

# S.C. OSHA's Field Operations Manual (FOM)

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## Chapter I

### Compliance Programming

#### A. Program Planning.

##### 1. Purpose.

To provide general guidelines to the Compliance Manager in planning compliance operations, related activities and instructions for their implementation.

##### 2. General.

These guidelines will assist OSH Compliance in the most effective use of existing manpower and to respond timely to unprogrammed inspections and to attain effective inspection coverage.

##### 3. Employer Contacts.

Contracts for information initiated by employers or their representatives shall not trigger an inspection, nor shall such employer inquiries protect them against scheduled (programmed) inspections conducted pursuant to established guidelines.

If an employer or his representative indicates that an imminent danger exists or that a fatality or catastrophe has occurred, the Compliance Manager shall follow established inspection priority procedures.

#### B. Inspection/Investigation Types.

##### 1. Unprogrammed.

Inspections scheduled in response to alleged hazardous working conditions that have been identified at a specific work site are unprogrammed. This includes imminent dangers, fatalities/catastrophes, accidents, employee complaints, referrals, follow-up inspections and monitoring inspections.

NOTE: This category includes all employers directly affected by the subject of the unprogrammed activity.

##### 2. Inspections of employers at multi-employer work sites whose operations are not directly affected by the subject of the conditions identified in the complaint, accident, or referral are unprogrammed related. An example would be a trenching inspection conducted at the unprogrammed work site, where the trenching hazard was not identified in the complaint, accident report or referral.

3. Programmed.

Inspections of work sites which have been scheduled based upon objective or neutral selection criteria are programmed. The work sites are selected according to the State Safety and Health Planning Guides and include special emphasis programs.

4. Programmed Related.

Inspections of employers at multi-employer work sites whose activities were not included in the programmed assignment.

All high hazard employers at the work site shall normally be included in the programmed inspections.

C. Inspection Scope.

Inspections, either programmed or unprogrammed, may fall into one of two categories:

1. Comprehensive.

A substantially complete inspection of the potentially high hazard areas of the establishment.

Generally, all programmed inspections are in this category. (Low hazard areas, such as office space, may be excluded from inspection.)

2. Partial.

An inspection whose focus is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment.

3. Procedures.

- a. As part of the opening conference of any inspection, inform the employer that the inspection will consist of (1) walk-around; (2) employee interviews; (3) taking of photos/video; (4) review of OSH 300 Logs and Summary and supplementary records (301), for the last five (5) years and current year; (5) review of all written programs, such as, but not limited to HAZCOM, Lockout/Tagout, Confined Space, etc.; (6) IHS may be taking samples.

If consent is given to proceed with the inspection, the employer should have no complaint about the scope because it received notice of the scope at the opening conference.



- b. Partial inspections include the review of OSH 300 logs and summary and supplementary records and written programs directly related to the accident, fatality or complaint items.

Inform the employer in the opening conference that with approval from the Compliance Manager, the scope of the inspection may be expanded if: (1) the employer is on the safety or health high hazard planning guide; (2) an employee files a complaint during the inspection; or (3) you observe serious violations.

- c. Do not expand any partial inspections without approval of the Compliance Manager.
- d. Explain to the employer that they can object to expanding the inspection.

If any employer refuses or discusses his right to refuse, your review of injury and illness records, written programs or expanding the scope of the inspection, you are to contact the Compliance Manager before proceeding any further.

- e. Under appropriate circumstances, the Agency may follow existing procedures to obtain a warrant or subpoena to expand the scope or to obtain records.

#### D. Inspection Priorities.

Instructions for each category of inspection activity are contained in the following paragraphs. Priority of accomplishment and assignment of manpower resources shall be as follows:

- 1. Safety (excluding construction).

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Catastrophe, fatalities, accidents
Third	Employee Complaints
Fourth	Power Press injuries
Fifth	Referrals (including referrals from SCDLLR Office of OVP)
Sixth	Follow-up/monitoring inspections
Seventh	Programmed inspections

- 2. Health.

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Catastrophe, fatalities, accidents
Third	Employee Complaints
Fourth	Referrals
Fifth	Follow-ups/monitoring inspections
Sixth	Programmed inspections

3. Construction.

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Catastrophe, fatalities, accidents
Third	Employee Complaints
Fourth	Referrals
Fifth	Follow-ups/monitoring inspections
Sixth	Special Emphasis
Seventh	Other specific observed violations
Eighth	Programmed inspections

E. Explanation of Categories.

1. Imminent Danger.

Evidence of a specific condition or practice which may immediately cause death or serious physical harm.

2. Catastrophe, Fatality, Accident Investigations.

a. The following guidelines shall be utilized in the investigation of catastrophes, fatalities, and accidents. An investigation should be scheduled if any of the following conditions exist:

(1) Total combination of one or more fatalities and injured employees; or three or more employees hospitalized

Or

(2) Media reports of accidents involving serious injuries on hazards of a serious nature.

(3) Frequently recurring incidents of like nature, or

(4) Specific instructions issued for fatality and catastrophe investigations in connection with any Special Program.

b. An investigation may not be conducted if it has been determined that the death was due to natural causes or occurred on the highway, or if exempted by the Federal Appropriations Rider.

c. Non-fatal accidents which are serious in nature are assigned as resources permit.

3. Power Press Injuries.

S. C. Rules and Regulations, Subarticle VI, Section 1910.217 (g) requires employers to report to the Commissioner of Labor within thirty (30) days of the occurrence, all point of operation injuries on power presses.

4. Employee Complaints.

Employee complaints are evaluated in accordance with Chapter III of the Field Manual. Includes cases of more than one informal/formal complaint involving the same employer or work site, and inspections scheduled because the complainant has disputed the action of the employer. Complaints receive third priority.

5. Referrals.

a. Referrals concerning serious hazards normally originate from within the compliance division (health to safety or safety to health) on the referral form (OSHS 90).

b. Referrals may also originate from the following sources:

(1) NIOSH.

(2) OSHA discrimination investigators.

(3) Other government agencies.

i. Federal.

ii. DHEC.

iii. Fire Marshal.

iv. News media reports of potentially serious hazards.

c. All referrals originating outside of Compliance Division will be evaluated by the Compliance Manager and brought to the attention of the OSH Administrator.

1) If there are reasonable grounds to believe that a serious safety or health hazard exists, then referral will be entered on an OSHA 90 form and scheduled in accordance with the scheduling system.

- 2) Referrals classified as nonserious, except those referred as the result of an OSHA discrimination investigation, will be handled by letter.

## 6. Follow-up Inspections.

Follow-up inspections may be conducted to determine if an employer has complied with a Citation or Order. Follow-up inspections are assigned in accordance with this manual.

To determine if a follow-up inspection should or should not be conducted an evaluation must be made of:

- a. Type of violations – Consider the nature of the violations as per the current violation classification system and severity of the hazards.
- b. Recommendation of the Compliance Officer.
- c. Letter of corrective action. Did the employer provide sufficient information or fail to provide corrective action.
- d. Previous follow-up history. Has company been previously cited for failure to abate?

## 7. Monitoring Inspections.

Monitoring inspections are conducted to ensure that hazards are being corrected and employees are being protected, whenever a long period of time is needed for an establishment to come into compliance. Such inspections may be scheduled, among other reasons, as a result of a petition for modification of abatement date (PMA); a corporate-wide settlement agreement; or to ensure that terms of a permanent variance are being carried out.

- a. Monitoring visits shall be conducted for each (PMA) date on serious, willful and repeated violations which extends the final abatement date by more than one year from the citation issuance date.
  - 1) These inspections shall be conducted as soon as possible after first contact with the employer but no later than 15 working days following the receipt of certification of posting unless an extension is requested and granted by the Review Board.
  - 2) Such inspections shall have priority equal to that of follow-up inspections. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.
- b. Monitoring visits in response to PMAs for other-than-serious violations which would result in a final abatement date of one year or less from the citation issuance date shall

be scheduled at the discretion of the Compliance Manager, based on the gravity of the violation and on resource availability.

- 1) These inspections shall be conducted as soon as possible after first contact with the employer but not later than 15 working days following the receipt of certification of posting unless an extension is requested and granted by the Review Board.
  - 2) Such inspections shall have priority equal to that of follow-up inspections. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.
- c. Monitoring visits shall be scheduled to check on progress made of long-term or multistep abatement plans whenever abatement dates extend beyond one year from the issuance date of the citation.
- 1) These inspections shall be conducted every 6 months, counted from the citation date until final abatement has been achieved for all cited violations. If the case has been contested, the final order date shall be used as a starting point, instead of the citation date. A settlement agreement may specify an alternative monitoring schedule.
  - 2) If the employer is submitting satisfactory quarterly progress reports and the Compliance Manager agrees, after careful review, that these reports reflect adequate progress on implementation of control measures and adequate interim protection for employees, a monitoring inspection may be conducted every 12 months.
  - 3) Such inspections shall have priority equal to that of follow-up inspections. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.
- d. Monitoring visits may be scheduled to verify compliance with the terms of granted variances.
- 1) The Standards Officer will provide the Compliance Manager with an updated list of granted variances at the beginning of each fiscal year.
  - 2) The Compliance Manager will determine if an employer on the variance list is in a SIC group which is on the High Hazard Planning Guide.

If they are, the CO/IH assigned to conduct the inspection will be instructed to check for compliance with the variance.

- 3) For employers not on the High Hazard Planning Guide, a monitoring visit may be scheduled at the discretion of the compliance Manager based on significant differences from the standard and resource availability.

#### 8. Programmed Inspections.

Programmed inspections are planned inspections as opposed to those inspections which occur due to a fatality complaint, referral, etc. Programmed inspections are those designated as high hazard and special emphasis. The methodology, scheduling procedures, exemption criteria, SIC list, and deviation policy, for these programs are found in the Safety and Health High Hazard Planning Guides which are revised annually.

#### 9. Other Specific Observed Violations (Construction Only).

If a Compliance Officer detects an apparent violation in plain view from a location on public property, he should conduct an inspection adequate in scope to determine whether the apparent violation exists, document the elements of the violation, and investigate any other apparent serious violations noted in the process. A complete or general inspection should not be conducted. This inspection may be conducted prior to conducting programmed inspections.

10. Worksites observed by the Compliance Officer which involve trenching or excavation, tree trimming, or work on electric transmission and distribution lines will take priority over scheduled high hazard assignments.

#### F. Consultative Services.

The Department of Labor, Licensing and Regulation provides consultation for employers in the public and private sectors. If a Compliance Officer/Industrial Hygienist arrives at a site where consultation is in progress, the inspection will not be conducted, except in the case of a fatality, complaint, imminent danger, catastrophe, or other critical inspection as determined by the Director. In progress includes the time the visit is scheduled to the expiration of the abatement period.

#### G. Trade Secrets.

The confidentiality of trade secrets is recognized by the Act and all Department personnel shall guard and protect such knowledge accordingly.

#### H. Limitations.

From year to year the U.S. Congress may amend the U.S. Department of Labor OSHA budget placing limitations on funding. Such limitations may affect compliance programming at the State level.



## Chapter II

### Inspection Procedures

#### A. Compliance Officers and Industrial Hygienists Responsibilities.

1. The primary responsibility is the conduct of effective inspections to determine whether employers are: (1) complying with safety and health standards and regulations promulgated under State Law, and (2) furnishing the highest degree of health and safety protection for any and all employees working within the State.
2. All employees must adhere to the S.C. Ethics Act and follow all personal conduct rules.
3. At a minimum, employees shall adhere to the following rules:
  - a. Be courteous and tactful to all employers and employees.
  - b. Accept no favors (gratuities, merchandise, tickets, etc. from any regulated party).
  - c. Dress appropriately for the job and be professional at all times.
  - d. Do not discuss any investigation with non-parties.
  - e. Upon being served with a subpoena immediately contact the Compliance Manager.
  - f. Do not act or offer information about laws or regulations outside the Office of OSHA. Make referrals to the appropriate division or Office of Public Information.
  - g. Refer all inquiries, oral and written, about ongoing investigations to the Office of Public Information.
  - h. Protect all confidential and trade secret information in accordance with State Statutes.
4. All inspection work papers which include notes, memos or records made by a Compliance Officer or Industrial Hygienist (CO/IH) during any investigation/inspection must be included in the case file. These papers are the property of the State and are not to be retained or used by a CO/IH for any private purpose.
5. If a CO/IH is informed by an employer that a security clearance is needed because the establishment has areas which are classified by the U.S. Government in the interest of national security, they shall contact the Compliance Manager immediately.
6. The CO/IH may be required to give testimony in hearings on behalf of the State of South Carolina. The CO/IH should keep this fact in mind when conducting an inspection and recording his observations.



## B. Advance Notice of Inspections.

### 1. Policy.

State law and regulations contain a prohibition against the giving of advance notice of inspections, except as authorized by the Director of Labor, Licensing and Regulation or his designees.

However, there may be occasions when advance notice is necessary to conduct an effective investigation.

Advance notice of inspections may be given only in the following situations:

- a. In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
- b. When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
- c. To ensure the presence of employer and employee representatives or other appropriate personnel who are needed to aid in the inspection; and
- d. When the giving of advance notice would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.
- e. When necessary to locate a logging crew.

### 2. Procedures.

- a. When authorized advance notice is given to the employer, it shall also be given to the authorized representative or employees. The employee representative may be notified by the employer or CO/IH.
- b. When advance notice is given to a general or prime contractor, it shall also be given to subcontractors.
- c. Advance notice may be given by a CO/IH or Compliance Manager by personal telephone contact but such notice shall not exceed 24 hours except in imminent danger situations and in other unusual circumstances.
- d. The CO/IH shall indicate in the case file that advance notice was given.

## C. General Procedures.

### 1. Preparation.

- a. The CO/IH shall briefly review the appropriate standards, Program Directives, previous inspections if required prior to starting the assignment.
- b. Compliance personnel shall have available for each inspection the safety equipment and clothing necessary to conduct the inspection safely.

Eye protection shall be worn at all times when there is any chance of being subject to eye injuries. Hard hats, safety shoes, safety glasses, ear protection, etc., should be worn where necessary. Consult the Compliance Manager for any other personal protective equipment necessary for specific hazardous work areas, such as rubber boots, coveralls, gloves, tinted lens, safety glasses, etc., before going to the inspection site.

## 2. Time of Inspection.

- a. Inspections shall be made during the regular working hours of the establishment, except as special circumstances may require.
- b. The Compliance Manager must approve an inspection scheduled outside regular working hours.

## 3. Entry of Workplace.

- a. State Law, Section 41-15-260, provides that “the Director, his inspectors, compliance officers, agents or designees, upon proper presentation of credentials to the owner, manager or agent of the employer, shall enter at reasonable times and have the right to question either publicly or privately any such employer, owner, manager, agent or the employees of the employer and inspect, investigate, reproduce, photograph, and sample all pertinent places, sites ,areas, work injury records and such other records during regular working hours and at other reasonable times, and manner when such comes under the jurisdiction of the Director to enforce the occupational safety and health provisions of this title.”

It is not necessary to present credentials unless requested by the employer.

Listed below are some special circumstances and how to handle them:

- 1) When the owner or operator is not present at the beginning of the inspection, identify the person in charge. This may be the foreman, lead man, gang boss, or senior member of a crew.
- 2) When the identity of the person in charge cannot be determined, contact the employer and request the presence of someone to represent the employer.

- 3) If the person in charge cannot be determined by (1) and (2) the CO/IH should contact the Compliance Manager for instructions.
  - 4) If no employees are on the worksite, the CO/IH shall try to determine when they will be present and contact the Compliance Manager for instructions.
4. Refusal of Entry.
- a. When an employer refuses entry, the Compliance Officer or Industrial Hygienist shall ascertain the reason for refusal and immediately contact the Compliance Manager for instructions. The name and title of the person refusing entry and the names of any witnesses to the refusal must be obtained by the Compliance officer or Industrial hygienist.
    - 1) If the employer's intent is not clear or is questionable, the CO/IH will immediately contact the Compliance Manager and explain the circumstances.
    - 2) If the employer interferes or limits the inspection or examination of records, the CO/IH shall ascertain why and contact the Compliance Manager.
  - b. Warrants

If an inspector is denied admission for purposes of inspection the Director may seek a warrant in accordance with Section 41-15-260, Code of Laws of South Carolina, 1976, as amended.
5. Forcible Interference with Conduct of Inspection or Other Official Duties.
- a. State Law, Section 41-3-140, South Carolina Code of Laws, 1976, as amended, makes it a criminal offense for any person who shall willfully impede or prevent the Director of Labor, Licensing and Regulation, his agents or assistants, in the free and full performance of his duties. Any person convicted of such and offense "shall be fined not less than on hundred dollars or more than one thousand dollars or be imprisoned for not less than thirty days or more than six months, or both."
  - b. Whenever a Labor Division official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault or the like while engaged in the performance or on account of the performance of his official duties, all investigative activity shall cease and the Compliance Manager notified immediately.
6. Release for Entry.
- a. The CO/IH shall not sign any form or release or agree to any waiver. This also applies to any employer forms concerned with trade secrets information. If, after pointing out the Director's authority under State Law, the employer still insists that a

release be signed before entering the establishment, the CO/IH shall suspend the inspection and report the matter promptly to his Supervisor.

- b. A visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises may be signed so long as such signatures do not constitute any form of a release or waiver of persecution or liability under State law.
- c. In case of any doubt, the CO/IH shall consult with the Compliance Manager before signing any document other than those specified in the above paragraph.

