

**North Carolina Department of Labor
Occupational Safety and Health Division**

Administrative Information System

Administrative Procedure Notice 16K

Subject: OSH Director's Office Citation and Settlement Authorization

- A. **Purpose.** This Administrative Procedure Notice (APN) describes the citation and settlement authorization review process at the Occupational Safety and Health (OSH) Director's Office level of review. The purpose of these reviews, and authorizations by the Director's Office, are to ensure that the Compliance Bureaus have properly documented high profile inspection files and that the inspection findings will be legally defensible in the event that a notice of contest is received. The review process also serves as a factual update and briefing for senior management, the Communications Division, and other interested parties. Often this includes specific questions received from the media and the public relating to high profile cases.
- B. **Intent.** The case file review (CFR) process is meant to be a multidisciplinary collaborative effort combining the years of experience and knowledge within the OSH Division and the Attorney General's (AG) Office to ensure that inspections, which may have a significant impact for the workers of North Carolina and their families, are documented in a manner that will help provide for a safe and healthy workplace for employees, are legally defensible, and that reflect highly on the ability and competency of the OSH Division.
- C. **Background.** The need for a management review process is typified by an OSH Division inspection that ultimately resulted in no citations being issued in a case in which an employee was killed. Initially, the wrong employer was cited, and the citations for the correct employer were not sustainable. The situation was brought to the attention of the Commissioner of Labor by the next of kin who was understandably not satisfied with the investigation results. In response to this situation, and to prevent similar cases in the future, the Commissioner of Labor instituted an OSH Director's Office high profile citation review process.
- D. **Cases Requiring Citation Review.** The types of inspections that require OSH Director's Office review and citation/settlement authorization, whether or not citations are being recommended, are;
- All work-related fatalities within OSH jurisdiction
 - Two (2) or more hospitalized following the same incident
 - All loss of eye injuries
 - Amputation of multiple digits (toe, finger)
 - Amputation of a limb (foot, hand, leg, arm)
 - Hospitalization or single digit amputation to a worker younger than 18 years old
 - Inspections with failure to abate or willful citations
 - Hospitalizations or single digit amputations that result in repeat citations as the proximate cause
 - Inspections with media involvement
 - Inspection with private sector penalties >\$50,000
 - Inspection with public sector penalties >\$10,000
 - Inspections where a 1910 standard is cited in construction, and not previously identified as applicable
 - Inspections involving poultry
 - Director "Need to Know"/Inspections initiated by the Director's Office

- Corporate-wide/State-wide settlements

Note: For items on the above list not found on the citation/settlement authorization form in OSHA Express (OE), check the box labelled "Other" and specify in the space provided the type of CFR case.

1. A closing conference will not be scheduled for these cases until the citation review process has been completed.
2. A settlement authorization is also required for all informal and formal settlement agreements that meet any applicable item listed above.
3. If an inspection file does not complete the case file review process due to the six-month statute of limitations, any subsequent settlement agreement is required to go through the authorization review process.
4. If an inspection file requiring authorization is submitted near the end of the six-month statute of limitation cycle and there is insufficient time for AG's Office or Director's Office review, it may be required to be issued under the authorization of the supervisor. If this occurs, the supervisor and Compliance Safety and Health Officer (CSHO) will be held responsible for any resulting issues.

E. Actions required prior to an OSH Director's Office Inspection Review.

1. Cases requiring case file review must be approved by the supervisor, assigned attorney, and bureau chief respectively prior to being submitted to the Director's Office.
2. After review by the AG's Office, if an agreement cannot be reached by all parties (CSHO, supervisor, bureau chief) regarding the appropriateness or adequacy of citations, a formal citation review committee meeting should be scheduled (see section H).
3. For extraordinary or complicated cases, the AG's Office should be contacted early in the inspection/investigation process. The CSHO should work with the assigned attorney to develop an effective investigation strategy, including proper documentation. Effective and ongoing communication between the CSHO, supervisor and the AG's Office attorney is critical toward ensuring that a defensible case file is developed.
4. For cases requiring case file review that appear on the 60-day lapse time report, a weekly meeting shall be held between the CSHO and supervisor to determine progress of the case.

For cases with a lapse time of 90 days or greater, a weekly email shall be sent to the bureau chief and the Assistant Director's Office by the CSHO and supervisor explaining delays in completion of the case file. A meeting may be scheduled between the CSHO, supervisor, bureau chief, and an Assistant Director's Office representative to discuss case progression.

5. A formal meeting between the CSHO, district supervisor, bureau chief, and a Director's Office representative is required for all cases involving the death of an employee. The district supervisor must schedule the meeting with applicable parties no later than 45 days from the opening date of the inspection.

