



KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH PROGRAM

STATE OFFICE ANNUAL REPORT

for

FEDERAL FISCAL YEAR 2023

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INTRODUCTION

The Kentucky Occupational Safety and Health (OSH) Program was established in 1972 by the Kentucky General Assembly. In July of 1973, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) approved Kentucky's state plan.

Kentucky has experienced three (3) significant reorganizations. Executive Order 2004-731, issued by Governor Ernie Fletcher in 2004, abolished the Labor Cabinet with all duties, responsibilities, employees, and functions transferred to the Environmental and Public Protection Cabinet, Department of Labor. The executive order was ratified into law during the 2005 General Assembly by Senate Bill 41.

Executive Order 2008-472, issued by Governor Steven L. Beshear and effective June 16, 2008, re-established the Labor Cabinet, headed by a Secretary appointed by the Governor, and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards, headed by a Commissioner appointed by the Governor.

Executive Order 2008-472 was not ratified in the 2009 Regular Session of the General Assembly. Therefore, Executive Order 2009-537 was issued by Governor Beshear on June 12, 2009, to preserve the organizational structure established in Executive Order 2008-472. Executive Order 2009-537 once again established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor as stated in Executive Order 2008-472.

Under the reorganization, the appointed directors of the Division of OSH Compliance and Division of OSH Education and Training report to the Commissioner of Workplace Standards who, in turn, reports to the Secretary of the Labor Cabinet.

On March 25, 2010, Governor Beshear signed House Bill (HB) 393, an act relating to reorganization, into law. HB 393 amended and created various sections of the Kentucky Revised Statutes to abolish the Environmental and Public Protection Cabinet and created (re-established) the Labor Cabinet. Kentucky's OSH Program consists of the Division of OSH Compliance, headed by a Director; the Division of OSH Education and Training, headed by a Director; and the Office of the OSH Federal-State Coordinator. The OSH Federal-State Coordinator and the appointed directors of the Division of OSH Compliance and Division of OSH Education and Training report to the Commissioner of Workplace Standards who, in turn, reports to the Secretary of the Labor Cabinet. Supplementing the functions of these units directly is a standards promulgation unit, the OSH Standards Board, as well as an adjudicatory body, the OSH Review Commission. Administrative staff support the division directors, the commissioner's office of the Department of Workplace Standards, and the OSH Federal-State Coordinator's office.

On November 17, 2021, Governor Andy Beshear and the Secretary of the Kentucky Labor Cabinet, Jamie Link, announced the merger of the Education and Workforce Development Cabinet with the Labor Cabinet to create the Education and Labor Cabinet, pending legislative approval. Senate Bill 180 of the 2022 Regular Session was introduced February 16, 2022, passed April 14, 2022, and signed April 20, 2022, by Governor Beshear. The merger was effective July 1, 2022. There were no significant changes to the Department of Workplace Standards or the KY OSH Program structure and/or duties.

The OSH Standards Board establishes, amends, and repeals OSH standards. Executive Order (EO) 2018-586, issued by Governor Matthew Bevin and effective July 16, 2018, abolished the OSH Standards Board. All duties of the Board were transferred to the Office of the Secretary; however, the EO was not codified. EO 2020-014, issued by Governor Andy Beshear and effective January 8, 2020, reconstituted and appointed members to the Board.

The Kentucky OSH Program encompasses all areas, issues, and responsibilities that are covered by OSHA with the exception of private sector maritime activities, non-OSH related discrimination, temporary labor camps and field sanitation, federal employers and employees, private contractors on properties ceded to the Federal Government (including Job Corps Centers and Federal Correctional Institutions), Tennessee Valley Authority facilities, and federal military bases. Kentucky's jurisdiction also extends to all state and local public employers and employees. The state's effort, with the exception of state and local government, does not include enforcement in any area where OSHA does not exercise jurisdiction.

Kentucky's OSH statutes, Kentucky Revised Statute (KRS) Chapter 338, include definitions of employer and employee that do not exclude public employers and public employees. The exclusions to KRS 338 cover only employees of the United States government and places of employment over which federal agencies other than OSHA exercise statutory authority. In addition, written opinions of the Kentucky Attorney General's Office support the Cabinet's position that public employees are included in the OSH Program jurisdiction, which holds Kentucky's public employers and employees to the same requirements, sanctions, and benefits as private sector employers and employees. Kentucky statutes, regulations, and policies make no distinction between the public and private sectors.

The Division of OSH Education and Training, also known as KYSAFE, and the Division of OSH Compliance have an effective and comprehensive program to promote the safety, health, and general welfare of the people of the Commonwealth. This effort focuses on preventing hazardous working conditions and practices at places of work. The Kentucky OSH Program provides voluntary compliance services, education and training, enforcement through inspections of workplaces, onsite consultation services, research, statistics, and other functions that meet the mandate of the Title XXVII – Labor and Human Rights, KRS Chapter 338, Occupational Safety and Health of Employees.

The Kentucky Education and Labor Cabinet remains fully committed to promoting the safety, health, and general welfare of the Commonwealth of Kentucky by preventing any detriment to the safety and health of all employees, both public and private, arising out of exposure to harmful conditions and practices at places of work. In addition, the Cabinet is fully involved in preserving our human resources by providing for education and training, inspection of workplaces, consultation services, research, reports, statistics, and other means of advancing progress in occupational safety and health.

The staffing benchmark for the Division of OSH Compliance is twenty-three (23) Compliance Safety and Health Officers (CSHO) and fourteen (14) Industrial Hygienists (IH). Another two (2) positions are devoted to investigating cases of alleged OSH discrimination. KYSAFE has three (3) main operational branches, safety, health, and partnership. In FFY 2023, there were six (6) consultants in the safety branch and seven (7) IHS in the health branch. The Partnership Branch maintains a staff of four (4) safety consultants and IHS as well as a Voluntary Protection Partnership (VPP) Administrator, a Safety and Health Achievement Recognition Program (SHARP) Administrator, and a Construction Partnership Program (CPP) Administrator.

The Kentucky OSH Program implemented a five (5) year strategic plan for 2021-2025 that utilizes a combination of resources to address workplace hazards, including enforcement strategies, consultations, training and education, partnership programs, technical assistance, and standards development. The synergistic effect of these combined resources enables the OSH Program to significantly impact worker safety and health in the Commonwealth of Kentucky.

The remainder of this report is presented in three (3) sections. Section I addresses Kentucky's success in achieving FFY 2023 Performance Plan goals. Section II addresses FFY 2023 mandated activities. Section III addresses noteworthy accomplishments achieved by the Kentucky OSH Program during FFY 2023.

Information presented reflects accurate data for the period sampled. Some enforcement casefiles have matured since preparation of this report while others are still developing. It is important to note that at the time of report submission, there were 304 FFY 2023 open enforcement inspections. Therefore, some data presented in this report is not fully mature and will vary if resampled. Some data presented in this report relates to inspection activity that initiated in FFY 2022 and matured in FFY 2023.

SECTION I SUCCESS ACHIEVING PERFORMANCE GOALS

The first strategic goal of the 2021-2025 Strategic Plan is to improve workplace safety and health for all workers, particularly in high-risk industries, as evidenced by fewer hazards, reduced exposures, and fewer fatalities, injuries, and illnesses.

Performance Goal 1.1 addresses the aforementioned Strategic Plan goal. Goal 1.1 is to reduce total fatalities in general industry and construction.

In the FFY 2021 baseline year, 155 fatalities were reported to the Division of OSH Compliance and ninety-five (95) inspections were conducted. In FFY 2023, 99 fatalities were reported to the Division of OSH Compliance and thirty-seven (37) inspections were conducted.

In the FFY 2021 baseline year, eighty (80) fatality inspections were conducted in general industry resulting in fifty-six (56) serious violations, fifty-eight (58) other than serious violations, three (3) willful serious violations, and two (2) repeat serious violations with penalties totaling \$692,500. Thirteen (13) construction industry fatality inspections were conducted resulting in ten (10) serious violations, and eleven (11) other than serious violations with penalties totaling \$63,125. In FFY 2023, twenty-seven (27) fatality inspections were conducted in general industry resulting in one (1) repeat violation, thirty-three (33) serious violations and twenty-four (24) other than serious violations with penalties totaling \$235,750. In FFY 2023, nine (9) construction industry fatality inspections were conducted resulting in one (1) willful violation, twelve (12) serious violations, and six (6) other than serious violations with penalties totaling \$130,250. In FFY 2023, one (1) agriculture industry fatality inspection was conducted resulting in one (1) other than serious violation with no penalties.