7. Bankrupt or Out of Business.

If an establishment scheduled for inspection has ceased business and there is no known successor, or if the establishment has been adjudicated bankrupt and the business is to be discontinued, immediately discontinue the investigation and report the facts to the Compliance Manager.

8. Labor Disputes.

The S. C. Department of Labor, Licensing and Regulation reserves the right to make an inspection under any circumstances. However, during a strike, lockout, organizational effort, election, or negotiations between management and a bargaining unit, unrecognized union or employee group, a decision on whether to inspect or not will be made considering the following; to wit:

a. For complaints:

- 1) Is the complaint for the purpose of harassing an employer?
- 2) Does the complaint allege an imminent danger situation, Serious or Other than Serious condition?
- 3) How long has the condition existed?
- 4) Have there been multiple injuries or a fatality?

b. For programmed inspections:

- 1) Is the industry on the High Hazard list?
- 2) What is the inspection history of the employer?
- 3) Has there been a history of employee complaints?

If an inspection is conducted, the scope of the inspection may be limited as follows:

- a. Unprogrammed inspections may be limited to the alleged complaint.
- b. Programmed inspections will be limited to the operation processes.

9. Consultative Services.

The Department of Labor, Licensing and Regulation provides consultation for employers in the public and private sectors. If a CO/IH arrives at a site where consultation is in progress, the inspection will not be conducted, except in the case of a fatality, complaint, imminent danger, catastrophe, or other critical inspection as determined by the Director. In progress includes the time the visit is scheduled to the expiration of the abatement period.

10. Voluntary Protection Programs (VPP).

Inspections of establishments approved for participation in VPP are limited to fatalities, catastrophe, complaints or imminent danger.

11. Safety and Health Achievement Recognition Program (SHARP)

Inspection of establishments approved for participation in SHARP are limited to fatalities, catastrophe, complaints or imminent danger.

D. Opening Conference.

1. Purpose.

At his interview with the employer or his designated representative, the Compliance Officer or Industrial Hygienist shall:

- a. Inform the employer that the purpose of his visit is to make an investigation to ascertain whether the employer is in compliance with the requirements of the Act.
- b. Outline in general terms the scope of the inspection, including records he may desire to review, employee interviews, physical inspection of the worksite or workplaces, and the closing conference with the employer or his designated representatives to discuss the inspection findings.
- c. Inform the employer of laws, standards, regulations, and promotional materials which will be made available on request.
- d. Furnish a copy of complaint(s) if appropriate.
- e. Inform the employer how he may obtain additional copies of other applicable materials and such cost as may be applicable.

- f. At an appropriate time during the opening conference, the CO/IH shall discuss the walk-around provisions under State Law. The employer should be asked to designate his representatives for walk-around purposes. In addition, the CO/IH should determine if there is a certified or recognized union or unions in the plant. Or any other authorized employee representative and they should be contacted. Where any authorized employee representatives are designated at the beginning of the inspection, the CO/IH should discuss with them the scope of the walk-around. To the extent possible, all issues relating to walk-around should be settled at the beginning of the inspection.
  - g. Determine if there are any areas which contain trade secrets.
  - h. Discuss taking of photographs and/or video tapes during the walk-around.
2. Construction Sites.
- a. On a construction site the CO/IH will contact the prime or general contractor and have them identify all subcontractors on site.
  - b. Depending on the number of contractors, the CO/IH may hold one opening with all contractors or hold several opening conferences with small groups.
  - c. The CO/IH must determine if any contractors are responsible for providing special services such as common sanitations facilities, first aid, etc.
  - d. The CO/IH will complete an OSHA-1 for each contractor and verify that OSHA-300 records are maintained.
  - e. If a complaint inspection is being conducted, a copy of the complaint will be provided to each employer whose employees may be exposed to the alleged hazard.
3. Exception.

When responding to complaints involving alleged imminent danger situations or alleged serious hazards, the CO/IH is required to get to the location of the alleged hazard(s) as promptly as possible. Under these circumstances, the CO/IH is required to get to the location of the alleged hazard(s) as promptly as possible. Under these circumstances, the CO/IH should reduce the time spent in the opening conference by limiting his remarks to the bare essentials of identifying himself, stating the purpose of his visit, giving the employer a copy of the complaint, and extend an invitation for the employer and employer representative to join him. The CO/IH shall inform the employer that his will be available for a more extensive discussion at the closing conference.

E. Establishment Inspection.

## 1. Employer and Employee Representatives.

- a. Under State regulations a representative of the employer and a representative authorized by employees, each subject to the approval of the CO/IH shall be afforded the opportunity to accompany the CO/IH on the inspection for the purpose of aiding such inspection.
- b. The CO/IH may deny the right of accompaniment to any person whose conduct interferes with a fair and orderly investigation.
- c. If employees are represented by a certified or recognized bargaining representative, the union ordinarily would designate the employee representative.
- d. In places of employment where groups of employees are represented by different unions, a different representative for different phases of the inspection is acceptable.
- e. Generally, the employee representative should be an employee of the establishment being inspected or, at least, of the same employer.
- f. Where there is no authorized representative of employees, the CO/IH shall consult with a reasonable number of employees concerning health and safety in the workplace.
- g. The CO/IH should be particularly careful to avoid injecting himself into labor relations disputes, either between a recognized union and the employer or between two unions competing for bargaining rights. However, if there is a recognized union it would ordinarily designate the authorized representative, even though another union may be seeking recognition.
- h. The CO/IH must take special measures during inspections when trade secrets or security matters are involved. Upon the request of any employer, any authorized representative of employees in an area containing trade secrets shall be an employee authorized to enter the area. The CO/IH should ascertain whether there is such a representative or employee. Where there is no such representative or employee, the CO/IH shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.
- i. During the opening conference, the CO/IH should ascertain from the employer operating the establishment whether the employee of any other employer (i.e., an "outside employer") are working in or on the establishment (for example, such contracting employers as maintenance, remodeling and window washing firms, etc.). If there are such employees, the CO/IH should afford an authorized representative of these employees a reasonable opportunity to accompany him during his inspection of the workplace where they are working. Since a responsible official of the "outside employer" may not be present, unless he was

given advance notice, he should be contacted as early in the inspection as possible and given a reasonable opportunity to accompany the CO/IH during the inspection of his employees' working conditions. The inspection should not be delayed to wait for the employer's or employee's representatives longer than would be reasonably necessary for them to be present.

## 2. Inspection of Records, Written Programs and Posting Requirements.

### a. Records.

The CO/IH shall inform the employer in the opening conference that the inspection will include a review of all records the employer is required to maintain. (See procedures in Chapter I). These include:

- 1) OSHA Form 301- Supplementary record or S.C. Workmen's Compensation- "First Report of Injury", (Form 12A).
- 2) OSHA Form 300- Log and Summary of Occupational Injuries and Illnesses.

Accuracy of the log can be verified by examining the First Report of Injury, First Aid Logs/Records.

NOTE: The CO/IH shall not request access to the BLS Statistics Survey questionnaire or ask if the employer has participated in the Survey program.

- 3) Exposure and Medical Record.

During health inspections and safety inspections when designated by the Supervisor, the CO/IH shall determine if applicable exposure and medical records are being maintained in accordance with the Medical Surveillance Recordkeeping requirements of applicable standards or of 1910.1020. Access to the employee medical records is authorized for the limited purpose of verifying employer compliance with those requirements. Access by CO/His must be in accordance with Subarticle IX and current Program Directives.

- 4) Other Records.

Other records which fall within the scope of the inspection which are related directly to the purpose of the inspection. These may include, but are not limited to inspection or certification records, training records; records voluntarily supplied by the employer such as safety committee minutes, checklists, records of plant inspections, accident investigations, Consultants' report.



b. Posting.

- 1) OSH poster informing employees of their rights and obligations under the Act. (SCLD 5 SH-75).
- 2) OSHA Form 300 – Summary must be posted no later than February 1<sup>st</sup> and shall remain posted until April 30<sup>th</sup>.
- 3) Citations- check for posting of citation at time of Follow-up inspections.

c. Other.

For all inspections, the CO/IH must determine if the employer is covered by and in compliance with the following:

- 1) Hazard Communication standard.
- 2) Lockout/Tagout standard.
- 3) Process Safety Management standard. (Refer to Program Directive for specific guidelines).

3. General Duty Requirement.

During the course of an inspection, the CO/IH's primary concern will be determining whether the employer is complying with safety and health standards promulgated under State Law. However, attention should also be directed to whether the employer is complying with the general duty clause, which applies to every workplace.

4. Employee Interview in Inspections.

- a. In accordance with the regulations of the Director of Labor, any employee shall be afforded an opportunity to bring any condition which he believes violates a standard or the general duty requirement to the attention of the CO/IH during an inspection. This objective is accomplished mainly by means of the employee walk-around provision. However, the walk-around provision does not prevent the CO/IH from consulting with any employee who desires to discuss a possible violation.

Upon receipt of such a communication from an employee alleging a violation, the CO/IH shall inspect for the alleged violation and record any findings as a result of his investigation on the Compliance Worksheet.

- b. Interviews shall be conducted within reasonable limits and in a reasonable manner and shall be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.

- c. Interviews are conducted for a definite investigative purpose and require careful planning and skill in selection. Former employees are generally not interviewed unless the inspection involves an accident, fatality or OSH (11c) discrimination investigation. Once the CO/IH has decided that the investigation purpose of employee interviews has been achieved, further interviews are unnecessary. The key is to reach an early decision as to the “cut-off” point and to act on it.
- d. Interview time and place.
  - 1) Interviews may be conducted at any time during an inspection. With respect to interviews in retail or service establishments, or in continuous production operation, (e.g., assembly lines), it is particularly important that each interview be scheduled at a time and under circumstances which will result in the minimum interference with the employee’s duties and with the employer’s business operations. For example, an employee shall not be interviewed during a peak period when he must be “on the job” without interruption to perform assembly line work, make sales, or serve his employer’s customers. During retail business hours, an employee shall not be interviewed on the selling floor or in any part of the establishment normally used by the public. If an employee requests such a consultation at a time that would unduly hinder the production or work cycle of the employer’s operation, the CO/IH shall consult with the employee during “break”, meal time, or after working hours as appropriate. If conditions consistent with these instructions cannot be arranged, the interview shall be obtained away from the establishment.
  - 2) Interviews away from the establishment may be held in the employee’s home or may be arranged at any other suitable place in the community.
  - 3) Employees will not be called on at home at very early or late hours; calls on holidays, Sundays, or other days of religious observances shall be avoided. Good judgment is the keynote to when home interviews are to be conducted.
- e. Privacy of Interview.
  - 1) According to S.C. Rules and Regulations, Subarticle V, Section 711-507, any employee shall be afforded a reasonable opportunity to consult the CO/IH in private.
  - 2) If an employer refuses to allow employee interviews, the Compliance Manager may request an Administrative subpoena pursuant to 41-15-270 and 41-3-110.
- f. Recording employee interview statements.
  - 1) Written interview statements shall be sought only where some necessary purpose will be served.

- 2) Signed interview statements shall be written in the first person and in the language of the employee. The wording of the statement he is being asked to sign must be understandable to the employee and reflect only what has been brought out as fact in the interview. Any changes or corrections shall be initialed by the employee. Otherwise the statement shall not be changed, added to, or altered in any way. Signed statements shall end with wording such as: "I have read/had read to me the above and state that the information is true and correct."

#### F. Receiving Complaints During Inspection.

1. If a formal complaint is received during the inspection, the CO/IH shall provide a copy to the employer and investigate the alleged hazard during that inspection.
2. An employee may bring a non-formal complaint to the attention of the CO/IH during the inspection. The CO/IH will investigate during that inspection.
3. If an employer objects to expanding the scope of the inspection, the CO/IH shall advise the employee of their right to file a formal complaint. The Compliance Manager shall be contacted in this situation.
4. Any allegation of imminent danger should be investigated immediately.

#### G. Inspection Techniques.

1. Photography.
  - a. South Carolina Rules and Regulations, Subarticle V, Section 71-505 authorize CO/His to take or obtain photographs related to the purpose of the inspection.
  - b. The use of still photography and video tapes serve as a valuable method of documenting hazards and conditions in the workplace.
  - c. Roll and frame numbers on film must correspond with worksheets; the numbered card system will be utilized; all film must be properly marked, turned into the office and processed and filed in accordance with office procedures.
  - d. If an employer objects to the taking of photos based on his fear that trade secrets may be disclosed, the CO/IH shall advise him of the protections against such disclosure afforded by Section 71-111 of Subarticle I, SCRR.

#### H. Closing Conference.

1. General.

Upon completion of an inspection, the CO/IH shall confer with the owner, operator, or employer representative and advise him of all conditions and practices disclosed by the inspection which may constitute safety and health violations. He should also indicate, where possible, the applicable section or sections of the standards which may have been violated. The CO/IH shall discuss all items on the Closing Conference Summary Sheet, DOSH-C-12, and leave the employer a copy of this form.

2. Discussing Citations and Penalties.

- a. The employer shall be advised that citations may be issued with respect to some or all of the conditions or practices noted, and that monetary penalties may be proposed with respect to each citation. (1) The employer should also be informed that citations will fix reasonable time for abatement of the alleged violations(s); (2) That appeal procedures will be explained in the citation notice; (3) an informal conference may be requested prior to and held within the 20-calender day protest period.
- b. The CO/IH should encourage employers to eliminate all hazards as promptly as possible.

3. Closing Discussion With Employees, if Requested.

Generally, there will be no closing conference with the employees or their representative, since they will have communicated and participated in the inspection. However, if requested by the employees or their representatives, a separate closing conference will be held to discuss the results of the inspection.

4. Second Closing Conference.

- a. Since the CO/IH may not have all pertinent information and/or sample results during the first closing conference, a second closing may be held by telephone or in person.

I. Sit Down or Walk Off.

1. If an employer instructs his crew to stop work or leave the site to avoid an inspection, the CO/IH should follow these procedures:
  - a. Ascertain, from prime contractor if necessary, the following:
    - 1) Name of company.
    - 2) Nature of work.
    - 3) Status of work.

- 4) Number of employees.
- 5) When work will resume.

b. Advise your Supervisor or the Compliance Manager of the situation.

## J. Multi-Employer Worksites.

On multi-employer worksites citations normally shall be issued only to employer/contractor who created the violation or who has control of its correction.

This procedure is in accordance with Section 41-3-55, S.C. Code of Laws which reads as follows:

Determination of liability for violations at sites involving multiple employers or contractors.

At any construction site involving multiple employers or contractors, the Department of Labor, Licensing and Regulation inspector when citing any such employer or contractor for a violation of any regulation or standard provided by law, shall first determine which employer or contractor is in violation and such employer or contractor only shall be cited and held responsible for such violation.

### 1. Definitions.

- a. Multi-Employer Worksite: A worksite where the employees of more than one employer are working. The worksite may be fixed or mobile.
- b. Exposing Employer: An employer who has or had employees actually or potentially exposed to hazardous conditions.
- c. Controlling Employer: An employer who creates the violation, or who is in the best position to prevent, correct or detect the violation. For example:
  - 1) The plant owner or manager; the prime contractor, the general contractor, or construction manager, by virtue of being in the best position to prevent or to detect and correct the hazard as a result of general supervisory responsibilities over the entire worksite.
  - 2) A (sub)contractor with contractual responsibility to deal with particular hazards(s); e.g., a carpentry subcontractor who is charged with specific responsibility for erecting guardrails, or an electrical contractor with specific responsibility for installing GFCI.

### 2. Guidelines.

- a. The Compliance Manager will issue citations to the employer(s) who created the hazardous condition or is in the best position to correct the hazard or to assure its correction (the controlling employer).
- b. The controlling employer may be cited even though no employees of that employer are exposed to the violative condition.
- c. Under 41-3-55, the controlling employer, the violator, may be cited for all foreseeable exposures. To arrive at the total number of employees exposed, count the number of employees of each employer who are exposed to the hazard.
- d. In cases where the creator of the violation is no longer on the site, the prime, general or construction manager becomes the citable employer due to their supervisory responsibilities over the entire worksite.

K. Referrals.

## Chapter III

### Special Inspection Procedures

#### A. Complaints.

All written and oral complaints received will be carefully evaluated to determine if the complaint meets the formality requirements set forth in the Rules and Regulations. All complaints will be logged on the Inspection Division complaint log and designated as formal, informal, or discriminatory.

When a complaint alleges both safety and health hazards, it should be evaluated by both safety and health personnel.

##### 1. Imminent Danger Complaint.

Any complaint, whether formal or informal, which is determined to be imminent danger will be investigated within 24 hours.

##### 2. Formal Complaint.

- a. Subarticle V, [Section 71-508](#) of the Rules and Regulations sets forth the formality requirements for a complaint. The complaint must:
  - 1) Be reduced to writing (either on a DOSH-C-7) or in a letter);
  - 2) Allege that a violation of the Act exists in the workplace;
  - 3) Set forth with reasonable particularity the grounds upon which it is based. This does not mean that the complaint must specify a particular standard; it need only specify a condition or practice that is hazardous, and if uncommon, why it is hazardous, and
  - 4) Be signed by one or more employees or their representatives.
- b. For purposes of submitting a complaint, an employee would be a present employee of the employer whose establishment is being complained about.
- c. A complaint by a former employee is not considered a formal complaint unless the former employee alleges discrimination for exercising his or her rights under the Act. The discrimination complaint may be filed with either State or Federal OSHA.
- d. For purposes of submitting a complaint, a representative of employees may be:

- 1) Any authorized representative of the employee bargaining unit, such as certified or recognized labor organizations.
- 2) An attorney acting for an employee;
- 3) A member of the employee's family acting on his behalf. In this situation, a complainant purporting to act as a representative of an employee will be presumed to be so acting unless the Compliance Officer/Industrial Hygienist has specific information that the complaint was not submitted with the knowledge of or on behalf of the employee.