Meetings can be scheduled at any time if the CSHO and district supervisor are in agreement regarding the facts of the case and proposed citations. Meetings will be held via video conference/in person (preferred) or by phone. Prior to the scheduled meeting date, the CSHO will provide attendees with a presentation containing information such as, but not limited to, timeline of events, photographs, and results of the inspection including recommended citations, if any. The presentation will be made available to the AG's Office upon their review.

F. Preparing the Case File for OSH Director's Office Review.

1. Cases are ready for review by the OSH Director's Office when they have been reviewed and approved by the district supervisor, bureau chief and assigned attorney. The supervisor, bureau chief and assigned attorney are expected to document their inspection file comments and approval in the "Notes" section of OE.

Note: The AG's Office review is not intended to be comprehensive, rather it is to ensure that citations are documented in a manner that will be legally defensible should a case go to contestment.

2. The complete case file material submitted to the Director's Office must be accurate, correct and consistent with instructions documented in the Technical Writing Course and NC Field Operations Manual (FOM). If it is apparent that a case file is not in final draft form, it will be returned to the CSHO for correction and resubmittal.
3. Inspection files shall not be submitted for review until the narrative, violation form (OSHA-1B), failure to abate (FTA) form (OSHA 2B), and any other pertinent information has been shared with the assigned attorney and all agreed revisions have been made. For follow-up inspections where FTAs are recommended, this pertinent information must include copies of the OSHA 1Bs from the original case file.

The assigned attorney should enter a note and a date stamp under the "OSHA File", "Notes" tab, indicating they have reviewed the file and are okay for Director's Office review. The attorney can also enter notes if they are not in agreement and are requesting a meeting. Likewise, if the bureau chief does not agree with the recommendations of the AG's Office, it should be documented under the "Notes" tab and they can request a review meeting.

4. The citation authorization form, located under the OSHA-167I tab of the OE inspection form, must be accurately completed including the "must issue date". An inaccurate "must issue date" could affect the completion of the citation review process within the required six-month issuance deadline.
5. In addition to the completed case file, the following materials must be included in OE at the time a file is submitted for Director's Office review:
 - a. Citation authorization form with all items completed correctly including required approval signatures;
 - b. Any documents referenced in the narrative and citations including relevant photos (if needed for clarification), witness statements, and any hand drawn diagrams/sketches;
 - c. Any other documents that the CSHO will reference during the citation review.

6. Once the complete inspection has been received in the Assistant Director's Office workflow queue, it will be determined as to whether the AG's Office agrees with the inspection documentation and findings. If neither the AG's Office nor the Compliance Bureau have outstanding issues with the inspection file, it will be reviewed by a Director's Office representative.

If there are issues discovered during the Director's Office review, a review committee meeting may be scheduled. A meeting notice and schedule will be sent to the review committee and each participant will have access to the file via OE. It is at the discretion of the meeting participants whether or not they want to print a hard copy of the file. Anytime an inspection file is routed in OE, it should be accompanied by an email to applicable parties to let them know the file is in their OE workflow queue.

G. Preparing an Informal/Formal Settlement Agreement

1. Prior to submitting an informal settlement agreement, the district supervisor should work towards a verbal agreement with the employer regarding the disposition of citations and penalties as well as the addition of any stipulations. If an agreement cannot be reached, the bureau chief, Director's Office, and the AG's Office will be consulted until such time as an agreement is reached or it is decided that the case should go before the Safety and Health Review Commission.
2. Once a verbal agreement has been reached between the employer and the supervisor, the supervisor will enter a draft informal settlement agreement and informal conference notes into the "Attachments" tab of OE and route the case to the bureau chief for approval.

Upon bureau chief approval, the file must be routed to the OSH review and program analyst in the Assistant Director's Office using OE workflow queues. Additionally, an email stating that the file has been routed should be sent to the assistant director's administrative assistant, the OSH review and program analyst, and the assistant director to make sure the file is received.

Subsequent to initial settlement agreement approval by the Director's Office, any major changes to the agreement such as reclassification of citations, further penalty reduction, or deletion of stipulations must again be approved by the bureau chief and Director's Office. Minor changes such as the re-wording of stipulations or the inclusion of a non-admittance clause do not need approval.

3. For cases which have been contested, the procedures outlined in subsections 1 and 2 of this section should be followed with the additional inclusion of an attorney from the AG's Office. Once an agreement between the AG's Office, the district supervisor, and the employer has been reached, the AG's Office will draft a formal settlement agreement and provide it to the district supervisor. Bureau chief's will be consulted as necessary during this process.
4. The settlement authorization form, located under the OSHA-1671 tab of the OE inspection form, must be accurately completed including required approval signatures.