Performance Goal 1.2 is to reduce the number of hazards associated with hospitalizations, amputations, injuries, and illnesses.

In the FFY 2021 baseline year, 457 hospitalizations were reported to the Division of OSH Compliance and 167 inspections were conducted with four (4) repeat serious violations, eighty-one (81) serious violations, and sixty-six (66) other than serious violations. Total penalties were \$519,210. Eighty-six (86) amputations were reported to the Division of OSH Compliance. Seventy-four (74) inspections were conducted with one (1) willful serious violation, eight (8) repeat serious violations, fifty-nine (59) serious violations, and thirty-one (31) other than serious violations. Total penalties were \$574,900. No loss of eye injuries were reported to the Division of OSH Compliance in the FFY 2021 baseline year.

In FFY 2023, 402 hospitalizations were reported to the Division of OSH Compliance and 190 inspections were conducted with three (3) willful violations, one (1) repeat serious violation, 118 serious violations, and sixty-six (66) other than serious violations. Total penalties were \$798,775. Eighty-one (81) amputations were reported to the Division of OSH Compliance. Eighty (80) inspections were conducted with three (3) repeat serious violations, sixty-seven (67) serious violations, and thirty-four (34) other than serious violations. Total penalties were \$464,250. Additional inspections are pending. In FFY 2023, one (1) loss of eye was reported to the Division of OSH Compliance resulting in an inspection with two (2) other than serious violations and no penalties.

The hospitalization inspection rate increased from the FFY 2021 baseline of 36.5% to 47.3% in FFY 2023. The amputation inspection rate increased from the FFY 2021 baseline of 86% to 98.7% in FFY 2023

Kentucky met the goal.

Performance Goal 1.3 addresses hazards identified through a multi-pronged strategy that incorporates efforts for both the Division of OSH Compliance and KYSAFE.

The Division of OSH Compliance's portion of this goal consists of the number of inspections in construction and general industry. In the FFY 2021 baseline year, the Division of OSH Compliance conducted 864 inspections, 685 in general industry, 179 in construction, and none in maritime. In FFY 2023, the Division of OSH Compliance conducted 847 inspections, 600 in general industry, 246 in construction, one (1) in agriculture, and none in maritime.

The Division of OSH Education and Training's portion of this goal consists of surveys and training contact hours conducted in high hazard industries, as well as the total number of training courses, contact hours, surveys, and technical assistance visits in all industries.

Kentucky's injury and illness data are also an indicator for this goal.

During the FFY 2021 baseline year, KYSAFE conducted ninety-eight (98) health surveys; all were considered high hazard. The division's safety branch conducted ninety-six (96) surveys; all were considered high hazard. Two (2) safety and health technical assistance visits and ten (10) face-to-face training sessions were conducted that impacted 277 persons. Two (2) of the face-to-face training courses were in response to employer specific requests and reached fifty-nine (59) attendees. Twelve (12) trainings were conducted on virtual platforms, impacting 1,028 persons. In FFY 2023, KYSAFE conducted 160 health surveys of which all were considered high hazard. The division's safety branch conducted 204 surveys; all were high hazard. Seven (7) safety and health technical assistance visits and ninety-one (91) face-to-face training sessions were conducted that impacted 1,954 persons. Additionally, two (2) trainings were conducted on virtual platforms, impacting thirty-nine (39) persons. Kentucky met the goal.

Performance Goal 1.4 strives to ensure that employers are adhering to settlement provisions for fatality investigations through follow-up inspections.

In the FFY 2021 baseline year, the Division of OSH Compliance conducted six (6) follow-up inspections. However, there were no settlements that met Performance Goal 1.4 criteria in FFY 2021; therefore, no follow-up inspections were conducted to verify adherence to settlement provisions of fatality investigations. The Division of OSH Compliance conducted one (1) follow-up inspection in FFY 2023, related to a complaint inspection. There were no inspections conducted to verify adherence to settlement provisions of fatality investigations because there were no applicable FFY 2023 fatality settlement agreements.

Performance Goal 1.5 aims to reduce by two (2) percent the number of construction industry injuries caused by falls, struck-by, and crushed-by incidents through a five (5) part strategy that combines efforts by the Division of OSH Compliance and the Division of OSH Education and Training. In addition to the information presented immediately below, Performance Goals 1.2, 1.3, 1.8, and 1.9 also relate to this goal.

In the FFY 2021 baseline year, 179 compliance inspections were conducted in the construction industry and fourteen (14) other construction sites were enrolled in the CPP. KYSAFE conducted twenty-two (22) surveys, no technical assistance visits, and presented three (3) training courses totaling 336 contact hours in the construction industry. In FFY 2023, 246 compliance inspections were conducted in the construction industry and twenty-two (22) other construction sites were enrolled in the CPP. KYSAFE conducted fifteen (15) surveys and presented ten (10) training courses totaling 308 contact hours in the construction industry.

FFY 2021 baseline year data collected by the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illness in cooperation with the OSH Program's Statistical Services

Branch, established the following Kentucky and National incident rates for 2020. This baseline data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry (private industry).

2020	Falls	Struck-by	Crushed
Kentucky	11.7	10.2	5.0
National	15.7	19.9	3.9

BLS now employs a multi-year estimation methodology and transitioned to a biennial case and demographic estimates publication. Data collected by the BLS Survey of Occupational Injuries and Illness in cooperation with the OSH Programs’ Statistical Services Branch, established the following Kentucky and National incident rates for 2021-2022. This data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry (private industry).

2021-2022	Falls	Struck-by	Crushed
Kentucky	7.8	10.2	4.0
National	13.9	20.6	4.2

Kentucky was significantly below the national rate for falls and struck-by injuries and also below the national rate for crushed injuries. Kentucky overwhelmingly met the goal.

Performance Goal 1.6 aims to initiate all work-related fatality as well as hospitalizations of three (3) or more employees inspections within one (1) working day of notification. Kentucky

conducted thirty-seven (37) fatality inspections in FFY 2023 and three (3) appear as outliers. A brief summary is provided below for each outlier.

On Wednesday, December 21, 2022, the Division of OSH Compliance learned of a Tuesday, January 17, 2021 employee fatality. Details of the fatality provided to the division were incorrect. The division started an immediate investigation and after sufficient accurate information was attained, determined the COVID related fatality was work-related. An inspection officially opened Monday, April 17, 2023.

A public service employee died Wednesday, April 12, 2023. After sufficient information was obtained and a thorough in-house review of the fatality circumstances was conducted, an inspection opened Friday, April 14, 2023.

On Friday, June 8, 2023, the Friday, May 19, 2023 hospitalization of a private sector employee was reported to the Division of OSH Compliance. The employee subsequently died Monday, June 4, 2023. Multiple attempts to open an inspection after the Division of OSH Compliance learned of the fatality failed due to employer unavailability. Contact was made with the employer June 12, 2023 and an inspection opened same day.

Kentucky met the goal.

Performance Goal 1.7 aims to initiate Division of OSH Compliance inspections of all imminent danger reports within one (1) working day of notification.

The Division of OSH Compliance conducted 115 imminent danger inspections in FFY 2023 and two (2) appear as outliers. A brief summary of the outliers is provided below.

An imminent danger was reported Thursday, June 14, 2023 to the Division of OSH Compliance. Attempts to obtain information were unsuccessful and the jobsite was inactive

upon arrival. The complainant was contacted and confirmed work would resume Tuesday, June 20, 2023. An inspection opened Tuesday, June 20, 2023.

An imminent danger was reported to the Division of OSH Compliance from OSHA's online complaint form at 7:38 pm Friday, September 1, 2023. State government offices were closed when the complaint was reported and also closed Monday, September 4, 2023 for Labor Day observance. An inspection opened Tuesday, September 5, 2023.

Kentucky met the goal.

Performance Goal 1.8 strives to reduce Kentucky's total case incident rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and KYSAFE.

