complaints are not passed down the line in a timely manner, we cannot answer them properly. No one is being sent to the OSHA Institute for necessary training."

"Alterations of report findings/ citations after informal conferences. Last training was at least 4-5 years ago."

"YES, (name of company³)"

10. Have you or your co-workers been discouraged from writing violations?

YES 12 (29%)

NO 29

Blank 3

"While the writing of citations is not discouraged, DOSH Management (not PESH) may over-ride the inspector or delay the issuance of citations, particularly when large State Agencies are involved."

11. Do you and your co-workers have adequate support from management in enforcing abatement of violations cited?

YES 19

NO 19 (50%)

Blank 6

"Upper management (Division Director and above) feels that training is too expensive and waste our time with their political agenda. The Governor's and Commissioner's Offices have restrained our enforcement activities."

³ Name of company is not identified to protect the inspector involved from recrimination

"My immediate supervisors are dedicated, conscientious, safety and health professionals with sincere concerns for the safety and health of Public Employees. The political appointments are anti-government, anti-union, anti-safety linguistics."

"Management is more a hindrance than a solution when handling complaints and accident investigations. PESH Staff is demoralized due to the work overload and lack of support from management. Also, there is a lack of training."

12. Have you had sufficient access to training opportunities to handle your job?

YES 6

NO 35 (85%)

Blank 3

"Present Administration does not believe in training at OSHA Training Institute because they are paranoid of OSHA. Present training levels to keep up with latest developments and standards are inadequate. NCCC courses in Buffalo are used, yet these are superficial courses not designed for compliance personnel."

"Training is not sufficient. During the course of any given year staff are asked to complete training request sheets for the OSHA Training Institute (OTI). Up until this year the exercise has been fruitless. This year the staff was permitted to go to the OTI for training. The training given at the institute is the only education/training that has any value."

"The training offered at Niagara Community College is not up to the level standards of OTI. Training of Field personnel, Supervising staff and Management is imperative if PESH is to conduct inspections as required by law. Course work that includes the following:

1. Inspection techniques
2. Report writing
3. Updates when standards are revised are an integral part of how we stay informed."

"For the most part inspectors have not had regular OSHA Training due to the cost. Since 1994, I have had one OSHA approved course. Supervisors are not able to guide inspectors in order to do the job properly."

"We do not have Confined Space Training, Electrical Training, Ladders, and Scaffolds, etc."

"Higher levels of management have been very reluctant to provide the professional staff with adequate training. Training provided from Niagara County Community

College does not approach the level of training provided by the OSHA Training Institute."

"There has been virtually no training in the past five years."

"I have had no training courses since 1993-1994. I am Discrimination Investigator for three Districts."

"Shotgun approach to training. One health inspector has had two courses at OSHA Training Institute this year. I have not been to an adequate training course in over three years. Bureau has not conducted training for new standards since Bloodborne Pathogens. Training at Niagara Community College for Hazardous Materials Response was a waste. Instructors did not control class discussion and participants understood material more than the instructors."

"Training has deteriorated from two courses per year to hit and miss. No formal training or new and/or updated standards. Supervision at Bureau level and above has gone from proactive to reactive. Replaced last Bureau Chief with a yes man. Department of Labor and Government are not committed to support program monetarily or actively. Supervisors are selected from DOSH and are not technically knowledgeable, and get the same hit and miss training. Supervisors need to come from PESH or trained adequately. Time to do job is adequate since quotas were removed."

"I have not received any formal training from OSHA Institute in Chicago, in over five years."

"I have been scheduled for training on two different occasions. Both times the classes were canceled because NYS can not adopt a budget on time. This caused lack of funding for travel. "

"PESH Management (Supervisors) is promoted to their present positions (per Civil Service Exam), but is not provided the proper supervisory training; not to mention any Technical Training, etc."

"All training and "excessive travel" has been cancelled pending a consultant investigating the proposed installation of a "Super Computer" for Deputy Commissioner's and Directors Office's use. I personally have not attended an OSHA Training Institute Course (for Compliance Officers) since June 1994."

"Training is sporadic and limited to a few."

"Except for new personnel, the rest of the PESH Staff has not received training over the last five years. Also, because the Albany District has not had clerical staff since October 1998, the hygienists and inspectors have been typing the citations, etc. This condition has caused this office to curtail the number of programmed inspections."

"Training is needed at the OSHA Institute to help safety inspectors and industrial hygienists better enforce the laws. Training also enables these inspectors to recognize hazards for their own personal protection. I, myself, was almost electrocuted twice, and had an air conditioner fall on my head, etc."

"Training is woefully inadequate. Our personal safety is at stake. We need training to help recognize hazards."

"Training on new or revised standards could be enhanced."

"There is not much support above our Bureau for training. Management appears to feel our work is not important; even perhaps a necessary evil."

"No training on technical skills was given for years. Management does not encourage enforcement of regulations."