H. Citation Review Meeting Process.

1. The Citation Review Committee includes participation by the AG's Office, the Legal Affairs Division, the Communications Division and the director, assistant director,

bureau chiefs, district supervisors, and CSHOs. As the attorneys with the AG's Office and the Legal Affairs Division participate in these meetings, information discussed during these meetings will be considered attorney-client privileged. Bureau chiefs, CSHOs and supervisors should not discuss or reference the associated discussions and/or activities with employees, employers or employer representatives. If deemed necessary, bureau chiefs, supervisor and CSHOs can indicate to an employer or their representatives that they must consult with the Director's Office prior to citation issuance and/or settlement proposals involving inspections/investigations requiring authorization.

2. It is the responsibility of each participant in the citation review process to review the assigned case files prior to the meeting. The case files can be reviewed in OSHA Express.
3. The director, assistant director, or their designee will direct the review of case file scheduled for consideration. As necessary, the oldest cases on the committee schedule will be reviewed first.
4. Participation is expected by the affected bureau chief, district supervisor, and CSHO. Participation by the bureau chief and district supervisor is particularly important if changes have been made to the case file after completion by the CSHO.
5. The CSHO, supervisor, and/or bureau chief who have knowledge of the investigation will provide an overview of the case under review and will be prepared to respond to any questions from the committee participants. Particular attention will be given to any type of special situations or unique elements of the investigation that could be a point of contention at the appeals stage.
6. Most questions originating from the assigned attorneys will relate to questions of law such as employer knowledge, employer/employee and contractor/subcontractor relationships, and/or applicability of a particular standard. Consideration of these types of issues, prior to citation review, will expedite the process. The OSH Division Legal Aspects Training Manual and the FOM are helpful reference sources.
7. The CSHO and the assigned attorney will be the primary participants in the citation review process. Comments by others at the meeting will be limited to issues that may have been overlooked by the CSHO and the assigned attorney, or issues of clarification.
8. Any constructive criticism an inspection file receives from the Citation Review Committee members is designed to minimize this level of scrutiny at the appeal level. All parties involved are expected to be cordial, cooperative, and respectful toward one another.
9. Required changes, as a result of the citation review process, to any inspection file documents will only be communicated to the CSHO during the citation review process.
10. In the interest of time, committee participants will stick to the point. Discussion during the citation review process will be limited to inspection files that are scheduled for that day's review.
11. Information requested during the citation review process may require additional contact with the affected employers.


12. Sometimes there may be disagreement between the CSHO, district supervisor and the assigned attorney regarding issues that relate to an investigation and case file documentation. If this occurs, and the issue cannot be resolved through bureau chief intervention, the specific items can be scheduled for discussion at a citation review meeting through contact with the Assistant Director's Office. The case will be scheduled for discussion when all affected parties are available to attend.

I. **Post Citation Review Activity.**

1. A citation or settlement authorization form, signed by the Director's Office designee in OE, documents the authorization for either citation issuance or a settlement agreement. Additionally, an email will be sent to the supervisor notifying them the review has been completed and the results are in their OE workflow queue.
2. If any part of the case file is required to be changed as a result of the review process, the required file disposition will be documented on the citation or settlement authorization form and will be routed to the CSHO and supervisor via their workflow queue in OE.
3. District supervisors must track the progress being made by the CSHO to process the inspection file requiring changes or additional information as a result of the citation review. CSHO changes to the file will be verified by the supervisor and noted in the "Notes" section of the inspection file in OE.
4. If an inspection file must be resubmitted as a result of the case file review process, a complete case file must be prepared and resubmitted as described in section E.
5. The complete inspection file must be resubmitted to the assistant director's administrative assistant and the OSH review and program analyst, as soon as possible, in the interest of keeping citation lapse time to a minimum.
6. The goal of the OSH Division is to issue citations for inspections and investigations that go through the case file review process within 90 calendar days of the inspection/investigation opening date. Lapse time for cases going through case file review are tracked on a special report maintained in the Assistant Director's Office.

- J. **Referral of Recalcitrant Employers to OSHA.** The citation review process may identify certain employers "found to be recalcitrant or indifferent to its obligations under the OSH Act." The director will refer these employers with additional worksites outside the state to the federal OSHA regional administrator.

- K. **Expiration.** This APN is effective on the date of signature. It will remain in effect until revised or canceled by the director.



Scott Mabry
Assistant Director



Kevin Beauregard
Director

1/21/2022

Date of Signature