The Kentucky FFY 2021 baseline total case rate for injuries and illness, established from CY 2020 BLS data, was 3.3. The FFY 2023 total case rate for injuries and illness, established from CY 2022 BLS data, was 3.2. Kentucky met the goal.

Performance Goal 1.9 aims to reduce the lost time case rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training.

The Kentucky FFY 2021 baseline lost time case rate for injuries and illnesses, established from CY 2020 BLS data, was 2.0. The FFY 2023 lost time case rate for injuries and illnesses, established from CY 2022 BLS data, was 1.9. Kentucky met the goal.

Performance Goal 1.10 aims to reduce the total case rate in two (2) of the top ten (10) industries, identified by NAICS, in Kentucky with the highest injury and illness total case incident rates. The effort, known as "Safety Tops Our Priority" (S.T.O.P) combines efforts for both the Division of OSH Compliance and KYSAFE.

Based on 2021 BLS data, ten (10) Kentucky industries with the highest injury and illness total case incident rates are provided in the table below.

NAICS	DESCRIPTION	RATE
92214	Correctional Institutions (State Government)	10.8
62	Health Care and Social Assistance (Local Government)	9.4
492	Couriers and Messengers (Private)	7.5
31161	Animals Slaughtering and Processing (Private)	7.3
311615	Poultry Processing (Private)	7.3
3321	Forging and Stamping (Private)	7.3
32191	Millwork (Private)	7.2
622	Hospitals (Private)	7.2
623	Nursing and Residential Care Facilities (Private)	7.2
92	Public Administration (Local Government)	6.2

Many of the rates from BLS data were elevated due to the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and coronavirus disease 2019 (COVID-19). KYSAFE focused FFY 2023 outreach on NAICS code 92, Public Administration (local government). The NAICS code 92 is an industry KYSAFE has not worked with in the past.

KYSAFE launched a NAICS code 92 Safety Tops Our Priorities (S.T.O.P.) initiative in FFY 2023 and mailed 118 S.T.O.P. letters to counties and seventy-nine (79) S.T.O.P. letters to cities throughout the state. The response rate to the S.T.O.P. initiative was outstanding and resulted in 177 survey requests and 197 surveys. There are more surveys to complete in response to the initiative.

Another FFY 2023 KYSAFE outreach initiative, the Targeted Outreach Program (T.O.P.), sent 226 T.O.P. letters to employers that did not report OSHA 300 data to the Federal Injury Tracking Application (ITA). The T.O.P. initiative resulted in 113 survey requests and seventy-six (76) surveys. There are more surveys to complete in response to the initiative.

Forty-one (41) KYSAFE training sessions were presented at five (5) Population (POP) Center training seminars in FFY 2023; 744 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Basic Electrical Safety, Excavation and Trenching, Silica, Walking / Working Surfaces, Hazard Communication, Personal Protective Equipment, Fall Protection, and Confined Space Entry.

KYSAFE remains committed to working with employers and continues its focus on industries and employers with the worst injury and illness rates. The Division of OSH Compliance continues its programmed inspection focus on the industries with the highest injury and illness total case incident rates. The Division of OSH Compliance conducted sixty-one (61) program planned inspections in FFY 2023.

Performance Goal 1.11 is to identify and assist industries with a total case incident rate three (3) times above the average Kentucky total case incident rate. Industries that met the criteria were unsuitable for KYSAFE outreach. KYSAFE conducted extensive outreach in NAICS code 92 as noted above.

The second goal of Kentucky's 2021-2025 Strategic Plan is to change workplace culture to increase employer and employee awareness of, commitment to, and involvement in occupational safety and health.

Performance Goal 2.1 addresses formal settlement agreements for a citation with a penalty more than \$14,000, or for citations with a combined penalty totaling more than \$14,000, which provide a reduction of thirty-five (35) percent or more must include documented employer implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs" if general industry; or OSHA's 2016 "Recommended Practices for Safety & Health Programs in Construction" if construction; or the ANSI/ASSE Z10-2012 (R2017) "Occupational Health and

Safety Management Systems”; or engage the services of an outside BCSP or ABIH certified consultant.

During FFY 2023, the Division of OSH Compliance authorized forty-one (41) settlement agreements including two (2) OSH discrimination settlement agreements. Penalties were reduced in two (2) settlement agreements for a citation with a penalty more than \$14,000, or for citations with a combined penalty totaling more than \$14,000.

The penalty for Appalachian Restoration Project was reduced from \$26,000 to \$0 in exchange for abatement enhancements.

The penalty for 4D35, LLC was reduced from \$42,000 to \$5,000 in exchange for abatement enhancements. The formal settlement agreement also required implementation of OSHA’s 2016 “Recommended Practices for Safety & Health Programs.” Kentucky met the goal.

Performance Goal 2.2 is to ensure Division of OSH Compliance informal conference penalty reductions adhere to Chapter IV of the Kentucky Field Operations Manual (FOM). In FFY 2023, all Division of OSH Compliance informal conference penalty reductions adhered to Chapter IV of the Kentucky FOM. Kentucky met the goal.

Performance Goal 2.3 is to incorporate evaluation of safety and health management systems in 100 percent of the full-service comprehensive surveys. All FFY 2023 KYSAFE comprehensive consultative surveys incorporated an evaluation of safety and health management systems. Kentucky met the goal.

Performance Goal 2.4 seeks to utilize the Safety and Health Program Assessment Worksheet in all full-service general industry consultation surveys. All FFY 2023 KYSAFE

comprehensive general industry consultative surveys utilized the Safety and Health Program Assessment Worksheet. Kentucky met the goal.

Performance Goal 2.5 aims to provide safety and health program management training. KYSAFE provided employers and employees a cost-free online eLearning safety and health program management training module on the KYSAFE eLearning website, www.kysafe.ky.gov. The module was viewed forty-eight (48) times in FFY 2023. Kentucky met the goal.

Performance Goal 2.6 addresses the evaluations of worksites on a timely basis to certify and re-certify VPP sites, develop CPP agreements, and add new employers to the SHARP, as well as the maintenance and re-certification of current SHARP sites. The Partnership Program was very active in FFY 2023, with 164 VPP, CPP, and SHARP visits. The Partnership Branch continued reaching out in FFY 2023 looking for new VPP, SHARP, and CPP participants.

There were twenty-two (22) active CPP sites in FFY 2023 with a total project cost of approximately \$10.5 billion. The Partnership Branch had 100 contacts / visits with CPP sites in FFY 2023; eighty-nine (89) were site visits affecting 14,668 employees. Eleven (11) contacts were communication with CPP partners. The largest CPP project in FFY 2023 was the \$5.8 billion BlueOval SK Battery Park in Glendale. Also of note was the Envision battery plant in Bowling Green, which is an \$800+ million project.

VPP continues to be successful and set the standard for program and participant quality. The Partnership Branch worked diligently with five (5) facilities in their quest to become VPP certified while maintaining twenty (20) very strong, successful VPP sites in FFY 2023.

SHARP maintained fourteen (14) active sites in FFY 2023 and continues to solicit new participants.

In FFY 2023, the Partnership Branch had 206 significant contacts with participating sites. 164 were site visits affecting 26,752 employees that identified 1,590 hazards; 558 hazards were serious and 1,032 hazards were other than serious. Forty-two (42) contacts were communication with partners. Kentucky met the goal.

Performance Goal 2.7 addresses the implementation of a targeted outreach plan for 100 percent of new Kentucky OSH standards. There were no new OSH standards in FFY 2023; however, outreach planning began in FFY 2023 for new 29 CFR Part 1904 requirements effective January 1, 2024. Kentucky met the goal.

KYSAFE continues to offer free POP Center outreach training for employers and employees across the Commonwealth that addresses Kentucky OSH standards. The Kentucky OSH Program also posts updated and accurate information on the Cabinet's website. KYSAFE offers a universal serial bus (USB) with all state OSH regulations, federal OSH standards, Kentucky safety and health manuals, posters, conference information, and other resource links. KYSAFE provides the USB free of charge.

The third goal of Kentucky's 2021-2025 Strategic Plan is to maximize the efficient and effective use of human and technological resources.