### 3. Responding to Formal Complaints.

Upon receipt of formal complaint meeting the requirements of Section 71-508, a letter shall be promptly sent to the complainant to acknowledge receipt and indicate what action will be taken on the complaint.

#### a. Priorities.

IF an inspection will be conducted, it shall be conducted according to the following priority.

- 1) Imminent danger- 24 hours.
- 2) Formal Serious complaints -30 working days.
- 3) Formal nonserious complaints- 120 working days.

#### b. Circumstances Under Which No Inspection of a Formal Complaint Will Be Conducted.

Under the following conditions a formal complaint will not result in an inspection. Instead the compliance Manager shall inform the complainant by letter that no inspection is warranted, the reason, and that he has a right of appeal.

- 1) A thorough evaluation of the complaint does not establish "reasonable grounds to believe a violation or danger exists"; i.e., if the complaint is so vague and unsubstantiated that a reasonable judgment as to the nature of the hazard can not be determined.
- 2) The complaint concerns a condition which has no direct or immediate relationship to safety or health.
- 3) As a result of a recent inspection or on the basis of other objective evidence, the Compliance Manager determines that the hazard is not present or has been corrected.



- 4) The complaint clearly does not fall within OSH jurisdiction. Such complaints will be referred to the appropriate agency.
- 5) Complaints which clearly involve harassment, instead a letter will be written to the employer.

c. Results of Inspection.

The complainant shall be notified of the results of the inspection including a copy of any citations issued, a response to each item of the complaint, and right to appeal.

4. Informal Complaints.

- a. A complaint which does not meet the formality requirements of S.C. Rules and Regulations, Subarticle V, Section 71-508, will be considered informal and no inspection will be conducted.
- b. Upon receipt of a written informal complaint, the complainant shall be given a written explanation of :
  - 1) Why the complaint does not meet the formality requirements of Section 71-508.
  - 2) That no inspection can be made.
  - 3) That a letter will be sent to the employer requesting voluntary correction of the hazard. A copy of the letter to the employer will be included with the letter to the complainant.
  - 4) If the complaint does not contain sufficient information to determine whether it is formal or informal the complainant will be contacted for additional information.
  - 5) If the employer provides an inadequate response or fails to respond, an inspection may be scheduled at the Compliance Manager's discretion.
  - 6) When action taken by the employer is disputed by the complainant, the Compliance Manager may at his/her discretion schedule an inspection.

5. Oral Complaints.

- a. If an oral complaint appears to meet the requirements for a formal complaint, except for the written requirement, the complainant shall be advised as follows:

- 1) To file a written complaint as prescribed by law.
- 2) A complainant's identity will remain confidential, if requested
- 3) Protection against discrimination is provided by law, Section 41-15-510.
- 4) No inspection can be conducted until the written complaint has been received by this office. Complaint must be returned within 15 calendar days.

- b. If an oral complainant is not an employee or employee representative, the complainant shall be informed why no action can be taken on the complaint.

#### 6. Complaint Backlog.

Prior to conducting an inspection which is more than 20 working days old, the complainant should be contacted to determine the status of the hazard. If the hazard has been corrected or no longer exists, the matter can be closed and an entry to that effect made on the log. A letter should be sent to the complainant to confirm the hazard.

#### 7. Scope of Inspection.

See Chapter I, page I-2.

#### 8. Information Needed for Complaint Evaluation.

Below is a list of questions which should be useful to evaluate a complaint:

1. Description of the hazardous condition.
2. Type and condition of equipment involved.
3. Location of hazard.
4. Number of employees exposed and length of exposure.
5. Length of time hazard has existed.
6. Personal protective equipment used.
7. Injuries or illnesses which may have been caused by hazard.
8. Has employer attempted to correct.

In addition to the above certain specific information is useful in evaluating health complaints:

1. Name of substance and/or container label information.
2. How is substance used in the process; what is end product?
3. Type personal protective equipment used.
4. Is the process done daily or weekly?
5. Type of ventilation.
6. Size of work area.

7. What type problem is caused by the exposure:

- a. Headache
- b. Faintness
- c. Skin, eye or respiratory tract irritation
- d. Vomiting
- e. Breathing difficulty.

9. Inspection Procedures.

- a. The DOSH-C-1 will be marked as a complaint inspection and either complete or partial as indicated by the assignment from the office.
- b. At the opening conference with the employer, a copy of the complaint shall be given to the employer. Subarticle V, [Section 71-508](#) requires that if the complainant so requests, his name shall be deleted from the copy provided the employer. If handwritten, a complaint shall be retyped, and reworded as necessary, so that the identity of the complainant cannot be discerned by the employer.
- c. Written communications to a complainant shall be sent only to the complainant's home address, unless he specifically requests that it be mailed to another address.
- d. Inspections made as a result of an employee filing a discrimination complaint shall be treated as a formal complaint.

10. Special Instructions.

Because of the sensitive nature of employee complaints, Compliance personnel must be especially careful to conduct exhaustive investigations.

Incomplete investigations may result in employee appeals to the Director of Labor, Licensing and Regulation, complaints to Federal OSHA about the State program, or possibly hazardous conditions not being corrected.

All personnel must follow the procedures and inspection techniques outlined in other chapters of this manual as well as the following:

- 1. Conduct an exhaustive investigation of each complaint item.
- 2. Make a determination as to whether a hazard existed six months prior to or during the inspection.
- 3. Conduct employee interviews and obtain written employer statements, if possible. This is absolutely necessary to establish whether or not a violation existed prior to the inspection.

4. If the alleged hazard was corrected prior to the inspection, determine when and by whom.
5. Record the name, title and employer name of all persons who provided information (written or oral).
6. Take photographs of the alleged hazard. In cases whereon violations exist, photographs are still required to properly document the case.
7. On the back of the worksheet prepare a thorough response for each item in the order that it appears on the complaint.

This information is highly important because these notes are used in preparing a response to the complaint.

#### 11. Processing, Evaluation and Investigation of OSH Discrimination Complaints.

The rights and remedies of aggrieved employees are covered under Section 41-15-510 and 41-15-520, S.C. Code of Laws, 1976 as amended and SCRR Subarticle X. This type of complaint is commonly referred to as an 11(C) complaint which is in reference to the Federal OSHA Act.

- a. Employees are not to be discriminated against for filing complaints. No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted, or caused to be instituted, any proceeding under of relating to statutes, rules or regulations regarding occupational safety and health, or testified or is about to testify, in any such proceedings or because of the exercise by such employee on behalf of himself or others of any right afforded by such statutes, rules or regulations.
- b. Remedy of employee charging discrimination. Any employee believing that he has been discharged or otherwise discriminated against by any person in violation of Section 41-15-510 may, within thirty days after such violation occurs, file a complaint with the Director of Labor, Licensing and Regulation alleging such discrimination. Upon receipt of such complaint, the Director shall cause investigation to be made as he deems appropriate.

If upon such investigation the Director determines that the provisions of [Section 41-15-510](#) have been violated, he shall institute an action in the appropriate court of common pleas against such person. In any such action the court of common pleas shall have jurisdiction for cause shown to restrain violations of [Section 41-15-510](#) and order all appropriate relief including rehiring or reinstatement of employee to his former position with back pay.

c. Receipt of Complaint.

Upon receipt of a complaint alleging discrimination, the Administrative Assistant shall screen the complaint to determine if it was filed in time.

- 1) If the complaint is too vague to determine the nature and date of the discriminatory action, the complainant shall be contacted to obtain the required information.
- 2) For orally filed complaints the Administrative Assistant must accurately record the pertinent information on an appropriate intake worksheet and immediately forward it to the Compliance Manager for review.
- 3) The complaint will be sent via memorandum to the Agency's General Counsel for evaluation.

d. Evaluation of Complaint.

General Counsel will review the complaint and advise the Administrative Assistant whether the complaint involves protected activity and give reason for the decision.

- 1) If the case will be assigned for investigation, the Administrative Assistant will assign the complaint a case number.
- 2) The Administrative Assistant will also complete the appropriate sections of the 11(C) Activity Form and provide a copy to Legal, IMIS, the investigator and the Federal Area Office.
- 3) If the complaint does not fall under protected activity, the Administrative Assistant will notify the complainant of the decision.
- 4) Potential 11(C) cases involving the safety of motor vehicles must be carefully screened to determine if they fall within Federal or State jurisdiction.
  - a. Complaints which meet the definitions will be referred to the Federal area office.
  - b. Complaints which do not meet the definition will be sent to the Agency's General Counsel for evaluation.
- 5) Potential 11(C) Complaints received by Federal OSHA which involve South Carolina employees will normally be referred to the State unless the complainant insists that Federal OSHA handle the investigation.

e. Assignment of Investigator.

If General Counsel recommends that an investigation be conducted, the Administrative Assistant shall assign the complaint to a Senior Compliance Officer/Industrial Hygienist who has been trained to conduct 11(c) investigations.

- 1) The complainant will be notified in writing that the complaint may possibly fall within protected activity and that an investigation will be conducted.
- 2) A copy of the complaint, except those involving public sector employees, will be mailed to the Federal area office to insure that the Federal 30 day filing deadline is met and the employees' right to have Federal OSHA investigate is preserved.
- 3) For 11(c) complaints which also allege safety and/or health hazards, an OSHA-7 will be completed according to instructions and considered to be a formal complaint.
- 4) Copies of the 11(c) complaint and OSHA-7 will be provided to the investigator.

f. Investigation Procedures.

The Compliance Officer/Industrial Hygienist assigned to conduct the investigation will contact the parties in the case as follows:

- 1) Contact the complainant to take a statement, gather dates, time names of company officials, names of witnesses, and other information concerning the alleged violation.
- 2) Contact the employer to explain the purpose and scope of the investigation, conduct interviews, obtain necessary documents, and arrange to conduct employee interviews.
- 3) Contact witnesses to the alleged violation and obtain statements.
- 4) If at any time during the investigation, the Compliance Officer/Industrial Hygienist determines that a full-field investigation is not necessary, he or she shall contact the General Counsel.

During the investigation, the Compliance Officer/Industrial Hygienist must gather information concerning:

- 1) The protected activity

- 2) Retaliation –was it in terms of altered compensation, employment, termination, etc.
- 3) Causation
- 4) Damages

Once the field investigation has been completed, a conference will be held between the investigator and General Counsel.

g. Conference.

Upon review of the facts, interviews and witness statements, General Counsel will:

- 1) Advise the investigator and their supervisor that further investigation is needed.
- 2) Dismiss the case as non-meritorious.
- 3) Consider the case meritorious and proceed to reach a settlement between the parties or recommend to the Director that the case be litigated.

Under [Section 41-15-520](#), the Director must approve/institute an action in the Court of Common Pleas.

If, after investigation, the case is considered non-meritorious, General Counsel will send a letter closing the case to the complainant and the employer. (Copy to Federal Area Office). The letter will also advise the complainant of the right to appear to the Director and the right to request Federal OSHA to review the case or conduct their own investigation.

The 11(c) Activity form will be updated and submitted to IMIS and a copy to the file.

h. Appeals to the Complainant.

After an investigation, if the complainant is dissatisfied with the decision that the case is not meritorious, the complainant can appeal to the Director.

The Director will:

- 1) Order that a further investigation be conducted, or
- 2) Affirm the decision and notify the complainant.

The complainant also has the right to request that Federal OSHA review the case or conduct their own investigation.

i. Disclosure of Investigation.

The disclosure of any documents in 11(C) investigations will be in accordance with the Agency's Public Information policy.

B. Imminent Danger.

1. Definition.

- a. An imminent danger is defined as: Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by State Law.
- b. For condition(s) or practice(s) to constitute an imminent danger situation, it must be concluded that there is a reasonable expectation that condition(s) or practice(s) could cause death or serious physical harm immediately or before the danger can be eliminated by the normal citation mechanism. For health hazard(s) to constitute an imminent danger situation, it must be concluded that there is a reasonable expectation that toxic substances or health hazards are present and exposure to them will cause irreversible harm to such a degree as to shorten life or cause reduction in physical or mental efficiency even though the resulting irreversible harm may not manifest itself immediately.

2. Pre-Inspection Procedures for Handling Allegations of Imminent Danger.

- a. Any allegation of imminent danger received by the Office of Occupational Safety and Health shall be handled in accordance with the following procedures.
  - 1) The Compliance Manager or the Field Supervisor shall immediately ascertain whether there is reasonable basis for the allegation and alert the Administrator to the situation.
  - 2) The Compliance Manager shall contact the employer immediately, ascertain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. The Compliance Manager should ascertain what steps, if any, the employer indicates that he will try to abate the danger; appropriate steps shall be taken to prepare for and conduct an inspection in accordance with the procedures in this chapter. If advance notice is given to the employer, it shall also be given to the authorized employee representative.

b. Technical Considerations.



- 1) After the determination to inspect has been made, the inspection of the workplace should be thoroughly planned to the extent time permits.
- 2) The field Supervisor and Compliance Officer or Industrial Hygienist should review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection.
  - a. If it is determined that an inspection should be made, the inspection should be scheduled and conducted at the earliest possible time. Except in extraordinary circumstances, the inspection should be conducted within 24 hours of receipt and evaluation of the allegation of imminent danger.
  - b. Where the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the inspection, it may nevertheless be advisable to schedule and conduct a preliminary inspection within 24 hours of receipt of allegation.

### 3. Inspection.

#### a. Scope

- 1) In an inspection conducted because of an allegation of imminent danger, the alleged imminent danger situation shall be inspected first. Any additional inspection activity should take place only after resolution of the imminent danger situation.
- 2) The scope of the inspection may be expanded, with approval of the Compliance Manager.

#### b. Refusal of Entry.

The Compliance Officer or Industrial Hygienist shall contact the Compliance Manager immediately.

#### c. Procedures.

Any inspection that involved an imminent danger situation shall be conducted as expeditiously as possible. The opportunity to accompany the Compliance Officer/Industrial Hygienist shall be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay the inspection.

#### d. Elimination of the Imminent Danger.

As soon as it is concluded that conditions or practices exist which constitute an imminent danger, the employer shall be so advised and requested to notify his employees of the danger and remove them from the area of imminent danger. It is the duty of the Compliance Officer or Industrial Hygienist at the site of an imminent danger situation to encourage the employer to do whatever is possible to eliminate the danger.

1) Voluntary Elimination of the Imminent Danger.

The employer may voluntarily and permanently eliminate the imminent danger as soon as it is pointed out. In such cases, no imminent danger proceeding shall be instituted; and, therefore, no Notice of Alleged Imminent Danger shall be completed although an appropriate citation and notification of penalty shall be issued.

a. What Constitutes Voluntary Elimination.

Although there may be instances in which the employer will not be able to eliminate the danger permanently as soon as it is pointed out, the Compliance Officer or Industrial Hygienist shall nevertheless consider that voluntary elimination of the danger has been accomplished when the employer:

1. Has removed employees from the danger area; and
2. Has given satisfactory assurance that the dangerous condition will have been eliminated before permitting employees to work in the area as evidenced by one of the following:
  - a. After removal of employees immediate corrective action is initiated designed to bring the dangerous condition, practice, means or method of operation or process into compliance, which, when completed, would permanently eliminate the dangerous condition; or
  - b. The acceptable promise of the employer that:
    - i. Permanent corrective action will be taken as soon as possible, and
    - ii. Employees will not be permitted to work in the area of the imminent

danger until the condition is permanently corrected, or

c. The acceptable promise of the employer that:

- i. Permanent corrective action will be taken as soon as possible, and
- ii. Where personal protective equipment can eliminate the imminent danger, such equipment will be issued and its use enforced until the condition is permanently corrected.

NOTE: A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the Compliance Officer's or Industrial Hygienist's judgment.

b. **Action Where Voluntary Elimination is Accomplished.** If the employer agrees and proceeds to eliminate the imminent danger immediately and permanently, the Compliance Officer or Industrial Hygienist and any other technical support staff present shall advise the employer to the maximum extent possible. However, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.

1. If elimination of the imminent danger is achieved voluntarily, the Compliance Officer or Industrial Hygienist shall make the appropriate notation on the OSHA worksheet. Appropriate citation(s) and notice(s) of proposed penalties shall be issued regarding the hazard.
2. The Compliance Officer or Industrial Hygienist shall inform affected employees or their authorized representative(s) that, although an imminent danger had existed, the Compliance Officer or Industrial Hygienist has determined that such danger no longer exists. They shall also be informed of the steps to be taken by employer to eliminate the dangerous condition.
3. No Notice of Alleged Imminent Danger, OSHA-8 form, shall be prepared and no imminent danger

proceedings instituted when voluntary elimination of the imminent danger is accomplished.

2) **Action Where Voluntary Elimination Is Not Accomplished.** If the employer either cannot or does not voluntarily eliminate the hazard, the following procedures shall be observed:

a. The Compliance Officer or Industrial Hygienist shall call the Compliance Manager, who shall

1. Notify the Administrator and Staff Attorney.
2. Recommend to the Director that relief be sought.
3. Notify the Compliance Officer or Industrial Hygienist whether to post a Notice of Alleged Imminent Danger.

NOTE: The Compliance Officer or Industrial Hygienist has no authority either to order the closing down of the operation or to direct employees to leave the workplace.