"Training for safety inspectors in NYC has not been given in two years. OSHA Training and information is given via Dept. directives without follow-ups or adequate training."

13. In general, do you feel that training, supervision, management and time allocation is sufficient to accomplish the mission of the program?

YES 6

NO 38 (83 %)

BLANK 0

"Not only is staffing a problem within PESH but retention is also a problem because of the current pay grades. The pay grades are well below the present market value of professional safety and health inspectors. After graduating with a BS or BA and becoming proficient in your job skills and tasks and four to five years of experience a competent inspector could market his/her skills in the 60ks – 70ks bracket. I am not suggesting that the state pay that much, but the state will not retain seasoned safety and health professionals in the low 40k ranges."

"The PESH Program in this administration, especially through the actions of the Deputy Commissioner for Worker Protection and the DOSH Director's Office, has been relegated to a slow death by attrition in the name of "Less Government is Best Government". Our Director is avowedly anti-OSHA because he believes that all of

OSHA's pro-employee policies are formulated by the Democratic Executive Branch of our Federal Government. This Bureau (PESH) in my twenty years of Civil Service, most of which has been in PESH, has never been more politicized to reflect a pro-management, anti-regulatory stance. Our Program Managers have been chastised and thwarted in every attempt to bring our Bureau up to effective staffing levels and to send our staff to training at the OSHA Training Institute's courses in Chicago or Washington, D.C. Our Director's office believes that Niagara County Community College's abbreviated courses (specifically not intended for compliance personnel) are sufficient training for our professional staff. This is a blatant effort to reduce our effectiveness in hazard recognition and assessment."

"The highly competent and professional staff has been almost totally demoralized by the way their hard work is dismissed and diminished by upper management. Professional Hygiene Staff has been asked to assume the duties of the Principal Industrial Hygienist, a title eliminated in the Program Manager shake-up of a few years ago. This along with professional staff conducting out-of-title support staff duty has led to staff considering (including myself) filing grievances; however, instances of upper management's' mean spirited retaliatory measures have left us fearful to do so. It is widely known that only lock-step employees receive favors and promotions and anyone critical of their policies' is denied training or other tools needed to do their jobs (i.e. computers, testing equipment, etc.). Monetary surpluses from items not being filled, equipment not being purchased, and training not given are being used for "management's Super Computer" or are being turned back to the Federal Government (Read Memo of 6/17/99 in Appendix D)."

"All these policies and management's disregard for worker's safety is slowly eroding PESH's credibility and effectiveness. They are achieving their ideological goals."

"Without support staff and enough inspectors with equipment and training the mission of the program cannot be met."

"The Director of DOSH exhibits a strong resentment towards federal OSHA. PESH Inspectors and consultants have to prepare their own reports on computer. This work used to be done by secretarial staff. Several reports could be completed accurately and efficiently in a single day by a Grade 6 Keyboard Specialist. Today a report may take several days to complete by a Grade 16, 18, 20, or 23 Safety and Health Inspector or Hygienist. PESH staff are now mired in clerical work. PESH should have full staffing with a supervisor in Buffalo."

"The whole program is in shambles. It lacks leadership. We lack equipment, training, and support."

There is still no parity between the Safety Inspectors and the Industrial Hygienists. Supervising Inspectors should be at a higher grade than those supervised."

"It is no secret that the Division Director has bad mouthed OSHA, real bad; and had fits about the name of the OSHA Consultative Program. People wonder where all the funding goes, because we certainly do not see it. The Program Managers are intimidated by the Division Director and his Assistant."

"The Division does not allow banking of hours. There is no incentive for field staff to change workdays. The Labor Department has authorized overtime for employees (including the day care) to solve the Y2K problem. The overtime includes pay grade 23 and above. Yet, to protect the public from a known carcinogen (asbestos) overtime is usually refused and use of alternative work schedules has too many restrictions (i.e. agreed to work on a Saturday but have to take off Monday, Tuesday, or Wednesday in the same 37 ½ hour week."

"Lack adequate offices for out-stationed personnel. My office is desk with computer, available 2 days per week. No bookshelves for reference material, drawers for case files, etc. "Out of sight; out of mind."

"I think we are meeting the needs of the public sector. There is always room for improvements in any program. The only recommendation I have, now, is to fill the positions of those who have retired recently."

"I have not gotten a computer, a really important tool for my work. Yet, there seems to be an on again, off again game of here it is, here it isn't. I have to try to use computers of those who are out. I have heard that there are computers in storage, but there is someone who won't release them. This may or may not be true. I have also heard that permission to order one was given then withdrawn; then given again. Perhaps budget concerns were part of this, but it is time to get past this now. I need this important tool and it is hindering me to not have a computer.

"Staffing is adequate in our Rochester District. My understanding is that it is LOW DOWNSTATE."