Performance Goal 3.1 is to maintain a reliable data repository. The Kentucky OSH Program deployed comprehensive data management software in 2013 for both the Division of OSH Compliance and KYSAFE that "replaced" OSHA's NCR/IMIS system and the OSHA Information System. In 2015, Kentucky deployed a customized interface that provides the state's compliance and consultation data to OSHA.

In addition to the collection, retention, and transmission of Kentucky's data to OSHA, Kentucky's software provides advanced OSH Program capabilities such as report writing,

inspection and survey milestone tracking, time management analytics, program performance reports, etc. Each division also has specific functionality and capabilities unique to their individual needs.

The Division of OSH Compliance employs one (1) individual dedicated to maintaining reliable data. The Division of OSH Education and Training hired one (1) individual in FFY 2023 dedicated to maintaining reliable data. The Office of the Federal-State Coordinator employs one (1) individual that performs database integrity work. Kentucky met the goal.

Performance Goal 3.2 aims for new supervisory staff to complete formal leadership training.

The Division of OSH Compliance hired one (1) supervisory staff in FFY 2023. The individual was a former supervisor in the division that previously completed extensive formal leadership training. KYSAFE did not hire new supervisory staff in FFY 2023. Kentucky met the goal.

Performance Goal 3.3 encourages and aids attainment of professional certification. During FFY 2023, the Division of OSH Compliance maintained four (4) Certified Safety Professional (CSP) employees, five (5) Graduate Safety Professional (GSP) employees, one (1) certified Construction Health and Safety Technician (CHST) employee, one (1) dual CSP-Associate Safety Professional (ASP) employee, one (1) dual Certified Industrial Hygienist (CIH)-CSP employee, and one (1) employee with CSP-ASP-CHST certification.

The Division of OSH Compliance and KYSAFE encourage and promote professional certification, maintaining dedicated position descriptions with increased salaries for the level of certification attained, paying for certification preparatory courses, and paying for the certification examination after successful completion.

During FFY 2023, KYSAFE maintained one (1) CIH employee, two (2) dual CIH-CSP employees, one (1) CSP employee, two (2) GSP employees, one (1) Occupational Hygiene and Safety Technician (OHST) employee, one (1) dual CSP-CHST employee, one (1) employee with CSP-CIH-OHST certification, and one (1) employee with CSP-ASP-OHST certification. One (1) employee maintained the Asbestos Inspector License.

The Office of the Federal-State Coordinator maintained one (1) dual CSP-ASP employee. Kentucky met the goal.

Performance Goal 3.4 aims to develop and publish electronic learning products. In FFY 2023, KYSAFE added fourteen (14) cost-free interactive training products, five (5) modules, and nine (9) webinars to the KYSAFE online library at kysafe.ky.gov. The newly developed modules were Walking Working Surfaces Part 1, Bloodborne Pathogens Revision and Narration, Fall Protection - Training Requirements (1910.30), Wages and Hour / Child Labor Laws, and Fall Protection - Systems (1910.140). The nine (9) webinars were SWS Hazard Alert - Skid Steer Loaders, Lock Out / Tag Out, Silica Webinar, Chainsaw and Tree Trimming Safety, Welding Health Effects, Occupational Heat Planning 2023, ANSI Fall Protection Update, Occupational Heat Planning II, and Fatigue in the Workplace. Kentucky met the goal.

Performance Goal 3.5 seeks to include photographs of actionable hazards in all consultation surveys. Photographs of actionable hazards were included in all consultation surveys when feasible and monitored through the review of all consultation reports. Kentucky met the goal.

SECTION II MANDATED ACTIVITIES

The Occupational Safety and Health Act and 29 CFR 1902 establish a number of mandated activities or core elements for any state plan program. Kentucky's Annual Performance Plan, while involving many of these core elements, does not address every mandated activity. Mandated core elements of Kentucky's OSH program are addressed in this section.

Unannounced Inspections, Including Prohibition Against Advance Notice Thereof

During FFY 2023, the Division of OSH Compliance conducted 847 unannounced inspections of work sites pursuant to KRS 338.101. Advance notice of inspections is prohibited and punishable under KRS Chapter 338.991(9).

Employee Involvement in Inspection Process

803 KAR 2:110 establishes that an authorized representative of the employees is given an opportunity to accompany compliance officers during inspections. The Division of OSH Compliance contacts a representative(s) of employee-organized groups upon entry onto a site in order to afford employees' participation in the inspection process. Representatives of employee groups may participate in the inspection process by attending the opening conference, accompanying the inspector and employer on the walk-around, and attending the closing conference. Employee representatives are also allowed to observe employee interviews. If no employee-organized group exists at the facility, employee interviews are conducted.

Following the inspection, 803 KAR 2:130 requires that employee representative(s), at the discretion of the Commissioner, be afforded the opportunity to observe any informal conference requested by the employer. 803 KAR 50:010 allows the employee organization, or any interested employee, to intervene in any subsequent contest.

First Instance Sanctions Against Employers Who Violate the Act, Including Citations

KRS 338.141 mandates the issuance of citations for violations of any OSH requirement. The Division of OSH Compliance continued to improve Kentucky's work environment through enforcement operations, which include first instance citations for violations of workplace safety and health standards and regulations.

The Division of OSH Compliance conducted 847 inspections in FFY 2023, 630 safety inspections and 217 health inspections. 755 inspections were un-programmed, breaking down as:

- Seventy-eight (78) referrals;
- 193 employer referrals;
- 327 complaints;
- 119 un-programmed related;
- One (1) un-programmed follow-up; and
- Thirty-seven (37) fatalities.

246 inspections were in the construction industry, 600 were in general industry, and one (1) was in agriculture industry. 799 private sector and forty-eight (48) public sector employers were inspected. The Division of OSH Compliance conducted 630 safety inspections, which constitutes 74.38% of total inspections conducted while health conducted 217 inspections, representing 25.62% of total inspections conducted.

There were 103 local emphasis program (LEP) inspections, twenty-three (23) ITA and eighty (80) Falls, resulting in 181 violations with penalties totaling \$642,400. Of the 103 LEP inspections, fifty-three (53) were programmed planned inspections resulting in ninety-one (91) violations with penalties totaling \$280,275.

There were twenty-five (25) national emphasis program (NEP) inspections conducted resulting in eighty-two (82) violations with penalties totaling \$270,900. Of those, four (4) were

programmed planned inspections resulting in sixteen (16) violations with penalties totaling \$66,100.

Safety averaged 19.2 hours per case and health averaged 7.3 hours per case. Safety averaged 82.95 days from opening conference to citation issuance and health averaged 92.75 days from opening conference to citation issuance. 1,207 citations were issued in FFY 2023 with penalties totaling \$5,464,950 and break down as:

Twelve (12) willful violations with penalties issued totaling \$626,000;
Forty-nine (49) repeat violations with penalties issued totaling \$1,169,200;
743 serious violations with penalties issued totaling \$3,115,300;
403 other than serious violations with penalties issued totaling \$554,450; and
No failure to abate (FTA) violations.

In FFY 2023, the total amount of penalties collected by the Division of OSH Compliance was \$1,218,581. In FFY 2023, ninety-one (91) of the 452 inspections with citations issued were contested representing 20.13% of inspections with citations.

The Division of OSH compliance inspected establishments employing 348,363 employees and the inspections covered 61,770 employees. The Division of OSH Compliance vacated thirty (30) private sector violations pre-contest, which represents 3.22% of the violations issued. The Division of OSH Compliance vacated fifteen (15) private sector violations post-contest. The division reclassified eight (8), or 0.89%, violations pre-contest. The division reclassified one (1), or 2.70%, violations post-contest.

The overall penalty retention in FFY 2023 was 84.73%.

Ensuring Abatement of Potentially Harmful or Fatal Conditions

Hazardous conditions identified by Kentucky compliance officers and consultants are required to be abated. In order to ensure the correction of violations, KRS 338.991(4) provides specific penalties for any employer who fails to correct a cited violation. In addition, 803 KAR

2:060 establishes that employers must certify that each cited violation has been abated. Follow-up inspections may be conducted to verify that potentially harmful conditions have been abated. The division conducts follow up inspections when necessary to ensure employers are complying with settlement provisions and abated hazards for fatality investigations. The division may conduct follow-up inspections when employers fail to provide abatement documentation. The Division of OSH Compliance conducted one (1) follow-up inspection in FFY 2023 related to a complaint inspection. There were no inspections conducted to verify adherence to settlement provisions of fatality investigations because there were no applicable FFY 2023 fatality settlement agreements.