4. Issuing Notice of Alleged Imminent Danger. If the employer does not eliminate the imminent danger or give satisfactory assurance that the danger will be voluntarily eliminated, the Compliance Officer or Industrial Hygienist will be advised to post the Notice of Alleged Imminent Danger according to the following:
- a. The original OSHA-8 Form shall be signed and posted at or near the area in which the exposed employees are working. A copy shall be signed and attached to provide a means for posting.
  - b. Where there is not a suitable place for posting the OSHA-8 Form, the employer(s) shall be requested to provide a means of posting.
  - c. If there is reason to believe that the employee may not see the notice, the Compliance Officer or Industrial Hygienist shall orally inform the affected employees of the location of the Notice of Alleged Imminent Danger, after taking adequate precautions not to be exposed to danger.
  - d. The employer shall be advised that Section 41-15-290, S.C. Code of Laws, gives the Director of Labor, Licensing, and Regulation the authority to petition the Court of Common Pleas for a restraining order.

## 5. Citations and Proposed Penalties.

- a. Citations and Penalties. If the imminent danger is corrected during the on-site visit, appropriate citations and penalties will be issued.
  - b. Effect of Court Action. No citation shall be issued when court action is being or will be pursued relative to the issuance of and OSH-8 without prior clearance from the Director and the Staff Attorney.
6. Follow-up Inspection.
  - a. Court Action. Where a court has issued an injunction in an imminent danger situation, the follow-up inspection shall take place immediately after the court order has been issued to determine if the employer is complying with the terms of the order.
  - b. No Court Action. Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated but permanent correction of the condition has not been achieved at the time of the follow-up inspection, appropriate failure to abate citations and penalties shall be issued
  - c. Immediate Correction. Where the dangerous condition has been permanently corrected at the time of the inspection, the Compliance Manager shall determine whether a follow-up inspection is necessary.
7. Removal of Imminent Danger Notice. If an OSHA-8, Notice of Imminent Danger form has been posted at the work site in accordance with the procedures, the Compliance Officer or Industrial Hygienist shall remove the Notice as soon as the imminent danger situation has been eliminated or it has been determined that a temporary restraining order will not be sought.
8. Imminent Danger Observed During Scheduled Inspection. If an imminent danger situation, confined space work, trenching, crane operating within ten feet of a power lines, etc. is observed during the course of a scheduled inspection, the Compliance Officer/Industrial Hygienist should respond to it immediately. If there is any doubt about whether an imminent danger exists, the Compliance Officer/Industrial Hygienist should contact the Compliance Manager immediately.
9. Photographs. Photographs shall be taken of all imminent danger conditions or practices unless the use of the camera and flash would create a further hazard. Where voluntary elimination is not accomplished, photographs shall be made and delivered to the office as soon as possible.
10. Health Samples. If samples are required to determine whether there is an imminent danger, the Industrial Hygienist shall contact the Compliance Manager and the Industrial Hygienist Field Supervisor immediately. The laboratory will be notified that rapid analysis is essential and the Industrial Hygienist will be instructed to deliver the samples to the laboratory as soon as possible.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION  
Division of Occupational Safety and Health

TO: \_\_\_\_\_

NOTICE OF IMMINENT DANGER

\_\_\_\_\_

An inspection of a workplace under your ownership, operation, or control, located at \_\_\_\_\_

\_\_\_\_\_ and

described as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

has been conducted. On the basis of this inspection, it is alleged that you have violated the South Carolina Occupational Safety and Health Act, Act 379, of 1971, as amended, hereinafter referred to as the Act, in the respects set forth below and that these conditions are such THAT A DANGER EXISTS WHICH COULD REASONABLY BE EXPECTED TO CAUSE DEATH OR SERIOUS PHYSICAL HARM IMMEDIATELY or before the imminence of such danger can be eliminated through the normal procedures provided by the Act. You are notified to remove all employees from these conditions.

STANDARD OR OF ALLEGED VIOLATED _____	DESCRIPTION VIOLATION _____	REGULATION ALLEGEDLY
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The Act provides that the South Carolina Court of Common Pleas is empowered, upon petition of the Director of the Department LLR, to order you to take such action as is necessary to avoid, correct, or remove this alleged imminent danger, including, where necessary, the removal of employees from the dangerous area, or to require the cessation of operation in that area.

In accordance with the provisions of Section 9 of the Act, as amended, you and the employees affected by these alleged imminently dangerous conditions are being informed of the possible danger by posting a copy of this imminent danger citation near the conditions cited. You and the affected employees are likewise being informed that it will be recommended to the Director that he seek the judicial relief accorded by the Act.

Signed and dated at \_\_\_\_\_

\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Safety or Health Compliance Officer  
Division of Occupational Safety and Health  
South Carolina Department of Labor

## III

## C. Accident, Fatality and Catastrophe Investigations.

## 1. General.

All significant job-related fatalities and catastrophes will be investigated as thoroughly and expeditiously as resources and other priorities permit. Even in the absence of death or injuries, an investigation may be conducted of accidents which receive significant publicity, recur on a frequent basis; have occurred in industries which are the subject of a special emphasis program; or which involved extensive property damage and could have resulted in a large number of deaths or injuries.

## 2. Definitions.

## a. Fatality.

A fatality is the death of an employee as a result of a job-related injury or illness. A fatality must be reported to the South Carolina Department of Labor, Licensing and Regulation within 8 hours. The report can be made by telephone, or in writing.

## b. Catastrophe.

A catastrophe is a situation in which three or more employees are hospitalized as a result of any single accident. A catastrophe must be reported to the South Carolina Department of Labor, Licensing and Regulation within 8 hours of such and occurrence. Failure to report a fatality or catastrophe within 8 hours is a violation of Subarticle III, Section 71-308.

## 3. Purpose of Investigations.

The primary purpose of these investigations is to determine:

- a. Whether a violation of State safety and health regulations contributed to the occurrence.
- b. The accident could have been avoided had proper safety and health regulations been enforced and followed.
- c. Whether anything can be done to prevent recurrence.

## 4. Responsibilities.

## a. Administrative Assistant.

When a fatality or catastrophe is reported, the Compliance Manager or Administrative Assistant will obtain as much of the following information as possible.

- 1) Date and time reported.
- 2) Name, title, and telephone number of person making the report.
- 3) Name of company, location and type of business.
- 4) Date and time of accident.
- 5) Type of accident.
- 6) Number of fatalities and/or number hospitalized.
- 7) Number of witnesses.
- 8) Who to contact at the scene.

b. Compliance Manager.

The Compliance Manager shall review the information reported and take the following action:

- 1) Determine if additional information is needed.
- 2) Determine if OSHA has jurisdiction.
- 3) Assign the investigation to a Compliance Officer or Industrial Hygienist or to a team of Compliance Officers. When feasible, the compliance Officer or Industrial Hygienist assigned to the investigation will not receive other assignments until the investigation is complete.
- 4) Notify the Administrator of the fatality or catastrophe.
- 5) After a fatality has been reported the Compliance Manager is permitted to advise the employer and employee representative as to when the investigation will commence in order to avoid delays because work has ceased or key witnesses are absent. Such notification is not considered to be advance notice.
- 6) Make a preliminary determination as to whether the inspection should be complete or partial.

c. Compliance Officer.

- 1) Upon learning of a fatality or catastrophe the Compliance Officer or Industrial Hygienist should report it immediately to the Administrative Assistant or Compliance Manager.



- 2) Except in unusual circumstances, no Compliance Officer or Industrial Hygienist shall commence an investigation unless directed to do so by the Compliance Manager.
- 3) A Compliance Officer or Industrial Hygienist assigned to the case has the responsibility of conducting thorough and timely investigation and to keep His/her Supervisor updated on the progress of the investigation.

NOTE:

In investigations of this type the nature of the evidence available is of paramount importance, therefore, there may be occasions when such investigations will have to commence on holidays and weekends.

It is the Compliance Officer's or Industrial Hygienist's responsibility to have all equipment in operable condition and have necessary supplies available, such as film, witness statement forms, etc.

- 4) If in the course of the investigation the Compliance Officer or Industrial Hygienist determines that conditions are such that a complete inspection should be made, the Compliance Officer or Industrial Hygienist shall contact the Compliance Manager and explain the situation. The Compliance Manager will decide if the inspection should be concurrent or after the accident investigation.

5. Investigative Procedures.

- a. All investigations will follow the procedures outlined in Chapter II as well as specific instructions found in this Chapter.
- b. The level of investigation will vary from case to case. The Compliance Officer or Industrial Hygienist must use professional judgment, be inquisitive and investigate each clue to determine how the accident occurred and if a standard or the General Duty Clause was violated. To make this determination the investigator must answer in-depth the following:

1) Who was Injured?

Name and address

Age and sex

Occupation/job title

What was employee doing when the accident occurred?

What was he assigned to do?

How often has employee performed this task?

2) Where Did The Accident Occur?

General location

Specific location

In accidents such as cave-ins, where the trench may already be backfilled, select specific landmarks that will aid in relocating the exact location.

3) When Did The Accident Occur?

Date

Time

Shift

At what point in the task or procedure?

4) What Was Involved?

What equipment, machines, materials were involved? What condition was it in? Was it properly guarded?

List brand names, serial numbers

Has any item been moved, and/or modified since the accident?

Does the physical location of items at the site make sense relative to witness descriptions?

Describe environmental conditions. Was the area hot, noisy, wet, well lighted, and properly ventilated?

Was equipment operated in accordance with Operator's Manual and/or Manufacturer's Recommendations?

Was equipment modified prior to the accident? Did the modification lead to the accident? Were employees familiar with how to operate the modified equipment?

5) Personal Protective Equipment.

Required?

Provided?

Used?

Proper type?

Employee trained in proper use?

Was use of equipment enforced? Is there supporting documentation?

6) Chain of Supervision?

Who supervised employee(s) and gave them instructions?

What were the instructions?

Where was supervisor when accident occurred?

Was supervisor aware of unsafe act or conditions?

7) Were There Any Witnesses?

Name and address.

Who were coworkers? Where were they when accident occurred?

What did they see prior to or at time of accident?

NOTE:

Witnesses should be interviewed separately and statements should be taken in accordance with [Chapter VII](#).

If an injured employee or key witness is outside of the State, the investigator must have written authorization to travel out of the State.

If there were no eye witnesses and/or the cause of the injury or fatality is not clear, the investigator may interview or obtain copies of reports from others who may have pertinent information about site conditions or the cause of death, such as:

Other employees who may have been involved in rescue operations.

Members of rescue squads, ambulance service, fire department or police department.

Coroner.

Pathologist.

8) Training.

Had the employee received training in hazard recognition or training for the specific task or equipment involved?

Who provided the training and when?

Is training provided in accordance with OSH standards?

What is/are employee(s) understanding of the company's enforcement of safety rules?

Have employees been sanctioned for past safety violations?

9) Photographs and Sketches.

Photographs – If a professional photographer is needed, the investigator should contact the office immediately.

Use numbered card system to identify equipment, materials, etc. involved in accident.

Photos must be taken from various angles and distances.

Sketches – Sketches or drawings shall be used to supplement photographs. When possible, copies of sketches, plant layouts, blueprints, etc. should be requested from the employer and when appropriate from employees.

10) Cause of Accident.

Did an unsafe act cause the accident? Was the accident caused by an unsafe condition?

- i. How long has the condition existed?
- ii. Have employees complained about the condition? When? To whom?

Did the employer have knowledge of the unsafe act or condition?

Was the unsafe act or condition covered by an OSH standard or the General Duty Clause?

11) Corrective Action.

Has the employer taken positive action to correct the hazard?

12) Recommendations.

If there are no violations of the OSH standards or the General Duty Clause, the Compliance Officer or Industrial Hygienist should evaluate the situation to determine if any recommendations should be made that would help prevent reoccurrence of similar accidents.

13) Health Investigations.

When an accident or fatality investigation involves chemicals, a chemical process, or air contaminants the following additional questions should be considered.

Are Material Safety Data Sheets available?

Are Chemical Process Sheets or Batch Sheets available?

Are process logs or graphs for automatic recorders available (temperature, pressure, time).

Is sampling or monitoring data available?

Were chemicals mixed in proper sequence?

Were chemicals properly handled and stored?

6. Rescue Operations.

- a. OSHA has no authority to direct rescue operations-this is the responsibility of the employer and/or of local political subdivisions or State agencies. OSHA does not have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers.
- b. It is not OSHA's intent to interfere with or regulate an individual's choice to heroically risk their life to save another. Individuals who place themselves at risk may or may not have an occupational responsibility to perform rescue activities.
- c. Each case must be evaluated and the Compliance Officer/Industrial Hygienist must discuss the situation with the Compliance Manager and Legal Counsel before proposing citations.

7. Use of Experts.

If it is determined that outside expertise is required the Administrator will contact the Federal OSHA Area Office. As a second choice, outside non-government experts will be considered. This decision must be made as early in the investigation as possible so that funding for the outside consultant can be approved; the work completed, and the investigation completed within six months from the date the accident occurred.

8. Review of Findings.

- a. When the Compliance Officer or Industrial Hygienist believes that he/she has collected all necessary information/material he/she shall notify his/her Supervisor.
- b. The Compliance Officer or Industrial Hygienist will present the findings to the Compliance Manager and Supervisor.
- c. When there is a question on standard applicability or a legal issue involved, the Standards Officer and Staff Attorney will be consulted as appropriate.

9. Public Information Policy.

Release of information concerning the presence of OSH personnel at the site of an accident or fatality will be made only by the Director of Labor, Licensing, and Regulation, or Public Information Officer.

If an Industrial Hygienist or Compliance Officer is approached at the site by the news media, they should state that the accident is under investigation and refer them to the Office of Communication and Governmental Affairs.

## D. Follow-up Inspections.

### 1. Purpose

The purpose of follow-up inspections is to determine if cited violations have been corrected.

### 2. Policy

- a. Follow-up inspections are normally required when a citation(s) has been issued for imminent danger, willful violations, failure to abate, or repeated violations.  
(1) Compliance Officers and Industrial Hygienists shall recommend a follow-up inspection for these type violations unless the hazard is corrected prior to the on site closing conference. If all violations were corrected during the inspection a follow-up inspection is not required.
- b. Follow-up inspections may be considered on serious violations. Factors to be considered are: Number and/or gravity of violation, past history of employer, complex engineering controls.
- c. Follow-up inspections are not normally required on non-serious violations unless the Compliance Officer/Industrial Hygienist has reason to believe the violations may not be corrected.
- d. If an employer fails to respond, either written or orally, to repeated requests for corrective action, the Compliance Manager may assign a follow-up inspection on any type violation. A phone call will be made to obtain corrective action after the second request for fixed worksites and after the first request for mobile worksites.

### 3. Scheduling

- a. Follow-up inspections should normally be conducted within 10 days of the latest abatement date. Exceptions are allowed when no follow-up was originally scheduled and the employer fails to provide corrective action.
- b. If a citation contains staggered abatement dates more than one follow-up may be necessary. For example, if an employer is required to provide an eyewash within 10 days and to install engineering controls within 180 days, a follow-up may be conducted on the eyewash and another on the engineering controls. The Compliance Manager will use his discretion in scheduling follow-up inspections in cases involving staggered abatement dates.
- c. If a notice of protest is filed by the employer, a follow-up inspection will not be scheduled. A follow-up can be conducted if the protest is filed only by employees or their representative.

- d. If a follow-up is conducted within the 20 calendar day protest period and the violations have not been corrected, a citation for failure to abate will be issued even if the employer subsequently files a protest on the original citation.
- e. When a citation is under protest a follow-up inspection will not be considered until the Order of the Administrative Law Court, settlement agreement, or court order has been issued. After reviewing the record and inspection file, the Compliance Manager will decide if a follow-up is necessary.
- f. If a safety and a health inspection has been conducted and either one is protested, a follow-up inspection on the unprotested case will not be assigned until the protested case is resolved. The Compliance Manager should try to obtain corrective action from the employer either written or orally.

#### 4. Follow-Up Inspection Procedures

- a. The primary purpose of the follow-up is to determine if the hazards have been corrected and if the citation has been posted in accordance with Subarticle IV, Section 71-402.
- b. Generally, all instructions in this chapter for conducting inspections will be applicable, including opening conference contacting union representative, walk-around, and closing conference.
- c. Normally, the inspection will be limited to the cited violations. However, if there have been significant changes with new hazards in the workplace, further inspection action may be appropriate. The Compliance Officer or Industrial Hygienist shall consult with the Compliance Manager before expanding the scope of the follow-up.
- d. Unless more than six months has lapsed since the last inspection, a review of injury/illness records will not be necessary.
- e. The Compliance Officer/Industrial Hygienist must document in the report how each violation was corrected.
- f. If the violations have not been corrected, a citation for failure to abate and proposed additional penalties will be issued. The Compliance Manager shall allow a reasonable time for abatement but the additional penalties must be paid within the protest period unless a protest is filed. Under certain conditions a petition for modification of the abatement date may be considered rather than a citation for failure to correct.
- g. If a second follow-up inspection reveals the employer has still not corrected the violations, the Compliance Manager shall notify the Administrator.

## 5. Follow-Up Inspections – Construction

- a. Due to the rapid change of conditions and work progress it is essential that follow-up inspections be conducted in a timely manner.
- b. Where a contractor is no longer on the job, it is not necessary to complete a DOSH-C-1 Form; however, a Memorandum for the Record will be inserted into the file explaining that the contractor has completed the job.

The Compliance Manager shall contact the employer and request a letter of corrective action.