Also the Albany District Office is told money is available for supplies, time is invested in considering purchases, and then funds are taken away. That STINKS!"

Staffing Shortage Overview

According to an internal Labor Department staffing report dated 9/1/99 there are currently the following vacant positions:

Vacant Positions According to Labor Department Report of 9/1/99

Location	Safety & Health	Industrial Hygiene	Consultation	Clerical
Albany	2	0	1	2
Binghamton	0	0	0	1
Buffalo	1	0	0	1.5
Hempstead	1	0	0	0
New York City	3	2	0	1
Syracuse	0	0	1	0
Rochester	1	1	0	2
White Plains	0	1	0	0
Utica	1	0	0	0
Total	9	4	2	7.5

The reason for the discrepancy between the understaffing reported by OSHA and the PESH inspectors compared to the Labor Department's official report, is that many positions that have not been filled for two or more years have been eliminated.

The Department also eliminated the Principal Industrial Hygienist. This position was involved in reviewing complex cases, developing guidance and enforcement documents (including the first TB Enforcement Guidelines in the country), and staff training. Supervisors have had to assume these duties, which detracts from their primary work of supervising the inspection and standard enforcement program.

The Albany office has been without any clerical staff since October of 1998. Inspectors and supervisors have to do their own clerical work that further reduces time spent on inspections and consultations.

The Rochester office has been without any clerical support since May of 1999 and has had only one of the two positions filled since November of 1994. The Buffalo office is also short 1.5 clerical staff.

Conclusion

Short-staffing, lack of training, and improper interference by the current Labor Department administration has reduced the PESH program's effectiveness and is significantly reducing its ability to carry out its legislative mandate.

1. The New York State Legislature should appoint a special legislative commission (or appoint committees including the Labor and Government Operations and Public Employees committees) to investigate the PESH program and determine whether there are:
 - Adequate staff, including support staff, for the program to carry out its responsibilities under state and federal law including the timely response to complaints;
 - Sufficient training for professional staff to properly perform their duties under state and federal law;
 - An adequate and appropriate supply of equipment to conduct inspections' and
 - Upper-level PESH managers who discourage PESH inspectors from investigating complaints, writing violations, and/or enforcing abatement of violations and whether such managers improperly interfere or revise written violations or recommended enforcement actions.
2. The Office of the State Comptroller should audit the PESH program to determine whether the funds appropriated by the Legislature for the program are properly spent on fulfilling the program's responsibilities under state and federal law.
3. The Legislature should amend section 27-a of the Labor Law and require the PESH program to provide the Legislature with an annual report that addresses:
 - the number and timelines of inspections performed,
 - the number and timeliness of violations issues,
 - the number of enforcement actions taken,
 - the number of staff and vacant positions by title, and the number of staff sent to specific OSHA training courses.

This data should be provided for each region of the state and the state overall. The data in the first report should include all data for all years since 1990 so the Legislature can evaluate the performance of the program.

4. The Principal Industrial Hygienist position should be restored.
5. A plan to provide appropriate training at the OSHA Training Institute for the PESH program personnel should be developed within one month that will immediately resolve the training deficiencies outlined in this report.
6. The Civil Service Department should investigate the adequacy of the current pay structure that addresses pay equity and staff retention for industrial hygiene and health and safety inspectors.

7. The special commission named by the legislature (or legislative committee) to oversee the PESH program should complete a written report addressing staffing, training, enforcement, certification of the PESH program by federal OSHA, and related concerns within six months of appointment.

Appendix A

Legislative Background⁴

The NYS Public Employees Safety and Health Act was passed by the state legislature, signed by the Governor and made effective 180 days after June 30, 1980. It provided:

"The legislature hereby finds and declares that it is a basic right of all employees to work in an environment that is as free from hazards and risks to their safety as is practicable, and it is the intent of the legislature to insure that this right is also afforded to employees of the state, its counties, cities, towns, villages and other public employers who serve the people of this state.

"A significant percentage of all of those employed in this state are employed by the state or by one of its political subdivisions; many of these public employees perform job functions comparable to those performed by workers in the private sector who are protected by the United States Occupational Safety and Health Act of 1970 (P.L. 91-596) [29 U.S.C.A. § 651 et seq.]. The legislature therefore finds it inappropriate to continue two standards for employee safety, one applicable to those who work in the private sector and one for those who are employed by the state or local government.

"The legislature has further determined that a safe place in which to work is economically advantageous to employers. Work related accidents and injuries, and the absences caused thereby, decrease employee productivity and increase workers' compensation costs; unsafe premises increase the risk of financial liability for injuries to members of the public who frequent our public buildings.

"For these reasons, the legislature, in an exercise of the state's police power, charges the industrial commissioner with the responsibility to insure that all public employees are afforded the same safeguards in their workplaces as are granted to employees in the private sector."

⁴ Reference: Article 2, Section 27-a, NYS Labor Law