Discrimination rights established in KRS 338.121 and 803 KAR 2:250 are explained to complainants when they contact the Division of OSH Compliance. Employees interviewed during OSH inspections are also informed of their rights. The Division of OSH Compliance prints discrimination rights on staff business cards which are given to employees during inspections.

The Division of OSH Compliance has the force of KRS 338.131(1) which gives the Commissioner of Workplace Standards the authority to issue an immediate abatement order in the event of “. . .an imminent danger which reasonably could be expected to cause death or serious physical harm.” This ensures prompt abatement or removal of employees from the hazard. If an employer fails to comply with an abatement order issued under KRS 338.131(1), the Division of OSH Compliance shall apply to the Franklin Circuit Court through its Office of Legal Services for an order to restrain such condition or practice.

Serious hazards identified by KYSAFE consultants must also be corrected. Employers who fail to correct serious hazards identified in KYSAFE consultative surveys are subject to referral to the Division of OSH Compliance for inspection.

Prompt, Effective Standard Adoption and Promulgation

HB 50 of the 2017 General Session established a sunset for all executive branch administrative regulations based on a seven (7) year cycle. In response to HB 50, Kentucky undertook the significant task to update all OSH regulations. Regulations filed FFY 2022 and effective FFY 2023 were:

- 803 KAR 2:402, General safety and health provisions;
- 803 KAR 2:411, Scaffolds;
- 803 KAR 2:419, Demolition; and
- 803 KAR 2:445, Confined space in construction.

Certification letters were filed in FFY 2023 and will be effective in FFY 2024 for the following regulations to remain in effect as is.

- 803 KAR 2:307 Hazardous Materials
- 803 KAR 2:318 Electrical
- 803 KAR 2:421 Adoption of CFR Part 1926.950-968

Allocation of Sufficient Resources

The Kentucky OSH Program continued to match federal funding at the required rate. The state provides significant additional dollars beyond the federal match to meet program needs. Kentucky's ratio of state to federal funds for FFY 2023 was 72.3:27.7.

Counteraction of Imminent Dangers

KRS 338.131 provides enforcement personnel with the authority to order that imminent danger conditions be immediately abated. Such authority includes the enforcement of necessary measures to avoid, correct, or remove the imminent danger and prohibit the presence of individuals where the imminent danger exists. Reports of imminent danger are given the highest

priority for inspection by the Division of OSH Compliance. The Division of OSH Compliance conducted 115 imminent danger inspections in FFY 2023.

Response to Complaints

Kentucky's statutes ensure that employees and their representatives have a right to notify the OSH Program of perceived workplace violations. KRS 338.121 requires that a special inspection be conducted upon receipt of such notifications if reasonable grounds exist that there is a violation or danger. The Division of OSH Compliance prioritizes the employee complaints it receives.

Valid formal complaints are scheduled for workplace inspections. Formal complaints are given priority based upon classification and gravity of the alleged hazard. Formal serious complaints, for example, are inspected within thirty (30) days; however, it is stressed to compliance officers to respond within five (5) days after assignment of the complaint.

Total complaints received by the Division of OSH Compliance increased 22.11% in FFY 2023. Formal complaints increased 5.75%.

The Complaint Audit Log Report indicates that the average response time to all complaints was 53.6 days for safety and 41.3 days for health. The Division of OSH Compliance's overall average for serious complaints was forty-eight (48) days from the date the complaint was received to the date the inspection opened. The Complaint Audit Log indicates the average response time to complaints alleging other than serious hazards for safety was 65.2 days, and 41.1 days for health. The division's overall average was 57.7 days for other than serious hazards from the date the complaint was received to the date the inspection opened.

Of the 1,850 complaints received in FFY 2023, 865 were processed as formal complaints resulting in 286 inspections and 985 were processed as informal complaints.

Response to Referrals

The Division of OSH Compliance responded to 271 referrals in FFY 2023, 193 were employer-referrals. The average for safety referrals was 35.7 days and 20.9 days for health from the date of referral received to the date the inspection opened.

Fatality and Multiple Hospitalization Investigations

Only imminent danger investigations are given a higher priority than fatality investigations in the scheduling of inspections by the Division of OSH Compliance. It is the policy of the Division of OSH Compliance to investigate all job-related fatalities and hospitalizations of three (3) or more employees as thoroughly and expeditiously as possible. There were forty-four (44) work-related fatalities in FFY 2023. There was one (1) hospitalization of three (3) or more employees reported to the Division of OSH Compliance in FFY 2023.

Investigation of Discrimination and Employee Protection from Discrimination

KRS 338.121(3) offers protection to employees from reprisals which might result from the exercise of rights afforded by the OSH statutes. A system of citations, penalties, appeals to the OSH Review Commission, and reinstatement authority by the Commissioner while final determination is pending before the Review Commission distinguishes the Kentucky anti-discrimination effort. In addition, 803 KAR 2:240 allows any employee who believes he or she has been discriminated against, to file a complaint within 120 days of the alleged violation, as opposed to the thirty (30) days allowed by federal law. The Division of OSH Compliance is responsible for the enforcement of the state's anti-discrimination provisions.

During FFY 2023, the Division of OSH Compliance received 382 discrimination telephone inquiries and 135 formal complaints. Eighty-five (85) of the 135 formal complaints were administratively closed and fifty (50) were docketed for investigation.

Thirty (30) of the fifty (50) OSH discrimination cases docketed for investigation in FFY 2023 were resolved; zero (0) cases were withdrawn, ten (10) cases reached an agency facilitated settlement agreement, five (5) cases reached an outside settlement agreement, and five (5) cases were determined to have no merit.

During FFY 2023, seven (7) FFY 2022 OSH discrimination cases were administratively closed and sixteen (16) determinations for FFY 2022 cases were issued. Four (4) cases were determined to have no merit, four (4) cases reached an outside settlement agreement, seven (7) cases reached an agency facilitated settlement agreement, and citations were issued for one (1) case with penalties totaling \$35,000 with an additional \$18,464 back pay restitution. Two (2) FFY 2021 cases resulted in citations issued in FFY 2023, with penalties totaling \$9,000 with an additional \$40,598.02 back pay restitution. Both of those cases are in contest.

During FFY 2023, the Division of OSH Compliance issued determinations for an additional seven (7) FFY 2020 and FFY 2021 investigations, three (3) of which resulted in citations, and two (2) were determined to have no merit. Two (2) resulted in settlements after the citations were issued, and one (1) is currently in contest. Sixteen (16) FFY 2020 OSH discrimination investigations are active and thirty-five (35) FFY 2021 discrimination investigations are active. In summary, eighty-eight (88) FFY 2020, FFY 2021, FFY 2022 and FFY 2023 OSH discrimination cases are active investigations, fifteen (15) are COVID-19 related.

When complainants contact the Division of OSH Compliance, they are informed of their discrimination rights, as are employees interviewed during OSH inspections. The Division of OSH Compliance also prints discrimination rights on the back of its business cards which are given to employees during inspections.

Ensuring Employees Access to Health and Safety Information

Paragraph two (2) of KRS 338.161, Statistical Records -- Posting of Notices, and 803 KAR 2:060, Employer Responsibility to Post Notice, require employers to post notices informing employees of the protections and obligations provided for them in the law, including the proper contact for assistance and information. Kentucky regulations also provide for the availability of copies of the law and all regulations through the Cabinet. Employers who have obtained copies of these materials are required to make them available to employees or their authorized employee representatives. Failure to comply with posting requirements and information sharing provisions are citable offenses that may carry penalties. There were no citations issued in FFY 2023 for failure to ensure employee access to health and safety information.

Ensuring Employee Access to Information on Exposure to Toxic or Harmful Agents

Kentucky adopted 29 CFR 1910.1020, which assures employee access to information on exposure to toxic materials and medical records. Employers who fail to comply with these requirements are subject to citations and monetary penalties. In addition, 803 KAR 2:062, Employers' Responsibility Where Employees are Exposed to Toxic Substances or Harmful Physical Agents, requires employers to monitor areas of exposure to potentially toxic substances and to notify employees who have been or are being exposed to toxic materials. Monitoring

records are to be maintained and made available to employees, former employees, or employee representatives.