- c. On the follow-up inspection, the Compliance Officer or Industrial Hygienist shall be primarily concerned with determining whether the cited violations have been abated but they shall be alert to new serious violations on the job.
- d. The follow-up DOSH-C-1 Form shall refer to the identification block of the original report.
- e. The Compliance Officer or Industrial Hygienist shall list on the worksheet how each violation was corrected and take photographs when applicable.

### E. Construction; Re-inspection.

1. Due to the nature of the construction industry, changes in the number and type of crafts presents during various stages of construction, and the length of the project, construction worksites may require more than one inspection. Guidelines for re-inspecting construction worksites are as follows:
  - a. Re-inspection of previously inspected job sites is considered programmed inspections.
  - b. Re-inspection will occur not earlier than 90 days from the date of the original inspection.
  - c. Re-inspection will occur only if recommended by the Compliance Officer who conducted the original inspection.
  - d. In making a recommendation for re-inspection, the Compliance Officer will consider the following:
    - (1) The nature of the violations – serious versus other-than-serious.



- (1) How much longer the site will be open prior to completion of the project. The longer the site will be open the more likely the need for re-inspection.
  - (2) The likelihood of serious violations similar to those observed during the inspection, reoccurring at a later stage of construction. More likely the reoccurrence the more likely the need for re-inspection;
  - (3) The past-history of the companies working the site. Have they abated past violations in a timely manner? If not, re-inspection may be appropriate to insure long term abatement;
  - (4) The size of the worksite and workplace. The greater the size and work force the more potential exposure exist and depending on conditions at the site, the more likely the need for re-inspection.
2. There is no weight given to any factor noted in paragraph d [(1)-(5)]. It is possible that one factor will be such importance under the circumstances that the Compliance Officer will recommend re-inspection. The rationale for recommending re-inspection should be noted in the Compliance Officer's case notes.

## Chapter IV

### Violations

#### A. Basis of Violations

##### 1. Standards

- a. The Safety and Health Rules and Regulations contained in Subarticle VI, 1910, Subarticles VII, 1926, and Subarticles VIII, 1928, are to be used as a basis for citation.
- b. The most specific subdivision of the standard shall be used for citing violations.
- c. Specific industry standards are those standards which apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment or installations. Universal standards are those standards which apply when a condition is not covered by a specific industry standard. Within both universal and specific industry standards there are general standards and specific standards.
  - (1) When a hazard in a particular industry is covered by both a specific industry (e.g., Part 1915) standard and a universal (e.g., Part 1910) standard, the specific industry standard shall take precedence. This is true even if the universal standard is more stringent.
  - (2) When determining whether a universal or a specific industry standard is applicable to a work situation, the CO/IH shall focus attention on the activity in which the employer is engaged at the establishment being inspected rather than the nature of the employer's general business.
  - (3) As provided in Subarticle 1, 71-107, if a specific (vertical) Rule and Regulation adopted by 1926 (i.e., a construction standard) or a Rule and Regulation for a special industry contained in Subpart R of 1910 is specifically applicable to a working condition, apply the specific Rule and Regulation rather than a more general Rule and Regulation which might otherwise be applicable to that working condition.
  - (4) Similarly, apply the Rule and Regulation in the "1910" or "1926" parts of which is more specific than another Rule and Regulation within the same respective part. For example, the requirements regarding machine guards for woodworking saws, 1910.213, would apply to such saws. Rather than the more general machine guarding requirements for powered saws in 1910.212.
  - (5) A general (horizontal Rule and Regulation will be applied when a more specific (vertical) Rule and Regulation is not applicable to a certain condition.

## 2. Violation of variances and interim compliance determinations

- a. The granting of a variance under [Section 41-15-240 and 41-15-250](#), Code of Laws, State of South Carolina, as amended or the issuance of an interim compliance determination modifies the Rule and Regulation against which the alleged violation is to be measured. An employer will not be subject to citation if the area of possible violation is in compliance with either the granted variance, the terms of the interim compliance determination, or the controlling Rule and Regulation.
- b. When the OSH Compliance Officer or Industrial Hygienist discovers, during the course of a compliance inspection that the employer has filed an application for variance regarding a condition which the Compliance Officer or Industrial Hygienist determines to be an apparent violation of the Act, the Compliance Office or Industrial Hygienist shall immediately report this fact to the Compliance Manager who shall contact the Standards Officer for information as to the status of the variance request and for instructions prior to issuance of any citation.

## 3. General Duty Requirement

The General Duty Clause is discussed further in this chapter.

## 4. Violation of Regulations

An employer may be cited for violation of the following requirements under Subarticle III and Subarticle IV, Rules and Regulations, Director, SC Department of Labor, Licensing, and Regulation:

- a. **Posting Requirements** – Including the requirements to post notices advising employees of their rights, to post citations and to post the annual summary under Subarticle III, [Section 71-305](#);
- b. **Recordkeeping Requirements** – Including maintaining the log and supplemental records; note, however, the employer is not required to maintain a log where no recordable injuries or illnesses have occurred prior to inspection. However, the employer is required to note in his annual supplement that no injuries or illnesses required to be reported occurred;
- c. The requirement under Subarticle III, [Section 71-308](#) that the employer report within 8 hours to the Director, SC Department of Labor, Licensing, and Regulation, either orally or in writing, any occurrence of an employment accident which is fatal to one employee or more, or which results in **hospitalization of three or more employees**. If an inspection of the accident is made prior to the 8 hours requirement, no citation shall be issued to the employer for failing to report under Subarticle III, Section 71-308. Citations for regulatory violations shall be issued for violations of the requirement of these regulations. Penalties shall be proposed in accordance with the guidelines.

## B. Types of Violations

### 1. Serious Violations

- a. [Section 41-15-320\(h\)](#), Code of Laws, State of South Carolina, 1976, as amended provides: "...a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." (Emphasis added.)
- b. To determine that a violation is serious, the Compliance Officer or Industrial Hygienist must take four steps. The first three steps determine whether there is a substantial probability that death or serious physical harm could result from the violative condition. The fourth step determines whether the employer knew or could have known of the violation. The steps are taken after the Compliance Officer or Industrial Hygienist has identified a hazardous condition and has determined that employees are exposed or potentially exposed to the violative condition. Possible violations of the general duty clause shall be evaluated on the basis of these steps to assure that they represent serious violations. The four steps which are discussed in paragraph "c" are as follows:
  - (1) **Step (1)** – Determine the type of accident or health hazard exposure which the violated standard is designed to prevent in relation to the hazardous condition identified.
    - (a) The exposure or potential exposure of an employee to the violative condition must be established. Facts which could affect the severity of the injury or illness resulting from the accident or health hazard exposure shall be also noted.
    - (b) If more than one type of accident or health hazard exposure could occur, the Compliance Officer or Industrial Hygienist shall determine which type of accident or health hazard exposure could result in the most severe injury or illness and shall base the classification of the violation on that determination.
  - (2) **Step (2)** – Determine the types of injury or illness which it is reasonably predictable could result from the type of accident or health hazard exposure identified in Step (1).
    - (a) In making this determination, the Compliance Officer or Industrial Hygienist may have to consider peculiar factors associated with the particular workplace, such as height of a floor on which employees are working. However, the only factors to be considered are those which would affect the

severity of the injury or illness which it is reasonably predictable could result from an accident or health hazard exposure. The Compliance Officer or Industrial Hygienist shall not give consideration at this point to factors which relate to the likelihood that an injury or illness would occur.

- (b) For conditions involving exposure to air contaminants or harmful physical agents, the Compliance Officer or Industrial Hygienist may have to consider the frequency and duration of the exposure in determining the types of illness which it is reasonably predictable could result from the condition. This is not necessary to determine the nature of the illness for substances known as cancer-causing. For other substances, however, the Industrial Hygienist shall identify and record all available evidence which indicates the frequency and duration of employee exposure. Such evidence would include (a) the nature of the operation from which the exposure results, (b) whether it is regular and ongoing or of limited frequency and duration, (c) how long employees have worked at the operation in the past, and (d) whether they are employed at functions which can be expected to continue. Where such evidence is difficult to obtain or where it is inclusive, the Industrial Hygienist shall estimate the frequency and duration from the evidence available. In general, if the evidence tends to indicate that it is reasonably predictable that regular, on-going exposure could occur, the Industrial Hygienist shall presume such exposure in determining the types of illness which could result from the violative condition.
    - (i) Based on a presumption of regular, on-going exposure, the Industrial Hygiene Chemical Information Manual indicates illness which the Rules and Regulations governing toxic substances and harmful physical agents are intended to prevent at certain specific levels of exposure. In some instances, the types of illness which could result from exposures above the permissible exposure limit but below the level at which serious harm could occur are not listed. In such instances the Industrial Hygienist shall simply note that the illness would be other than serious physical harm.
    - (ii) When the Industrial Hygienist concludes that the exposure is of limited frequency or duration, he shall consult with the Supervisor-Occupational Health.
    - (iii) When a toxic substance or harmful physical agent discovered in a workplace is not listed in the Industrial Hygiene Chemical Information Manual or other field guidance, the Industrial Hygienist shall consult with the Supervisor-Occupational Health to determine its potential effects.
- (3) **Step (3)** - Determine that the types of injury or illness identified in Step (2) include death or a form serious physical harm.

In making this determination, the Compliance Officer or Industrial Hygienist shall utilize the following definition of “serious physical harm”:

- (a) Impairment of the body in which part of the body is made *functionally useless* or is *substantially reduced in efficiency* on or off the job. Such impairment may be permanent or temporary, chronic or acute. Injuries involving such impairment would usually require treatment by a medical doctor. Examples of injuries which constitute such harm include: amputation, concussion, crushing, fracture, burn or scald, cuts, laceration or puncture involving significant bleeding and/or requiring suturing.
  - (b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, silicosis, asbestosis, poisoning, hearing loss and visual impairment.
- (4) **Step (4)** – Determine that the employer knew or with the exercise of reasonable diligence could have known of the presence of the hazardous condition.
- (a) If the Compliance Officer or Industrial Hygienist determines that the employer actually knew of the condition which constituted the violation, the knowledge requirement is met. In this regard, a supervisor represents the employer knowledge. The Compliance Officer or Industrial Hygienist shall record any evidence which establishes that the employer knew of the hazardous condition.
  - (b) Even if the Compliance Officer or Industrial Hygienist is not in a position to determine that the employer had actual knowledge of the violative condition, the knowledge requirement is met if the Compliance Officer or Industrial Hygienist is satisfied that the employer could have known of the violative condition through the exercise of reasonable diligence. As a general rule, if the Compliance Officer or Industrial Hygienist was able to discover a violative condition and the condition was not transitory in nature, it can be presumed that the employer could have discovered the same condition through the exercise of reasonable diligence.

## 2. Nonserious Violations

- a. This type of citation shall be issued in situations where an accident or occupational illness resulting from violation of a standard would probably not cause death or serious physical harm, but which would have a direct or immediate relationship to the safety or health of employees. An example of “other” violation is the lack of guardrail at a height from which a fall would most likely result in only a mild sprain or cut and abrasions; i.e., something less than serious physical harm.
- b. Grouping

- (1) Grouping related “nonserious” violations where grouping results in a serious violation. A citation for serious violation may be issued for a group of individual violations when taken by themselves, would be nonserious, but considered together would be serious in the sense that in combination they present a substantial probability of injury resulting in death or serious physical harm to employees.
- (2) Where grouping results in higher gravity nonserious violation. Where the Compliance Officer or Industrial Hygienist finds during the course of his inspection that a number of other violations are present in the same piece of equipment, which considered in relation to each other affect the overall gravity of possible injury resulting from an accident involving the combined violations, then they may be grouped. The violations may be grouped in a manner similar to that indicated in the preceding paragraph (1), although the resulting citation will be for nonserious violation.

### 3. De Minimis

- a. Section 41-15-280, Code of Laws, State of South Carolina, 1976, as amended, provides that “the Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.” (Emphasis added). Therefore, where a violation of a Rule or Regulation does not immediately or directly relate to safety or health, it would be appropriate to issue a notice of de minimis violation, rather than a citation. ***Such use of the notice of de minimis violation might be appropriate in situations involving standards containing physical specificity where a slight deviation would not have an immediate or direct relationship to safety or health.*** No penalties are proposed for de minimis notices, and there is no abatement requirement. No further enforcement action should be taken even though the employer has not corrected the de minimis condition.
- b. The current policy is not to issue a de minimis notice. However, these conditions will be entered on the DOSH-C-1A worksheet and discussed with the employer during the closing conference.

### 4. Willful

- a. A “willful” violation may exist under the Act where the evidence shows (1) that the employer committed an ***intentional and knowing***, as contrasted with the inadvertent, ***violation of State Law***, or (2) even though the employer was not consciously violating State Law, he was aware that a hazardous condition existed and made ***no reasonable effort to eliminate*** the condition. It is not necessary that the violation be committed with a bad purpose, or an evil intent, to be deemed “willful” under State Law. It is sufficient that the act was deliberate, voluntary or intentional as distinguished from those which are inadvertent, accidental or ordinarily negligent.

- b. The Compliance Officer or Industrial Hygienist should carefully develop all evidence available that would indicate an employer's awareness of the disregard for his statutory obligations or of the hazardous conditions. *For example*, willingness would exist if an employer had been advised by employees or employee representatives regarding an alleged hazardous condition and the employer makes no reasonable effort to verify the condition. Additional factors which can influence a decision as to whether violations are willful include:
  - (1) The nature of the employer's business and what *knowledge regarding safety and health* matters could reasonably be expected in that industry.
  - (2) What *precautions* the employer took to guard against violations; for example: Are there trained safety personnel responsible for establishing and implementing a company safety program, or is this matter ignored?
  - (3) Whether the general application of State Law has been *called to the employer's attention*, and whether similar violations have been called to his attention.
  - (4) Whether the nature and extent of the violations disclosed are such that a *purposeful disregard* of statutory obligations becomes clear.
- c. *In accident investigations* as soon as there is reason to believe a willful violation resulting in a fatality has occurred, the Staff Attorney shall be contacted for instructions. Where possible, this should be done prior to the start of the investigation.
- d. A willful violation may also be considered after the first Failure to Abate citation.

## 5. Repeated

- a. Any employer who repeatedly violates any occupational safety or health rule or regulation may be assessed a civil penalty of not more than \$70,000 for each violation.

A "repeated" violation exists when there is a recurrence of a substantially similar violation with two years of the date that the original violation becomes a Final Order of the Director or the final abatement date, whichever is later. It must be shown that the employer (1) was previously cited, (2) for a substantially similar violation, (3) and was found in violation, and (4) the original violation was abated. The previous citations must have become final, either because they were not protested or because administrative review has upheld the citations.

Classification of a violation as Repeated requires the use of judgment by the Compliance Officer to determine whether the present and prior violations are substantially similar. Repeated violations may, but do not necessarily, involve the



same equipment, same location, or a recurrence of the identical condition, as the previous violation. In most cases, violations of the same standard will be substantially similar.

However, it is important to note that the employer still has the opportunity to prove the violations for which it was cited occurred under disparate conditions or involved different hazards. Therefore, if a repeated violation is alleged there should be evidence that the violations are “substantially similar” even when the same standards are involved. This burden can be met by proving that the alleged hazards and means of abatement are identical for the two citations. In this regard, it is usually easier to show that the violation of a specific standard is substantially similar.

For example: violations of 1910.262(n)(1) (requiring shuttle guards on looms) are more likely to be similar than violations of 1910.212(a)(1) (general machine guarding standard). Likewise, a violation of 1926.555(b)(2)(v) (requiring use of safety belts by employees in aerial lifts) can more easily be established as repeated than a violation of 1926.28(a) (general personal protective equipment standard). When a general standard is involved, the Compliance Officer or Industrial Hygienist should review the reports of the previous citations and determine whether the hazards and conditions are similar.

In some situations, it may be appropriate to classify a violation as “repeated” based on prior violations of a different standard. For example, the section number of a standard may have changed, or a change in compliance policy may dictate that a certain hazard is now being cited under a different standard. In certain cases, the proper standard to cite may change as the nature of the work changes, although the hazard is identical. For example, an employer with an unguarded scaffold, cited twice under 1926.451(a)(4), while it was involved in construction work, might later use the same type scaffold for general maintenance work and then be cited under 1910.28(a)(3). The later citation would be repeated.

- b. For purposes of determining whether a high gravity serious violation is repeated, the following criteria will apply:
  - (1) When high gravity serious violations are to be cited, the Compliance Manager may obtain a history of citations previously issued to this employer at all of his identified establishments, statewide, within the same two-digit SIC code. If this violation has been previously cited within the 2-year time limitation and is a Final Order, a repeated citation may be issued.
  - (2) The Compliance Manager should consider statewide histories, whenever the circumstances of the current inspection make it appropriate, such as a large number of Serious, Repeated, or Willful violations, a known history of previous high gravity violations or a known history of accidents and/or fatalities.

- c. For purposes of considering whether violation of lesser gravity is repeated, citations will be limited to the previously cited worksite. This applies to employers having fixed establishments as well as non-fixed establishments.
- d. Repeated violations differ from willful violations in that they may result from any inadvertent, accidental or ordinarily negligent act. A willful violation need not be one for which the employer has been previously cited. Where a repeated violation also meets the criteria for willful, a citation for a willful violation will be issued.
- e. Repeated violations are also to be distinguished from a failure to abate.

If upon re-inspection a violation of a previously cited standard is found on the same piece of equipment or in the same location and the evidence indicates that the violation has continued uncorrected since the original inspection, then there has been a failure to abate. If, however, the violation was not continuous, if it had been corrected and reoccurred, the subsequent reoccurrence is a repeated violation.