In FFY 2023, the Division of OSH Compliance conducted 139 inspections relating to toxic material and harmful agents breaking down as:

- Fourteen (14) inspections related to indoor air quality with ten (10) violations and penalties totaling \$25,125;
- Sixty-seven (67) inspections related to bloodborne pathogens with forty-seven (47) violations and penalties totaling \$110,750;
- Twelve (12) inspections related to asbestos with ten (10) violations and penalties totaling \$26,300;
- Twenty-four (24) inspections related to silica with sixty-seven (67) violations and penalties totaling \$148,650;
- Three (3) inspections related to combustible dust with three (3) violations and penalties totaling \$11,700;
- One (1) inspection related to formaldehyde with no violations and no penalties;
- Four (4) inspections related to confined space with six (6) violations and penalties totaling \$23,550;
- Eleven (11) inspections related to mold with no violations and no penalties;
- Two (2) inspections related to lead with thirteen (13) violations and penalties totaling \$22,850; and
- Three (3) inspections related to hexavalent chromium with six (6) violations and penalties totaling \$22,500.

The 141 inspections listed in the breakdown above exceeds the total inspections conducted relating to toxic material and harmful agents due to the overlap of categories.

Coverage of Public Employees

KRS Chapter 338 “Occupational Safety and Health of Employees” establishes definitions for employer and employee which do not exclude public employers and public employees. The

exclusions to KRS Chapter 338 cover only employees of the United States government and places of employment over which federal agencies other than OSHA have exercised statutory authority. In addition, written opinions of the Kentucky Office of the Attorney General support the Cabinet's position that public employees are included in the Kentucky OSH Program's jurisdiction. Therefore, Kentucky's public employers and employees are subject to the same requirements, sanctions, and benefits as Kentucky's private sector employers and employees. Consequently, Kentucky statutes, regulations, and policies make no distinction between public and private sector employers and employees. During FFY 2023, the Division of OSH Compliance conducted forty-eight (48) inspections of public sector work sites, which includes programmed inspections and responses to public employee complaints. This calculates to 5.67% of the total number of Division of OSH Compliance inspections.

Services offered by KYSAFE are available to state and local public agencies in the same manner and to the same degree as private sector employers. During FFY 2023, KYSAFE provided twenty-six (26) training sessions to public sector employers and employees totaling 722 participants. KYSAFE conducted 216 safety and health consultative surveys in public sector facilities resulting in the identification of 1,545 serious hazards and 471 other than serious hazards.

Recordkeeping and Reporting

KRS Chapter 338.161 "Statistical records - Posting of notices" requires employers keep, preserve, and make available to the Kentucky OSH Program and the Secretary of the U.S. Department of Labor or the Secretary of the U.S. Department of Health and Human Resources, records relating to occupational safety and health as may be prescribed by regulation.

803 KAR 2:181 specifically addresses occupational injury and illness recordkeeping, as well as reporting fatalities, hospitalizations, and loss of an eye to the Division of OSH Compliance. Employers must report the death of an employee as a result of a work-related incident, including death resulting from a heart attack, within eight (8) hours from when the death is reported to the employer, the employer's agent, or another employee. Employers must also report the work-related amputation, loss of an eye, or hospitalization, including hospitalization resulting from a heart attack, within seventy-two (72) hours after the employer, the employer's agent, or another employee is informed of the incident.

The Division of OSH Compliance inspection scheduling system prioritizes reported hospitalizations, amputations, and loss of eye injuries. This allows compliance resources to be focused on serious hazards in the workplace. In FFY 2023, 402 hospitalizations were reported to the Division of OSH Compliance and 190 inspections were conducted with three (3) willful violations, one (1) repeat serious violation, 118 serious violations, and sixty-six (66) other than serious violations. Total penalties were \$798,775.

In FFY 2023, eighty-one (81) amputations were reported to the Division of OSH Compliance. Eighty (80) inspections were conducted with three (3) repeat serious violations, sixty-seven (67) serious violations, and thirty-four (34) other than serious violations. Total penalties were \$464,250. Additional inspections are pending.

In FFY 2023, the Division of OSH Compliance received one (1) report of loss of eye injury resulting in an inspection with two (2) other than serious violations and no penalties.

Total penalties for violations related to amputation and hospitalization injuries in FFY 2023 were \$1,168,525.

The Division of OSH Compliance initiated a local emphasis program in FFY 2022, and continued in FFY 2023, addressing the electronic submission of employer identification number (EIN) and injury and illness records. Data submitted by employers to OSHA assists in identifying trends in workplace hazards, developing KYSAFE outreach programs, and evaluating the effectiveness of Kentucky enforcement activities. The Division of OSH Compliance inspected employers who failed to electronically submit their Employer Identification Numbers (EINs) and injury and illness data to OSHA. Twenty-three (23) inspections were conducted with nineteen (19) citations issued; penalties totaled \$50,575.

Education, Training, and Consultation Services

The Kentucky General Assembly, in enacting the Commonwealth's occupational safety and health laws, clearly expressed in its Statement of Purpose and Policy, found at KRS 338.011, that the means of preventing workplace injuries and illnesses were to include education, training, and consultation services. The Legislature created a Division of OSH Education and Training for Occupational Safety and Health to help serve this purpose.

Since 1973, the Division of OSH Education and Training has offered a full range of services, including cost-free on-site consultation, technical assistance, training programs, and publications.

The division also has a full range of partnership and recognition programs including:

1. The Voluntary Protection Program (VPP), which is similar to OSHA's VPP.
2. The Safety Partnership Program offers long term assistance to smaller employers who have a history of high injury / illness rates and high workers' compensation costs.
3. The Construction Protection Program (CPP) focuses specifically on partnering with contractors and builders to address the unique issues of the construction industry.

4. The Kentucky SHARP mirrors the federal SHARP by encouraging small, high hazard employers to operate exemplary safety and health management systems.

5. The Governor's Safety and Health Award Program recognizes employers who have reached certain milestones without a lost work time injury or illness.

KYSAFE conducted 364 consultative surveys in FFY 2023 identifying and ensuring the abatement of 2,759 serious hazards. The division also conducted fifty-one (51) training courses and reached 1,828 attendees in response to training requests from employers. Division staff members provided seven (7) on-site technical assistance visits and responded to hundreds of inquiries from public and private employers regarding OSH concerns.

The Kentucky OSH Program, through KYSAFE, offers a full range of education, training, and consultation services to employers and employees in the Commonwealth.

SECTION III NOTEWORTHY ACCOMPLISHMENTS

Many daily activities of the Kentucky OSH Program result in accomplishments that are not easily measured. The impact of OSH personnel onsite presence, the hazards identified and corrected through inspection or consultation, and the injuries, illnesses and fatalities that were prevented, while critically important, are ones that do not easily lend themselves to be singularly classified as outstanding accomplishments. Nevertheless, the day-to-day efforts of Kentucky OSH field and office personnel should not go unrecognized. During FFY 2023, there were events, activities, and results that merit attention as outstanding accomplishments.

Workplace Safety Savings

In FFY 2023, KYSAFE identified 2,759 serious hazards that exposed 55,823 employees and saved employers up to \$19,313,000 in potential penalties. KYSAFE also identified 901 other than serious hazards that exposed 34,445 employees and saved employers \$1,802,000 in potential penalties.

Voluntary Protection Partnership

Kentucky's VPP Program recognizes employers who have reached a level of excellence in their safety and health programs and removes them from programmed inspection lists. Detailed reviews of records and written programs, as well as intensive on-site surveys of worksite operations, assure that only companies with a strong commitment to workplace safety and health, institutionalized safety and health management systems in place, and proven success maintaining a safe and healthful workplace, qualify for Kentucky's highest achievement recognition.

The Kentucky VPP sites are:

- ABB, Louisville;
- Cintas, Grayson;
- Dow Corning Corporation, Carrollton;
- General Electric Aircraft Engines, Madisonville;
- General Electric Aviation Infrastructure, Erlanger;
- Kimberly-Clark, Owensboro;
- L’Oreal (USA) Florence Manufacturing, Florence;
- Marathon Big Sandy Asphalt Terminal, Catlettsburg;
- Marathon Pipeline LLC, Grayson;
- Marathon Pipeline, LLC, Lebanon Junction;
- Marathon Pipeline, Lexington;
- Marathon Pipeline, Louisville;
- Marathon Pipeline LLC, Owensboro Station;
- Marathon Refinery, Catlettsburg;
- Nucor Steel Gallatin, Ghent;
- Raytheon Corporation, Louisville;
- Southwire, Hawesville;
- Unifirst Distribution Center, Owensboro;
- Westlake chemical, Calvert City; and
- WestRock, Nicholasville.

VPP continues to be successful and sets the standard for program and participant quality.

The Partnership Branch maintains twenty (20) very strong, successful VPP sites, the highest number of active sites in the history of the program.

Construction Partnership Program

KYSAFE continues to focus on the construction industry by promoting CPP. There were twenty-two (22) active CPP sites in FFY 2023 with a total project cost of approximately \$10.5 billion. There were sixty (60) site audits with CPP sites in FFY 2023 affecting 10,660 employees. The most significant CPP project in FFY 2023 continued to be the new \$5.8 billion BlueOval SK Battery Park site in Glendale. Also of note is the Envision battery plant in Bowling Green, which is an \$800+ million project.

SHARP

SHARP started FFY 2023 with fourteen (14) active sites and ended FFY 2023 with fourteen (14) active sites.

Partnership staff also conducted twenty-seven (27) excavation interventions in FFY 2023 as part of the national emphasis program.

Compliance Emphasis on Serious Hazards

The Division of OSH Compliance maintains an emphasis on addressing serious hazards.

In FFY 2023, the Division of OSH Compliance cited:

Twelve (12) willful violations with penalties issued totaling \$626,000;
Forty-nine (49) repeat violations with penalties issued totaling \$1,169,200;
743 serious violations with penalties issued totaling \$3,115,300;
403 other than serious violations with penalties issued totaling \$554,450; and
No FTA violations.

Information presented in this report reflects accurate data for the period sampled. Some casefiles have matured since preparation of this report while others are still working through the process. Subsequently, some of the aforementioned information may vary if resampled. It is important to note that at the time of report submission, there were 304 FFY 2023 open enforcement inspections. The data has not fully matured.

Citations issued in FFY 2023 with noteworthy penalties include:

- \$253,000 to a general industry employer for three (3) serious willful, two (2) willful other, and one (1) repeat serious violation;
- \$196,000 to a general industry employer for four (4) repeat serious violations;
- \$148,500 to a general industry employer for one (1) serious willful and three (3) repeat serious, and one (1) serious violation;
- \$130,500 to a general industry employer for three (3) repeat serious violations;
- \$109,000 to a general industry employer for four (4) repeat serious, fourteen (14) serious, and nine (9) other than serious violations;

- \$96,000 to a general industry employer for fourteen (14) serious violations;
- \$84,000 to a construction employer for one (1) serious willful, one (1) repeat serious, and three (3) serious violations;
- \$83,000 to a construction employer for one (1) serious willful and four (4) serious violations;
- \$77,000 to a general industry employer for two (2) repeat serious violations;
- \$73,000 to a general industry employer for two (2) repeat serious and one (1) serious violation;
- \$65,000 to a general industry employer for two (2) repeat serious and one (1) other than serious violation;
- \$65,000 to a general industry employer for one (1) repeat serious, ten (10) serious, and four (4) other than serious violations;
- \$59,500 to a general industry employer for one (1) repeat serious and three (3) serious violations;
- \$57,400 to a general industry employer for eighteen (18) serious and two (2) other than serious violations;
- \$54,000 to a construction employer for three (3) repeat serious violations;
- \$54,000 to another construction employer for three (3) repeat serious violations;
- \$53,950 to a general industry employer for eight (8) serious and two (2) other than serious violations;
- \$50,400 to a construction employer for seven (1) serious and one (1) other than serious violations;
- \$49,000 to a general industry employer for seven (7) serious and one (1) other than serious violations;
- \$48,600 to a general industry employer for seventeen (17) serious violations;
- \$47,300 to a general industry employer for one (1) repeat serious and one (1) serious violation;
- \$44,850 to a general industry employer for one (1) repeat serious, five (5) repeat other, two (2) serious, and one (1) other than serious violations; and

- \$41,000 to a general industry employer for six (6) serious and four (4) other than serious violations.

All aforementioned penalties were assessed using \$70,000 as the maximum penalty for a willful violation, \$70,000 as the maximum for a repeat serious violation, and \$7,000 as the maximum for a serious violation.

Salary Increase

The Kentucky OSH Program realized a much needed and long overdue salary increase in FFY 2023 that was complemented with a subsequent six (6) percent increase for all state employees. The base pay for all Division of OSH Compliance enforcement officers and KYSAFE consultants increased and is permanent. The salary increase addresses the 47% compliance officer turnover rate and improved recruitment.

Emphasis Program

The Division of OSH Compliance initiated a local emphasis program in FFY 2022 addressing the electronic submission of injury and illness records and the EIN. Data submitted by employers to OSHA assists in identifying trends in workplace hazards, developing KYSAFE outreach programs, and evaluating the effectiveness of Kentucky enforcement activities. The Division of OSH Compliance inspected employers who failed to electronically submit their injury and illness data and EIN to OSHA. The Division of OSH Compliance conducted twenty-three (23) inspections in FFY 2023; nineteen (19) citations were issued with penalties totaling \$50,575.

Combustible Dust

The (then) Labor Cabinet entered into an Interagency Agreement in 2005 with the Office of Housing, Building and Construction, Division of Fire Prevention (State Fire Marshal). Under the agreement, during the inspection of industrial facilities by the State Fire Marshal in which the

potential for combustible dust hazards may exist, the State Fire Marshal informs employer representatives of the availability of education and technical assistance services that are available from KYSAFE. If there are safety and health issues, the State Fire Marshal will make a referral to the Division of OSH Compliance.

If the Kentucky OSH program becomes aware of the existence of fire and safety issues, it will notify the State Fire Marshal. Both the State Fire Marshal and the Division of OSH Compliance will cooperate in the investigation of all fires and explosions involving combustible dust. The Education and Labor Cabinet and State Fire Marshal continue cooperation to identify facilities and conduct joint investigations, when necessary, where combustible dust hazards exist.

The Division of OSH Compliance conducted three (3) inspections in FFY 2023 related to combustible dust that identified three (3) violations with penalties totaling \$11,700.

Notification of Asbestos Abatement / Demolition / Renovation or Ten (10) Day Notice

The Division of OSH Compliance has an agreement with the Division of Air Quality (DAQ) in the Department for Environmental Protection of the Energy and Environment Cabinet in which the Division of OSH Compliance is alerted of asbestos removals conducted in the Commonwealth. Employers are required to notify the DAQ ten (10) days in advance of any job involving asbestos removal. The Division of OSH Compliance received thirteen (13) 10-day notices from DAQ in FFY 2023.

Occupational Poison Alerts

The Division of OSH Compliance receives notices of incidents involving occupational exposure to toxins and poisons from The Kentucky Regional Poison Control Center of Kosair Children's Hospital. The notices make the Division of OSH Compliance aware of events that may have otherwise been overlooked. Many have resulted in citations and penalties. This

informal arrangement and notice provide a mechanism to protect employees from future exposures. During FFY 2023, the Division of OSH Compliance received eleven (11) notices from the Poison Control Center.

Professional Development

During FFY 2023, KYSAFE maintained one (1) CIH employee, two (2) dual CIH-CSP employees, one (1) CSP employee, two (2) GSP employees, one (1) OHST employee, one (1) dual CSP-CHST employee, one (1) employee with CIH-CSP-OHST certification, and one (1) employee with CSP-ASP-OHST certification. One (1) employee maintained the Asbestos Inspector License.

The Office of the Federal-State Coordinator maintained one (1) dual CSP-ASP employee.

The Division of OSH Compliance followed OSHA's TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel during FFY 2023. The Division of OSH Education and Training utilized TED 01-00-018 as guidance for training newly hired employees.