## **6. Failure to Abate**

- a. When a follow-up inspection is conducted and the employer has not corrected a violation, additional penalties for failure to abate will be assessed in accordance with procedures.
- b. Exceptions

If an employer has taken what he thought was proper action to correct the violation, but that action is not acceptable to the Compliance Officer or Industrial Hygienist the procedures below will be followed:

- (1) Evaluate the corrective action taken and the employer's explanation for that action.
- (2) Take photographs and measurements where applicable.
- (3) Discuss with Supervisor and Compliance Manager prior to taking further action.

## **C. General Duty Clause**

### **1. Definitions**

- a. Subarticle I, Section 71-112, South Carolina Rules and Regulations, provides that "each employer shall furnish to his employees employment and a place of employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and he shall comply with occupational safety and health rules and regulations under this Chapter.

- b. See definition of serious physical harm in this Chapter.
- c. A recognized hazard may be established on the basis of industry recognition, actual employer knowledge or common sense recognition.

(1) Industry Recognition

A hazard recognized if the employer's industry recognizes it. Industry recognition may be established by:

- (i) Statements by industry safety and health experts.
- (ii) Evidence of implementation of abatement methods.
- (iii) Manufacturer's warnings on equipment which are relevant to the hazard.

(2) Employer Recognition

Employer knowledge may be established by evidence of actual employer knowledge. Evidence may consist of:

- (i) Company memorandums, safety rules, or operating procedures.
- (ii) Employee complaints to supervisory personnel.
- (iii) Employer's implementation of corrective action.

(3) Common-Sense Recognition

Recognition may be established if it is concluded that any reasonable person would have recognized the hazard.

**2. Use and Limitations of General Duty Clause.**

- a. The General Duty Clause may only be used to cite serious hazards which may cause death or serious physical harm and where the hazard is not covered by a specific standard.
- b. The General Duty Clause **may not** be used to:
  - (1) Impose a stricter requirement than that required by a standard.
  - (2) Require an abatement method not set forth in a specific standard.
  - (3) Enforce "should" sections of OSHA or ANSI standards.

### **3. Documentation Required.**

In order to cite a violation of the General Duty Clause, it is incumbent upon the agency to establish by a preponderance of evidence that:

- a. A recognized hazard existed.
- b. The employer knew or should have known of the hazard.
- c. There was a feasible and useful method to correct the hazard. This may be established by:
  - (1) Employer's recognition of an abatement method.
  - (2) The industry's recognition of an abatement period.
  - (3) Recommendations by the manufacturer of equipment involved.
  - (4) Suggested guarding methods contained in trade journals.
  - (5) Methods provided by expert witnesses.

### **4. Pre-Citation Review**

Violations of the General Duty Clause will not be issued unless approved by the Administrator and/or Compliance Manager. In complicated cases, the legal staff will be consulted prior to issuance of a citation.

### **5. Citation Form**

The language of the violation description shall distinguish between the hazard and the abatement method. In addition, the description of the abatement method shall clearly state that it is one of the number of possible methods, unless the facts clearly indicate that it is the only abatement method.

### **6. The Citation Should Read:**

SCRR Subarticle I, 71-112A: Failed to furnish a place of employment which is free of recognized hazards which may cause death or serious physical harm to his employees and comply with this regulation and other Occupational Safety and Health Rules and Regulations promulgated under Chapter 15 of Title 41, Code of Laws, State of South Carolina, 1976, as amended, as follows:

**Example** – Employer knew or should have known that employees working underneath cars were exposed to the hazard of being crushed by a falling junked car which was suspended by a two ton Mack tow truck. A feasible and useful method to correct this hazard, among other methods, is to place jacks or blocks under the car to prevent it from falling.

### **PMA**

PMA request requires the following information:

1. The specific item(s) that need extending.
2. The specific number of additional days needed to achieve compliance.
3. The reasons this additional time is necessary.
4. Detailed information regarding steps taken, including the date of such actions to achieve compliance.
5. Interim steps taken to safeguard the employees against the cited hazards during the abatement period.
6. Date posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. Posted 10 working days.
7. Copy given to authorized representative of affected employees either the union or the employees organized safety committee, if applicable.

## Chapter V

### Citations & Abatement Dates

#### A. Citations

##### 1. General

The proper writing of a citation is an important part of the enforcement process. Citing incorrect standards and improperly written violations descriptions may cause unnecessary amendments, encourage unnecessary informal conferences, or protest which may result in the Administrative Law Court vacating or modifying otherwise valid citations. Therefore, a careful review of the citation must be made by the Compliance Officer or Industrial Hygienist, the Field Supervisor or Standards Officer, and the Compliance Manager before a citation is issued.

##### 2. Specific

- a. In many cases, before a citation is issued, a pre-citation consultation may be necessary. The consultation with the Compliance Officer or Industrial Hygienist may involve one or all of the following: OSH Field Supervisor, Compliance Manager, Standards Officer, Administrator, or Staff Attorney.

The consultation may be a discussion with the Field Supervisor, a call to the Standards Officer, or a Fatality/Accident conference with a Staff Attorney.

- b. Examples of cases where a pre-citation consultation may occur are as follows:

- (1) When there are questions about the proper standard to cite and/or classification of a violation.
- (2) Questions about use of a **general** or **vertical** standard.
- (3) Grouping of violations.
- (4) Jurisdictional issues.

Normally, a pre-citation conference will be held in cases involving willful violations, OSH discrimination cases, accidents and fatalities, and use of the General Duty Clause.

##### 3. Writing Citations

- a. [Section 41-15-280](#) of Act 379, S.C. Acts of Joint Resolutions, 1976, as amended, specifically requires that "...each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the

Act, Standard, Rule, Regulation, or Order alleged to have been violated.”; therefore, the Compliance Officer or Industrial Hygienist must:

- (1) Give a clear and accurate description of the alleged violation under the “as follows” on the worksheet(s). From the wording of the standard and violation description the employer must be able to readily identify the standard, rule or regulation, and hazard for which they are being cited.
- (2) The alleged violation description must specify:
  - (a) The hazard or condition – what is wrong?
  - (b) Exact location of the hazardous condition or practice.
- (3) Specific identification of the equipment or procedure. List brand or trade name, serial and/or company number and model number.
- (4) Number of instances. For example: state the number of saws not guarded, or the number of employees not wearing hard hats.

b Timely Issuance of Citations

- (1) Section [41-15-280](#), S.C. Code of Laws, 1976, as amended, states, “No citation may be issued under this section after the expiration of six months following the occurrence of any violations.”
- (2) All report writing and citations must be processed as quickly as possible according to the following priority:

Imminent Danger  
Willful  
Repeated Serious  
Serious  
Other

Process reports in each category by oldest inspection date.

(3) Limitation

As provided in [Subarticle IV, Section 71-400](#), S.C. Rule and Regulation, no citation may be issued after the expiration of 6 months following the occurrence of any violation.

4. Combining and Grouping Violations

- a. All violations of a single standard having the same classification shall be combined into one alleged violation item.
- b. Interrelated violations of different standards may be grouped in the following situations:
  - (1) Grouping Related Violations

When the CO/IH believes that violations classified either as serious or as other-than-serious are so closely related as to constitute a single hazardous condition.

(2) Grouping Other-Than-Serious Violations Where Grouping Results in a Serious Violation

When two or more individual violations are found which, if considered individually represent other-than-serious violations, but if grouped create a substantial probability of death or serious physical harm.

(3) Where Grouping Results in Higher Gravity Other-Than-Serious Violation

Where the CO/IH finds during the course of the inspection that a number of other-than-serious violations are present in the same piece of equipment which, considered in relation to each other affect the overall gravity of possible injury resulting from an accident involving the combined violations.

Note: Generally CO/IHs will only group violations where permitted by a Program Directive or approved by the Compliance Manager.

c. Normally grouping of violations in the private sector is inappropriate in the following:

(1) Multiple inspections of the same establishment.

(2) Separate establishments of the same employer. Normally all operations of an employer in the same location would be considered a single establishment.

(3) General Duty Clause violations.

(4) Egregious violations.

## 5. Citing Alternative Standards

### General

- a. In rare cases certain factual information about a violation may not be known making it difficult for the Compliance Officer to determine which standard should be cited.

For example, a Compliance Officer may find that a “hole” in the ground has been backfilled. Evidence to support employee exposure and the absence of sloping or shoring is available, but the dimensions needed to classify the “hole” as either a trench or excavation are not known.



- b. In this case it is permissible to cite alternative standards. For example, both 1926.651(c) and 1926.652(b) or (c) may be cited using the words “In The Alternative Of” in the citation.
- c. One citation will be issued with Item #1 and Item #2 with the appropriate information under the “as follows” for each standard cited.
- d. The words “In The Alternative Of” will be typed between Item #1 and Item #2.
- e. Where violations are cited in the alternative, the same penalty will be assessed for each standard cited; however, the total penalty assessed shall equal the amount assessed for one item since there is only one violation.
- f. Compliance Officers and Industrial Hygienists must have prior approval before citing standards in the alternative.

## 6. Citing Violations Not Actually Observed

### a. General

Working conditions that allegedly violate the OSH safety and health standards of the general duty requirement shall be cited only when actually observed by a Compliance Officer/Industrial Hygienist during the course of an inspection and there is exposure or potential exposure to employees. This general rule shall apply except in special circumstances, which include:

- (1) Where the hazardous condition no longer exists at the time of the inspection, i.e., accident, complaint, referral, but where the Compliance Officer/Industrial Hygienist and the Compliance Manager determine, on the basis of written statements by witnesses and other corroborative evidence, that a violation existed at the time of the accident.
- (2) Circumstances where authorized advance notice has been given and at the time of the inspection, the Compliance Officer/Industrial Hygienist determines, through written statements and other corroborative evidence, and the Compliance Manager agrees that alterations have taken place as a result of the advance notice so as to give a misleading impression of the conditions in the workplace: i.e., an alleged violation existing at the time of advance notice was removed prior to inspection. Citation may also be appropriate where the employer was given advance notice of an inspection of an alleged imminent danger, and the imminent danger but that it was abated prior to the inspection.

- 7. Potential Exposure. A citation may be issued when the possibility exists that an employee could be exposed to a hazardous condition because of work patterns, past circumstances, or anticipated work requirements, and it is reasonably predictable that employee exposure could occur, such as:

- a The hazardous condition is an integral part of an employer's recurring operations, but the employer has not established a policy or program to ensure that exposure to the hazardous condition will not recur; or
- b The employer has not taken steps to prevent access to unsafe machinery or equipment which employees may have reason to use.

## 8. Citations For Employee Actions Which Violate Safety and Health Standards.

### a. Employer Responsibility

Where an employee does not comply with the requirements of a standard which is applicable to his own actions and conduct, the employer is subject to citation. For example, if the employees refuse to wear protective equipment provided by the employer, the employer is subject to citation. Employers will thus be responsible for establishing means of becoming informed of situations where their employees do not comply with applicable standards, and they should take all necessary action to assure compliance with such standards by their employees.

- (1) Section 41-15-80 of the Act provides that:  
"Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct."
- (2) The State law does not provide for the issuance of citations or the proposal of penalties against employees. Employers will be held responsible for failing to comply with standards applicable to employee action and conduct; e.g., use of hard hats, safety belts and other personal protective equipment.
- (3) In cases where employees systematically refuse to comply with the standards applicable to their own actions and conduct, the matter shall be referred to the Compliance Manager. Involvement in labor/management disputes or collective bargaining issues shall be avoided.
- (4) In all such cases, the Compliance Officer/Industrial Hygienist shall discuss the employee conduct with the employees and their representatives to attempt to obtain further compliance. During the closing conference, the Compliance Officer/Industrial Hygienist shall point out to the employer such employee actions or conduct for which the employer may be cited. The Compliance Officer/Industrial Hygienist shall also advise the employer that it is their responsibility under State law to assure compliance by their employees with the applicable standards.

## 9. Multi-Employer Worksites

### a General

- (1) Generally each employer is responsible for the working conditions of his own employees. Difficult matter of judgment in citing will arise where employees of different employers are working in the same establishment. For example, employees of an employer who operates an establishment may be present, along with employees of a second employer (or contractor) who may be present to perform such work as remodeling, general maintenance, or special services.
- (2) The procedures for issuing citations on multi-employer worksites is the same for fixed and mobile worksites.

## 10. Amending or Withdrawing Citation or Notification of Proposed Penalties

### a. General

A citation may be considered for amendment when it has been determined that specific details of the citation are incorrect, unreasonable, incomplete or entirely misleading. Examples of proper cause to amend would include:

- Citing an incorrect standard.
- Incorrect or incomplete description of the alleged violation.
- Improper classification of a violation.
- Unreasonable time for abatement.

It would not be appropriate to amend a citation or proposed penalty for editorial or stylistic purposes. When appropriate, the Attorney shall be consulted on the proposed amendment.

- (1) An amendment to, or withdrawal of, a citation is permissible only if the employer has not filed a notice of contest as to that citation and the 20-calendar day period for filing a notice of contest has not yet expired.
- (2) Where an employer has contested an item in a citation that the Compliance Manager believes should be amended, the Compliance Manager should immediately bring these items to the attention of the Staff Attorney, whether or not the 20-calendar day period has expired. The Attorney, as the legal representative of OSH, can take the necessary legal steps in the proceedings to make appropriate amendments.
- (3) If the Compliance Manager believes that an amendment to or withdrawal of a citation would be appropriate, and where the 20-calendar day period of contest has expired and the employer has not contested, he should contact the Attorney for advice.
- (4) Withdrawal of Citation In Its Entirety

- a. A citation may be withdrawn in its entirety by the Compliance Manager after consultation with the Attorney and the Administrator of OSH. After such consultation, he shall send the employer a letter withdrawing the citation and the notification of proposed penalty.
- b. The letter of withdrawal shall refer to the citation and notification, shall state they are withdrawn, and shall direct that the letter be posted by the employer for 3 working days in those locations where the citation is posted.

(5) Amendments to Citations Issued Pursuant to Employee Complaints

In all cases, if the citation was issued pursuant to a complaint under S.C. Rule and Regulation, [Article V, Section 5.08](#), the complainant shall be advised of the action taken and sent a copy of the amended citation or notice of withdrawal of citation. Where there is a notice of withdrawal of such a citation, the complainant will have the right to an informal review under S.C. Rule and Regulation, Article V, Section 5.09. This applies only to amendments or withdrawals involving the conditions stated in the complaint.

11. Posting Citations

- a. At many construction sites, the employer (whether prime contractor or subcontractor) provides a trailer or other worksite office. Where such a facility is provided and employees are likely to be in the vicinity of the facility on a daily basis, the citation shall be posted at that location. A copy of the citation shall also be posted at any other location of the employer where employees are required to report on a daily basis. In some situations, such a location would be the employer's main or branch office; in other situations, such as highway construction, the location would be the place where employees actually work.
- b. Where no obvious place for posting the citation exists (such as in highway construction where the trailer may be a considerable distance away and employees do not report to the trailer) the employer shall be required to furnish a suitable object on which to post the citation.

B. Abatement

1. Period

The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement date shall be set forth in the citation as a specific date, not a number of days. When the abatement period is very short (i.e., 5 working days or less) and it is uncertain when the employer will receive the citation, the abatement date shall be set so as to allow for a mail delay and the agreed-upon abatement time. When abatement is witnessed by the Compliance

Officer/Industrial Hygienist during the inspection, the abatement period shall be “corrected during inspection”.

In cases where the employer indicates an item can be corrected prior to receiving the citation, the abatement period will be one day.

## 2. Considerations

- a. The establishment of an abatement date requires the exercise of maximum professional judgment on the part of the Compliance Officer/Industrial Hygienist and the Compliance Manager. This judgment should be based on the knowledge of the conditions noted.

In all cases, the employer shall be asked for any available information relative to the time required to accomplish abatement and/or any factors unique to the employer’s operation which may have an effect on the time needed for abatement.

- b. All pertinent factors shall be considered in determining what is a reasonable period. The following considerations may be useful in arriving at a decision:

- (1) Seriousness of the alleged violation.
- (2) Availability of needed equipment, materials, or personnel.
- (3) Time required for delivery, installation, modification, or construction.
- (4) Training of personnel.
- (5) Exposure and/or number of employees exposed.
- (6) Any other relevant circumstances the Compliance Officer/Industrial Hygienist and Compliance Manager consider appropriate.
- (7) Construction sites.

- a. Due to the gravity of violations, rapid change of conditions, and in many situations the availability of materials to correct violations, the abatement periods set will generally be short, often just a few days.
- b. An explanation must be provided for any abatement date exceeding five (5) days.

## 3. Abatement Not Exceeding 30 Days

When the abatement periods are more than 5 working days, the days should be counted in 5 day increments.

#### 4. Abatement Period Exceeding 30 Days

- a. In some cases, a period in excess of 30 days will be needed for abatement. For example, where extensive structural changes are necessary, where new equipment or parts must be ordered and cannot be delivered within 30 days, or where training cannot be conducted within 30 days, the Compliance Officer/Industrial Hygienist must document on the worksheet why more than 30 days is necessary.
- b. Abatement periods in excess of one year shall not be authorized without the Administrator's approval.

#### 5. Corrective Action Taken by Employer

Employers are required to advise the Compliance Manager as to the specific corrective action taken on each violation and the approximate date of such action. This report must be submitted no later than the latest abatement date for all violations.

#### 6. Verification of Corrective Action

The Compliance Manager is responsible for determining if proper corrective action was taken. When abatement is not accomplished at the time of the inspection or the employer does not notify the Compliance Manager of the action taken, verification will be determined by a follow-up inspection, or if appropriate, by telephone.