The Division of OSH Compliance remains committed to developing and maintaining an experienced, diverse staff and continues to encourage professional development and professional certification, such as the CSP and CIH. During FFY 2023, the Division of OSH Compliance maintained four (4) CSP employees, five (5) GSP employees, one (1) CHST employee, one (1) dual CSP-ASP employee, one (1) dual CIH-CSP employee, and one (1) employee with CSP-ASP-CHST certification.

Focused OSH Public Speaking / Presentations

The Kentucky OSH Program continues to serve as a resource for associations, employers, organizations, etc. requesting specialized and insightful speakers addressing various OSH-related topics. KYSAFE conducted fifty (50) face-to-face training courses in response to employer

specific requests that reached 1,954 attendees. Forty-one (41) training sessions were presented at five (5) POP Center training seminars; 744 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Safety and Health Management System, Powered Industrial Trucks, Hazard Awareness, Basic Electrical Safety, Excavation and Trenching, Silica, Walking/Working Surfaces, Hazard Communication, Personal Protective Equipment, Falls, and Permit-Required Confined Spaces.

Other KY OSH Program officials spoke at events such as the National Utility Contractors Association Kentucky Chapter annual meeting, National Association of Women In Construction Industry Night, Kentucky Association of Counties events, Governor's Scholars Program, American Society of Safety Professionals Louisville Chapter meeting, etc.

Attendance and positive feedback demonstrate that Kentucky OSH Program staff participation at such events is beneficial for the Education and Labor Cabinet, employers, and employees.

Standards Interpretation and Development

The Office of the OSH Federal-State Coordinator provided 776 OSH interpretations during FFY 2023.

Annual Governor's Safety and Health Conference and Exposition

The Annual Governor's Safety and Health Conference and Exposition was held in Louisville, KY in May of 2023. The event, co-sponsored by the Education and Labor Cabinet and the Kentucky Safety and Health Network, Inc., is the largest safety and health exposition in the Commonwealth. Scholastic Achievement for Education Awards, or "SAFE" awards, totaling \$19,295 were presented to five (5) university students matriculating in the areas of occupational safety and health, industrial hygiene, or a closely related field.

Governor's Safety and Health Award

The Governor's Safety and Health Award is presented to employers and employees who together achieve a required number of hours worked without experiencing a lost time injury or illness. Thirty-eight (38) Kentucky employers received the award in FFY 2023. Education and Labor Cabinet leadership traditionally present the award at the employer's facility or at the Annual Governor's Safety and Health Conference and Exposition. Ten (10) companies received the Governor's Safety and Health Award at their facility and another twenty-five (25) companies received the Award at the Annual Governor's Safety and Health Conference and Exposition. Three (3) establishments chose to receive their Governor's Safety and Health Award through the mail at their facility.

Collection of Delinquent OSH Penalties

Pursuant to KRS 45.239(4) and 45.241, the Kentucky OSH Program entered into an agreement with the Kentucky Department of Revenue in FFY 2013 to collect delinquent debts. Employers who have outstanding OSH debts are reported to the Department of Revenue for collection and further action. Such action may include:

- Adding a 25% collection fee to the total debt to defray the cost of collection.
- Filing a notice of State Lien. The filing of a lien is reflected in credit reports maintained by various credit bureaus.
- Seizing all property rights, both real and personal. This includes, but is not limited to, the attachments of any funds held by a bank, any wages paid to the employer, and the seizure and sale of any real estate.
- Using any tax refund or other monies that may become due to the employer from the Commonwealth of Kentucky to offset the outstanding debt.

The effort has proven successful; delinquent debts have been collected by Revenue and returned to the OSH Program. Additionally, the OSH Program has seen an increase in

employer's efforts to resolve debt payment to avoid being reported to the Department of Revenue. Since October 2013, the Division of OSH Compliance submitted 312 cases to the Department of Revenue for collection totaling \$3,387,170.67. To date, \$1,005,570.20 has been collected.

KYSAFE eLearning

The Education and Labor Cabinet recognized the need to make occupational safety and health training more accessible and economical for all of Kentucky's employers and employees and charged the OSH Program with achieving the goal. The Kentucky OSH Program applied for, and received, a one (1) time federal award in FFY 2011 to purchase web conferencing software, a video editing computer, and video equipment. After much planning and preparation, the Cabinet launched an online workplace safety and health training website, www.kysafe.ky.gov, the same year. Employers and employees have cost-free, 24/7 access to a variety of OSH webinars and training courses. The eLearning program has grown by leaps and bounds since its launch. To date, more than 284,240 participants have utilized the website resulting in over 659,212 page views.

Webinars are streamed and provide real-time instruction and offer immediate feedback to participants. Advanced registration for webinars is required and is free to all participants. As each webinar is presented, it is recorded and available for review at any time.

KYSAFE added fourteen (14) cost-free interactive training products, five (5) modules and nine (9) webinars, to the KYSAFE online library at kysafe.ky.gov. The newly developed modules were Walking Working Surfaces Part 1, Bloodborne Pathogens Revision, Fall Protection - Training Requirements, Wages and Hour/Child Labor Laws and Fall Protection - Systems. The fourteen (14) webinars were SWS Hazards Alert - Skid Steer Loaders,

Lockout/Tagout Revision, Silica Webinar, Chainsaw and Tree Trimming Safety, Welding Health Effects, Occupational Heat Planning 2023, ANSI Fall Protection Update, Occupational Heat Planning II and Fatigue in the Workplace.

Kentucky is particularly proud of the fact that www.kysafe.ky.gov was created, designed, and developed solely by KYSAFE staff. In addition to performing their full plate of regular duties, Division of OSH Education and Training consultants compose all course content and a division training development specialist assists with presentation and production details.

Heat Campaign

Since 2011, the Division of OSH Education and Training has participated in the heat awareness campaign and conducted concentrated state-wide efforts to educate the working public concerning the hazards of working in the summer heat. The efforts targeted construction as well as general industry.

Kentucky continued the outreach in FFY 2023. Heat stress education was promoted by KYSAFE in FFY 2023 through in person outreach and online training. Consultants reached 7,561 employees during heat stress targeted outreach efforts. KYSAFE presented one (1) in person heat stress education class and two (2) online trainings via ZOOM. The Cabinet's eLearning website hosts the interactive Heat Stress Awareness for Construction and General Industry module as well as the Occupational Heat Exposure and Occupational Heat Exposure-Masks and Heat Stress webinars. A "Heat Stress NEP 2022 Webinar" presented in English and Spanish is posted on the KYSAFE eLearning website at kysafe.ky.gov. The module and webinars were viewed 715 times in FFY 2023.

In FFY 2023, all compliance officers and consultants were issued a WetBulb Globe Temperature (WBGT) meter and trained on the use of the instrument. Beginning August 1, 2023

all KYSAFE consultants and all Division of OSH Compliance enforcement officers utilized the WBGT meter to address heat related issues during applicable KY OSH Program onsite activities.

Mobile App

The KYSAFE mobile app launched late September 2019. The app is a cost-free resource that can be downloaded from the Google Play Store as well as the Apple App Store. Users can watch videos, view a calendar of free KYSAFE training events, see a directory of KYSAFE managers, receive OSH news and messages, and connect to the KYSAFE website. The app also features a messaging function to report a hazard(s) or violation(s) with a photograph and provides the OSH Program with a drop pin location.

Latino Community Outreach

KYSAFE utilized multiple avenues to provide outreach to the Latino population throughout the state in FFY 2023. Ads in Spanish were developed and published in the El Kentubano magazine on several topics including heat stress, fall protection, silica, trenches, and ladder safety. El Kentubano is a monthly publication with 9,000 copies distributed in more than 150 locations. Free copies of each edition were strategically distributed in high traffic locations such as grocery stores, markets, restaurants, doctors' offices, salons, barber shops, etc.

KYSAFE staff attended Latino events to distribute water bottles with the "Water, Rest, Shade" logo containing heat stress information in English and Spanish. Safety and health Quick Cards were also distributed. KYSAFE was represented at four (4) events and reached over 500 people.

A commercial was developed to air on Spanish radio stations to advise listeners of the dangers of heat and available resources. It reached over 45,000 listeners.