#### 7. Effect of Contest Upon Abatement Date

- a. In situations where an employer contests either 1) the period set for abatement, or 2) the citation itself, the abatement period shall be considered not to have begun until all administrative and court proceedings have been exhausted and have resulted in affirmation of the citation and abatement period. If there is an employee contest of the abatement date, the abatement requirement(s) of the citation remains unchanged.
- b. In situations where the Director of Labor, Licensing, and Regulation or a court has altered the abatement period, the abatement period, as altered, will be the applicable abatement period.
- c. If the Order does not specify an abatement date, the number of days assigned in the original citation shall be used and calculated from the date of the final Order.
- d. Where an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the contest.

#### 8. Abatement Dates for Grouped Violations

Frequently, two or more separate standards are cited as one grouped violation. Although the violations are grouped, a separate abatement date may be set for each standard cited.

For examples, 1910.1000(e) and 1910.134 may be grouped and cited as one violation. A long-range abatement date may be given to implement feasible engineering controls and a short abatement date given for requiring personal protective equipment.

## 9. Feasible Administrative Work Practices and Engineering Controls

Reserved.

## 10. Long Term Abatement

- a. In certain situations it may be difficult to set an abatement date. For example, during the closing conference an employer may indicate that more than one year is needed to conduct an engineering study of a noisy area and to order equipment. Normally, a one year abatement date is given and the employer may petition for modification of the abatement date at a later time.

In unusual cases, the Compliance Manager may delay the citation for a short period of time to allow the employer to submit an abatement plan outlining the specific steps to be taken and the dates on which each step is to be completed. The Compliance Manager will consider the plan and after consultation with the Administrator, issue the citation with appropriate abatement dates.

- b. An abatement plan may also be considered under the Petition for Modification Procedure when the employer is requesting more than one year.

## 11. Extending Abatement Dates

- a. During the 20 day protest period the employer may request, written or oral, an extension of an abatement date. The Compliance Manager may grant a reasonable extension.
- b. If the 20 day protest period has expired, the employer may petition for modification of the abatement date. The Compliance Manager will process in accordance with the following:

### (1) Filing

If the employer has made a good faith effort to comply with the abatement period, but has not been able to do so by the prescribed date because of factors beyond their control, they may file a Petition for Modification of Abatement. The petition must be filed with the Compliance Manager no later than the end of the next working day following the date on which abatement was to have been completed. The petition shall state why the abatement cannot be completed within the prescribed time, the steps taken to achieve compliance, and what

interim steps are being taken to protect the employees from the cited hazard. Affected employees and their authorized representatives (if any) must be also notified in writing of the petition by posting of the petition at the same location the citation is posted, and the petition shall remain posted for a period of ten (10) days.

(2) Incomplete Petition for Modification of Abatement

Should a Petition for Modification of Abatement be submitted to the Compliance Manager which does not meet the requirements of this section, the Compliance Manager shall immediately notify the employer of the deficiency and may allow up to an additional five (5) days to meet the requirements. Incomplete Petitions for Modification of Abatement may be objected to by the Compliance Manager.

(3) Objections to Petition for Modification of Abatement

- a. Affected employees or their representatives may file an objection in writing to a petition for modification of abatement with the Compliance Manager. Failure to file such objection within ten (10) days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition unless good cause is shown for such failure. The Compliance Manager shall forward the petition to the Director within five (5) days after expiration of the above protest period and shall include their recommendation as to the granting or denial of the extension of the abatement period. Should the Compliance Manager recommend denial of the request for extension of the abatement period, such denial will be deemed an objection.
- b. If there is no objection to the petition, the Compliance Manager may approve the PMA request.
- c. Where any petition is objected to by the Compliance Manager or affected employees, the petition, citation, and any objections shall be immediately forwarded to the Administrative Law Court for determination.



# Chapter VI

## Penalties

### A. Scope

This chapter summarizes the various types of penalties provided for under Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, outlines the methods to be used for calculating such penalties, provides guidelines to be used for notifying employers of such penalties, and provides instructions for the collection and recovery of such penalties.

### B. Civil Penalties

#### 1. Type of Violations as a Factor

In proposing civil penalties for violations, a distinction is made between serious violations and all other violations. There is no requirement that a penalty be proposed when the violation is not a serious one; but a penalty must be proposed when the violation is serious in nature. In either case, the maximum penalty that may be proposed for a nonserious or serious violation is \$7,000. In the case of willful or repeated violation, a civil penalty of up to \$70,000 may be proposed. But the penalty may not be less than \$5,000 for a willful violation. For other specific violations of the law, civil penalties of up to \$7,000 may be proposed. The following paragraphs describe the procedures to be followed in determining a proposed penalty.

#### 2. De Minimis Violation

No penalty shall be proposed for a de minimis violation.

#### 3. Serious and Nonserious Violations

##### a. Reference to the Act

##### (1) Serious Violations

[Section 41-15-320\(b\)](#) of the Code provides that any employer who has received a citation for a serious violation of an occupational safety or health rule or regulation promulgated pursuant to this Article may be assessed a civil penalty of up to \$7,000 for each such violation.

##### (2) Nonserious Violations

[Section 41-15-320\(c\)](#) of the Code provides that any employer who has received a citation for a violation of an occupational safety or health rule or regulation or order promulgated pursuant to this article, and such violation is specifically

determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each such violation.

(3) [Subarticle IV, Section 71-402B](#), provides that in determining the amount of any proposed penalty, due consideration will be given to four factors:

- (i) the size of the business,
- (ii) the gravity of the violation
- (iii) the good faith of the employer, and
- (iv) the employer's history of previous violations

b. Gravity of Violation

The gravity of the violation is the primary factor in determining penalties. It shall be the basis for determining the basic penalty for serious and nonserious violations. The size of the business, the good faith of the employer and the history of previous violations shall be considered in determining whether the gravity-based penalty shall be reduced.

(1) The following two factors shall be considered in determining the gravity of a violation.

- (a) The **severity** of the injury or illness which could result from the alleged violation;
- (b) The degree of **probability** that an injury or illness could occur as a result of the alleged violation.

4. **Severity Assessment**

The classification of the alleged violations as serious or other-than-serious is based on the severity of the injury or illness that could result from the violation. This classification constitutes the first step in determining the gravity of the violation. The most serious injury or illness which is reasonably predictable as a result of an employee's exposure to the safety or health hazard cited shall be assigned a severity assessment in accordance with the following factors:

- a. **High Severity:** Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
- b. **Medium Severity:** Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.

- c. **Low Severity:** Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.
- d. **Minimal Severity:** Other-than-serious violations. Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness most likely to result would probably not cause death or serious physical harm.

## 5. Probability Assessment

The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation but does not affect the amount of the penalty to be proposed.

- a. **Categorization.** Probability shall be categorized either as a greater or as lesser probability.
  - (1) High probability results when the likelihood that an injury or illness will occur is judged to be relatively high.
  - (2) Low probability results when the likelihood that an injury or illness will occur is judged to be relatively low.
- b. **Determination.** The CO/IH, using professional judgment, shall identify and evaluate as far as possible all of the factors influencing the likelihood of the occurrence of an injury or illness and shall assign them a weight in accordance with the relative contribution of each.
- c. **Safety Violations.** The following circumstances shall normally be considered (and documented in the case file) when violations likely to result in injury are involved:
  - (1) Number of workers exposed to the hazardous conditions, both at the same time and sequentially.
  - (2) Frequency of exposure, including one-time, short exposures through more frequent exposures from once a week up to exposures of more than once a week up to continuous daily exposure.
  - (3) Employee proximity to the hazardous conditions likely to lead to an accident, anywhere from the fringe of danger zone up to the point of danger.
  - (4) Working conditions including environmental and other factors (e.g., speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.) which may cause employee stress and thereby increase the likelihood of an accident.

- d. **Health Violations.** The following circumstances shall normally be considered (and documented in the case file) when violations likely to result in illness are involved.
- (1) Number of workers exposed to the hazardous conditions, both at the same time and sequentially.
  - (2) Duration of employee overexposures to hazardous levels of contaminants or other illness-producing conditions, ranging from relatively short exposures of less than one hour to continuous daily exposures.
  - (3) Use of appropriate personal protective equipment; whether, for example, such equipment is utilized by all exposed employees and the employer has an effective PPE program in effect down to whether it is not utilized by any of the exposed employees and the employer has no program.
  - (4) Medical surveillance program is in place as appropriate and effectively protects the employees, a defective program which only partially and inadequately protects them, or no medical surveillance program is in effect.
- e. **Other factors.** There are other factors which may affect significantly the probability that the hazard will produce an injury or illness and they shall also be considered (and documented):
- (1) Mitigating circumstances, such as specific safety or health instructions, effective training programs, a comprehensive safety and health program, evidence of correction underway, warning signs and labels or special procedures, or mandatory administrative controls providing some, though not complete, protection shall be documented and considered in the final evaluation of probability.
  - (2) Similarly, contributing circumstances, such as inappropriate or inadequate safety or health instructions, inadequate or no training, a poor or nonexistent safety and health program, or widespread hazardous conditions or faulty equipment, with little or no attempt to control them, shall be documented and considered in the final evaluation of probability.
- f. **Final Probability Assessment.** All of the factors outlined above shall be considered together in arriving at a final probability assessment.
- (1) A factor shall not materially affect the final probability assessment if, based on the professional judgment of the CO/IH as documented in the case file, it:
    - (a) Does not significantly influence the probability of an injury- or illness-causing condition; or
    - (b) Would tend to dilute the penalty excessively.

**Example:** In a particularly dangerous trenching situation or in a confined space where there is insufficient oxygen to support life, even when only one or two employees are exposed, it may be appropriate to reduce the weight that might otherwise be given to the number of employees exposed.

(2) When strict adherence to the probability assessment procedures would result in an unreasonably high or low gravity, the CO/IH shall use professional judgment to adjust the probability appropriately. Such decisions shall be adequately documented in the case file.

6. **Gravity-based Penalty.** The gravity-based penalty (GBP) is an unadjusted penalty and is calculated in accordance with the following procedures:

- a. The GBP for each violation shall be determined based on an appropriate and balanced professional judgment combining the severity assessment and the final probability assessment.
- b. For serious violations, the GBP shall be assigned on the basis of the following scale:

<b>Severity</b>	<b>Probability</b>	<b>GBP</b>
High	Greater	\$5,000
Medium	Greater	\$3,500
Low	Greater	\$2,500
High	Lesser	\$2,500
Medium	Lesser	\$2,000
Low	Lesser	\$1,500

- c. The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury. If the Administrator determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed. The reasons for this determination shall be documented in the case file.
- d. The gravity of a violation is defined by the GBP.
  - (1) A high gravity violation is one with a GBP of \$5,000 or greater.
  - (2) A moderate gravity violation is one with a GBP \$2,000 to \$3,500.
  - (3) A low gravity violation is one with a GBP of \$1,500.
- e. For other-than-serious safety and health violations, there is no severity assessment.

- (1) Other-than-serious safety and health violations judged to be of greater probability shall be assigned a GBP of \$1,000 to which appropriate adjustment factors shall be applied.
- (2) Other-than serious safety and health violations judged to be of lesser probability shall be cited with no penalty.
- (3) The OSH Administrator may authorize a penalty up to \$7,000 for an other-than-serious violation when it is determined to be appropriate to achieve the necessary deterrent effect.

The reasons for such a determination shall be documented in the case file.

- f. Penalties to be proposed for other-than-serious regulatory violations are discussed at B.14.
- g. A GBP may be assigned in some cases without using the severity and the probability assessment procedures outlined in B.7. When these procedures cannot appropriately be used. For an example, shipped containers under the Hazard Communication Standard.
- h. The Penalty Table shall be used for determining appropriate adjusted penalties for serious and other-than-serious violations.

7. **Gravity Calculations for Combined or Grouped Violations.** The following procedures apply to the calculation of penalties for combined and grouped violations:

- a. The severity and the probability assessments for combined violations shall be based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or sub item of a combined or grouped violation if it is clear which instance will have the highest gravity.
- b. For grouped violations, the following special guidelines shall be adhered to:
  - (1) **Severity Assessment.** There are two considerations to be kept in mind in calculating the severity of grouped violations:
    - (a) The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item.
    - (b) If a more serious injury or illness is reasonably predictable from the grouped items than from any single violation item, the more serious injury or illness shall serve as the basis from the calculation of the severity factor of the grouped violation.

- (2) **Probability Assessment.** There are three considerations to be kept in mind in calculating the probability of grouped violations:
- (a) The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness.
  - (b) If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment of grouped violation.
  - (c) Some individual probability factors may be increased by grouping and others may not. The increased values shall be used in the probability calculation if, in the professional judgment of CO/IH, a more appropriate probability assessment will result. For example, the number of employees exposed may be increased while the proximity factor may not.
- (3) **Gravity-based Penalty.** A single severity assessment and a single probability assessment for the combined or grouped violation will result from the foregoing considerations. That result shall be the basis for determining an appropriate GBP for the violation item according to the guidelines in B.6.
- c. Combined and grouped violations shall normally be considered as one violation for penalty purposes, and in such cases the guidelines for calculating penalties given in B.6 through B.8 shall apply.
  - d. The flagrant cases; i.e., willful, repeated and high gravity serious citations and failures to abate, and additional factor of up to the number of violation instances (number of days since the abatement date for failure to abate) may be applied to the gravity-based penalty calculated in accordance with B.6 or the regulatory penalty assigned in accordance with B.16 and adjusted in accordance with B.8, as described in each of the subsections. Penalties calculated with this additional factor shall not be proposed without the concurrence of the Administrator.
8. **Penalty Adjustment Factors.** The GBP may be reduced by as much as 95% depending upon the employer's "good faith", "size of business", and "history of previous violations". Up to 60% reduction is permitted for size; up to 25% reduction for good faith, and 10% for history.
- a. Since these rates are based on the general character of a business and its safety and health performance, the rates shall generally be calculated only once for each employer – after the classification and probability ratings have been determined for each violation and the general character of the employer's performance is apparent.
  - b. Penalties assessed for violations that are classified as high severity and greater probability shall be adjusted only for size and history, if applicable.

- c. Penalties assessed for violations that are classified as repeated shall be adjusted only for size.
- d. Penalties assessed for violations classified as willful shall have been adjusted only for size.
- e. The rate of penalty reduction for size of business, employer's good faith and employer's history of previous violations shall be calculated on the basis of the criteria described in the following paragraphs:

(1) **Size.** A maximum penalty reduction of 60% is permitted for small businesses. "Size of business" shall be measured on the basis of the maximum number of employees for an employer at all workplaces at any one time during the previous 12 months. Information on the total number of an employer's employees can generally be obtained at the inspection worksite. However, on occasion it may be necessary to obtain or confirm the information from the employer's headquarters.

(a) The rates of reduction to be applied are as follows:

<b>Employees</b>	<b>Percent Reduction</b>
1-25	60
26-100	40
101-250	20
251 or more	None

- (b) An employer's ability to pay a penalty shall not normally be investigated or considered in determining the penalty reduction for size of business.
  - (c) However, if an employer presents convincing evidence of inability to pay a penalty because of financial difficulties at an informal conference, the Supervisor may offer an EPO and penalty payment plan.
  - (d) When a small business has one or more serious violations of high gravity or a number of serious violations of moderate gravity, indicating a lack of concern for employee safety and health, the Compliance Manager may determine that only a partial reduction in penalty shall be permitted for size of business.
- (2) **Good Faith.** A penalty reduction of up to 25% is permitted in recognition of an employer's "good faith".
- (a) A reduction of 25% shall normally be given if the employer has a written safety and health program (as documented during the inspection) that has been effectively implemented in the workplace and that:



- (i) Provides for appropriate management commitment and employee involvement; worksite analysis for the purpose of hazard identification; hazard prevention and control measures; and safety and health training.

*Note:* One example of a framework for such a program is given in OSHA’s voluntary “Safety and Health Program Management Guidelines” (*Federal Register*, Vol. 54, No. 16, January 26, 1989, pp. 3904-3916, or later revisions as published).

**Table A: Penalty Table**

Percent Reduction	Penalty in Dollars							
	\$1,000	\$1,500	\$2,000	\$2,500	\$3,000	\$3,500	\$5,000	\$7,000
0	\$1,000	\$1,500	\$2,000	\$2,500	\$3,000	\$3,500	\$5,000	\$7,000
10	\$900	\$1,350	\$1,800	\$2,250	\$2,700	\$3,150	\$4,500	\$6,300
15	\$850	\$1,275	\$1,700	\$2,125	\$2,550	\$2,975	\$4,250*	\$5,950*
20	\$800	\$1,200	\$1,600	\$2,000	\$2,400	\$2,800	\$4,000	\$5,600
25	\$750	\$1,125	\$1,500	\$1,875	\$2,250	\$2,625	\$3,750*	\$5,250*
30	\$700	\$1,050	\$1,400	\$1,750	\$2,100	\$2,450	\$3,500	\$4,900
35	\$650	\$975	\$1,300	\$1,625	\$1,950	\$2,275	\$3,250*	\$4,550*
40	\$600	\$900	\$1,200	\$1,500	\$1,800	\$2,100	\$3,000	\$4,200
45	\$550	\$825	\$1,100	\$1,375	\$1,650	\$1,925	\$2,750*	\$3,850*
50	\$500	\$750	\$1,000	\$1,250	\$1,500	\$1,750	\$2,500	\$3,500
55	\$450	\$675	\$900	\$1,125	\$1,350	\$1,575	\$2,250*	\$3,150*
60	\$400	\$600	\$800	\$1,000	\$1,200	\$1,400	\$2,000	\$2,800
65	\$350	\$525	\$700	\$875	\$1,050	\$1,225	\$1,750*	\$2,450*
70	\$300	\$450	\$600	\$750	\$900	\$1,050	\$1,500	\$2,100
75	\$250	\$375	\$500	\$625	\$750	\$875	\$1,250*	\$1,750*
85	\$150	\$225	\$300	\$375	\$450	\$525	\$750*	\$1,050*
95	\$100**	\$100**	\$100	\$125	\$150	\$175	\$250*	\$350*


\* Starred figures represent penalty amounts that would not normally be proposed for high gravity serious violations because no reduction for good faith is made in such cases. They may occasionally be applicable for other-than-serious violations where the Director has determined a high unreduced penalty amount to be warranted.

\*\* Serious penalty will not be less than \$100

**Table B - Regulatory Penalties**

<b>Violation</b>	<b>Type Violation</b>	<b>Unadjusted Penalty</b>
OSHA Poster	Other	\$1,000
Post Annual Summary (300A)	Other	1,000
Post Citation	Other	3,000
Maintain OSHA 300	Other	1,000
Maintain OSHA 301	Other	1,000
Reporting Fatality	Other	5,000
Fail to Provide Records	Other	1,000
Failure to Provided Records - 1910.1020	Other	1,000

### Penalty Table - Public Sector

	95%	90	85	80	75	70	65	60	55	50	45	40	35	30	25	20	15
																	
*7000																	
*5000	250	500	750	1,000	1,250	1,500	1,750	2,000	2,250	2,500	2,750	3,000	3,250	3,500	3,750	4,000	4,250
<b>HG</b>	1,000	100	150	200	250	300	350	400	450	500	550	600	650	700	750	800	850
<b>MG</b>	900		135	180	225	270	315	360	405	450	495	540	585	630	675	720	765
<b>LG</b>	800		120	160	200	240	280	320	360	400	440	480	520	560	600	640	680
<b>HL</b>	700		105	140	175	210	245	280	315	350	385	420	455	490	525	560	595
<b>ML</b>	600			120	150	180	210	240	270	300	330	360	390	420	450	480	510
<b>LL</b>	500			100	125	150	175	200	225	250	275	300	325	350	375	400	425

\* To be used only with approval of Director.

(ii) Includes all programs required under OSHA standards applicable to the workplace (e.g., hazard communication, lockout-tagout, hazardous materials and emergency response, safety and health programs for construction [1926.20] respiratory protection and chemical hygiene plan).

(iii) Has deficiencies that are only incidentals.

(b) A reduction of 15% shall normally be given if the employer has a documented safety and health program, but with more than only incidental deficiencies.

(c) No reduction shall be given to an employer who has no safety and health program.

(3) **History.** A reduction of 10% shall be given to employers who have not been cited by OSHA in the past three years.

(4) **Total.** The total reduction will normally be the sum of the reductions for each adjustment factors.

9. **Imminent Danger Situations.** Detailed instructions and procedures for handling allegations of imminent danger situations are contained in Chapter IV. Penalties shall be assessed in accordance with the following:

a. **Classification.** An imminent danger situation normally will involve a serious, willful or repeated violation.

b. **Proposed Penalties.** Penalties shall be proposed in cases where citations are issued in imminent danger situations even though, after being informed by the CO/IH, the employer immediately eliminates the imminence of the danger and initiates steps to abate the hazard. The procedures given in this chapter for calculating and assessing proposed penalties shall be applied in the case of imminent danger situations, as appropriate.

10. **Effect on Penalties if Employer Immediately Corrects or Initiates Corrective Action.**

Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of such alleged violation by the CO/IH, the employer immediately corrects or initiates steps to correct the hazard.

11. **Failure to Abate.** A Notification of Failure to Abate an alleged violation may be issued in cases where violations have not been corrected as required.

a. **Failure to Abate.** Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation which had become a Final Order of the Director.

- b. **Employer Contest.** If an employer contest one or more of the alleged violations, the period for abatement does not begin to run, as to those items contested, until the day following the entry of the Final Order by the Administrative Law Court (ALC) affirming the citation.
- (1) If the employer contests only the amount of the proposed penalty, the employer must correct the alleged violation within the prescribed abatement period.
  - (2) If an employer contests an abatement date in good faith, a Failure to Abate notice shall not be issued for the item contested until a Final Order affirming a date is entered, the new abatement period, if any, has been completed, and the employer has still failed to abate.
- c. **Calculation of Additional Penalties.** A GBP for unabated violations is to be calculated for failure to abate a serious or other than serious violation on the basis of the facts noted upon reinspection. This recalculated GBP, however, shall not be less than that proposed for the item when originally cited, except as provided in B.11.e.
- (1) In those instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the supervisor. In no case shall the penalty be less than \$1,000.
  - (2) Only the adjustment factor for size, based upon the circumstances noted during the reinspection, shall then be applied to arrive at the daily proposed penalty.
  - (3) The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated.
    - (a) The number of days unabated shall be counted from the day following the abatement date specified in the citation or the Final Order. It will include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
    - (b) Normally the maximum total proposed penalty for failure to abate a particular violation shall not exceed 30 times the amount of the daily proposed penalty.
    - (c) At the discretion of the Compliance Manager, fewer than the maximum of 30 days may be used in this calculation. If fewer than the maximum days are used, the reason will be documented in the case file.
    - (d) If a penalty beyond the maximum amount is deemed appropriate by the Administrator, the case shall be treated under the violation-by-violation penalty procedures.

- (4) In unusual circumstances, such as where the gravity of the violation is at the highest level (high severity and greater probability) or the employer has willfully failed to abate the violation or has failed to abate a second time, higher penalties or a willful citation shall be proposed. In such situations the proposed penalty shall be approved by the OSH Administrator.
- d. **Partial Abatement.** When the citation has been partially abated, the Administrator may authorize a reduction of 25% to 75% to the amount of the proposed penalty calculated as outlined in B.11.c. The reasons for this action shall be documented in the case file.
- (1) When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent that the violation has been abated.
- Example:* Where 3 out of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in B.11.c without regard to any partial abatement) may be reduced by 60%.
- (2) In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements shall generally incur a full failure to abate penalty.
- (3) On rare occasions, when the Compliance Manager decides to issue a Failure to Abate Notice for failure to comply with procedural requirements, the calculation of the daily proposed penalty shall consider the extent to which a violation has been substantially abated, with the daily proposed penalty (calculated as outlined in B.11.c without regard to any partial abatement) reduced accordingly.
- e. **Good Faith Effort to Abate.** When the CO/IH believes and so documents in the case file that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated, the Compliance Manager may reduce or eliminate the daily proposed penalty that would otherwise be justified.
12. **Repeated Violations.** Section 41-15-320 of the 1976 Code, as amended, provides that an employer who repeatedly violates the Act may be assessed a civil penalty of not more than \$70,000 for each violation.
- a. **Gravity-Based Penalty Factors.** Each violation shall be classified as serious or other-than-serious. A GAP shall then be calculated for repeated violations based on facts noted during the current inspection. Only the adjustment factor for size, appropriate to the facts at the time of the reinspection, shall be applied.
- b. **Penalty Increase Factors.** The amount of the increased penalty to be assessed for a repeated violation shall be determined by the size of the employer.

- (1) **Smaller Employers.** For employers with 250 or fewer employees, the GAP shall be doubled for the first repeated violation and quintupled (x5) if the violation has been cited twice before. If the Administrator determines that it is appropriate to achieve the necessary deterrent effect, the GAP may be multiplied by 10.
    - (2) **Larger employers.** For employers with more than 250 employees, the GAP shall be multiplied by 5 for the first repeated violation and multiplied by 10 if the violation has been cited twice before.
  - c. **Other-than-serious, No Initial Penalty.** For repeated other-than-serious violation that otherwise would have no initial penalty, a penalty of \$200 shall be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repetition.
  - d. **Regulatory Violations.** For repeated violations of regulatory violations (see B.14), the initial penalty shall be doubled for the first repeated violation and quintupled (x5) if the violation has been cited twice before. If the Administrator determines that it is appropriate to achieve the necessary deterrent effect, the initial penalty may be multiplied by 10.
13. **Willful Violations.** [Section 41-15-320](#) of the 1976 Code, as amended, provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than \$70,000.
- a. **Gravity and Penalty Factors.** Each violation shall, be classified as serious or other-than-serious. After determining the gravity of the violation, a GAP shall be determined based on the facts noted during the inspection. The adjustment factor for size shall be applied.
    - (1) **Serious Violations.** For willful serious violations, the adjusted GAP shall be multiplied by seven.
      - (a) In no case shall the proposed penalty be less than \$5,000.
      - (b) The Administrator may assess a higher penalty (up to the statutory maximum of \$70,000) or a lower penalty than that calculated in accordance with B.13.a.(1), upon consideration of such factors as the degree of willfulness involved in the violation and the achievement of an appropriate deterrent effect. The reasons for such action shall be documented in the case file.
    - (2) **Other-than-serious Violations.** For willful other-than-serious violations, the minimum willful penalty of \$5,000 shall be assessed.
    - (3) **Regulatory Violations.** In the case of regulatory violations (see B.14) that are determined to be willful, the unadjusted initial penalty shall be multiplied by seven. In no event shall the penalty, after adjustment for size be less than \$5,000.

**(4) Instance-by-instance Penalties; Flagrant Violations:**

- (a) When the traditional willful policy and penalties do not provide employers with an incentive toward correcting violations voluntarily, a stricter policy will be applied.

A stricter policy is appropriate in situations where violations constitute flagrant disregard of OSH standards, regulations or General Duty Clause.

Such flagrancy is constituted when the employer, having actual knowledge through previous citations history, accident experience or evidence of specific recognized and serious jobsite hazards, continues to demonstrate glaringly bad or notorious disregard for the safety and health of employees and/or the laws intended to protect employees.

- b. **Procedures.** The procedure for flagrant violations shall be considered under the following conditions:

- (1) The company has been previously cited for a willful violation or;
- (2) Where such violations reflect company/corporate policy which deliberately misleads the Agency, the public or its own employees with regard to existing or potential hazards or conditions related to safety or health in the workplace.

- c. **Classification.** When violations are considered to be flagrant, a willful citation will be issued.

- d. **Penalty Calculation.**

- (1) Each instance will be counted as a separate violation with a penalty assessed for each instance.

***For example:***

1910.217(c)(1)(i) – requires a point of operation guard. Each mechanical power press without a guard would be a separate violation.

1910.1025(e)(1)(i) – requires engineering work practice controls to reduce exposed to lead. Each identifiable source of contamination would be a separate violation.

When considering OSHA 300 recordkeeping violations under this policy consideration must be given to the following:

Were unrecorded injuries/illnesses serious?



Were the cases investigated by the company or subject of Worker's Compensation claims?

What is the number of recorded versus unrecorded cases?

Does the number of unrecorded cases substantially affect the LWDI rate?

- (2) A gravity-based penalty (probability and severity) will be proposed for each instance.

**e. Adjustment Factors.**

The adjustment factor for size shall be applied. Factors for good faith and history will normally not be applied.

**f. Citations.**

- (1) Each instance of the violated standard must have a separate alleged violation description (AVD).
- (2) Each instance of the violated standard must have a separate "as follows" and abatement date.

**g. Public Sector.**

The flagrant violation (instance-by-instance penalties) procedures are not applicable in the public sector.

**h. Approval.**

All violations and penalties to be proposed under this policy must have prior approval of the OSH Administrator. The approval process will include:

- (1) A review of all evidence such as: three year citation history, photographs, company documents, accident and fatality experience, witness statements, etc.
- (2) Legal opinion for General Counsel.

**14. Violation of Regulatory Requirements Contained in State Law and Rules and Regulations.**

**a. General Application.**

- (1) The following procedures shall be used in determining proposed penalties for violations of the regulatory requirements only when the employer has received the OSH poster and "recordkeeping requirements" or he had knowledge of the

requirements. If the employer has not received the poster or recordkeeping requirements or did not have knowledge, citations without proposed penalties will be issued.

- (2) All unadjusted penalties for regulatory violations shall have the adjustment factors applied in determining the proposed adjusted penalty.

**b. Posting Requirements.**

Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, stipulates that any employer who violates posting requirements may be assessed a civil penalty of up to \$7,000 for each violation.

- (1) OSH poster.

Subarticle V, 71-502A, states that each employer shall post and keep posted a notice or notices, to be furnished by the South Carolina Department of Labor, Licensing and Regulation. If the informational notice is not displayed as prescribed by this section, this alleged violation shall be included on an OSHA-2 Form. A proposed unadjusted penalty of \$1,000 may be assessed when warranted.

- (2) Posting Citation.

Subarticle IV, Section 71-403, states that upon receipt of any citation, the employer shall immediately post such citation or a copy thereof, at or near each place an alleged violation referred to in the citation occurred or as excepted by the reference. If a citation, which has been received by an employer is not posted as prescribed in Subarticle IV, Section 71-403, this alleged violation shall be included on the DOSH-C-2 Form. A proposed unadjusted penalty of \$3,000 may be assessed for failure to post citation.

- (3) Subarticle III, Section 71-305, requires that an employer shall post a copy of the OSHA 300 Form, "Log and Summary of Occupational Injuries and Illnesses", in a conspicuous place and maintained where notices to its employees are customarily posted. If the OSHA 300 Form is not posted as prescribed in this Section, this alleged violation shall not be proposed unless a copy of the "Recordkeeping Requirements" pamphlet has been furnished to the employer or the employer had knowledge of the OSHA 300 Form and its posting requirement. A proposed unadjusted penalty of \$1,000 may be assessed when warranted.

- (4) Reporting Requirements.

Subarticle III, Section 71-308, requires the employer report to the Director of Labor, orally or in writing, any occurrence of employment accident which is fatal to one or more employees or which results in hospitalization of three or more

employees, within eight hours or each occurrence. For violation of this regulation, an unadjusted penalty of \$5,000 shall be assessed when warranted.

**c. Recordkeeping Requirements.**

Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, stipulates that any employer who violates any standard, rule or order prescribed pursuant to the Act such as recordkeeping requirements may be assessed a civil penalty of up to \$1,000 for each violation.

(1) OSHA 300 and 301 Forms.

Subarticle III, Section 71-302 and Subarticle III, Section 71-304 requires an employer to maintain an OSHA 300 Form, “Log and Summary of Occupational Injuries and Illnesses”; and OSHA 301 Form, “Supplementary Record of Occupational Injuries and Illnesses”; or when the above forms are not available the data shall be recorded in a manner which is consistent with the specimen of OSHA 300 and 301 Forms. If these records are not maintained as prescribed, they shall be included as alleged violations of an OSHA-2 Form. A proposed penalty of \$1,000 may be assessed for each form not maintained.

(2) Annual Summary.

Subarticle III, Section 71-305 requires an employer to compile a “Log and Summary of Occupational Injuries and Illnesses”, an OSHA 300 Form. If the OSHA 300 Form is not maintained as prescribed, this alleged violation shall be included on the OSHA-2 Form. No penalty shall be proposed unless a copy of the “Recordkeeping Requirements” pamphlet has been furnished to employer or the employer has knowledge of such a requirement. A proposed penalty of \$1,000 may be assessed when warranted.

**d. Access to Records.**

If an employer fails upon request to provide records required in 71-302, Log & Summary; 71-304, Supplementary Record; or 71-305, Annual Summary; for inspection and copying by any designated representative of the Director of Labor, Licensing, and Regulation or by any employee, former employee, or authorized representative of employees, a citation for violations of 71-307 may be issued. The unadjusted penalty shall be \$1,000 for each form not made available. For example, if the OSHA 300 for the three preceding years is not made available, the unadjusted penalty would be \$3,000. If the employer is to be cited for failure to maintain these records, no citation of 71-307 will be issued.

**e. Notification Requirement.**

Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, stipulates that any employer who violates any standards, rule or order prescribed pursuant to the Act, such as the requirement to promptly notify the authorized representative of employees of an inspection if advance notice is given and if the identify of such representative is known to the employer, may be assessed a civil penalty of up to \$2,000 for each violation.

### **C. Criminal Penalties.**

#### **1. Willful Violations Causing Death**

Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, provides that any employer convicted of a willful violation of any standard, rule, order or regulation causing the death of any employee shall be punished by a fine of not more than \$10,000 or by imprisonment or both. For a second conviction under this section, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

#### **2. Giving Unauthorized Advance Notice of Inspection.**

Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, provides that any person who gives advance notice of any inspection to be conducted under the Act shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both. It should be noted that the giving of advance notice of inspections is not banned where it is authorized. In such circumstances, the sanctions for giving advance notice would not apply.

#### **3. Giving False Information**

Section 41-15-320, Code of Laws, State of South Carolina, 1976, as amended, provides that, whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

#### **4. Procedures to be Followed When Criminal Penalties are Involved.**

Criminal penalties are imposed by the courts after trials and not by the Director of Labor, Licensing and Regulation. Therefore, no criminal penalties shall be proposed by the Office of Occupational Safety and Health. When the Compliance Officer/Industrial Hygienist believes a violation may involve a crime, he shall consult with the Compliance Manager. After such consultation, the Compliance Manager shall refer the matter to his Administrator who will in turn, refer the matter to the Director of Labor, Licensing and Regulation and/or the attorney for further action.

**15. Penalties in Public Sector.**

- a. In the public sector no penalties are assessed for nonserious violations. Penalties may be assessed for Serious violations, Failure to Abate, Repeated and Willful violations.