

# OSHNC UPDATE

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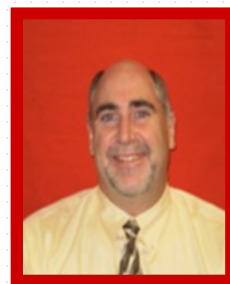


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## February 2022

**Ask The Director :** I have received many inquiries over the past several weeks from OSH Division staff regarding the status of OSHA's COVID-19 related Emergency Temporary Standard (aka ETS1) and OSHA's COVID-19 related Vaccine, Testing and Face Coverings Emergency Temporary Standard (aka ETS2), in NC. Questions that I received included: How does OSHA's withdrawal of their ETS1 effect OSH? Did NCDOL withdraw ETS1? What affect, if any, do the multiple lawsuits filed regarding ETS2 have in NC? What does the recent enforcement "stay" issued by the Supreme Court mean for NC? What happens now regarding ETS2? I will try to provide a summary of ETS1/ETS2 and their status in both federal and NCDOL jurisdictions.



**Answer:** There has been a lot of activity on these standards in recent weeks and it can be somewhat confusing. Last year OSHA issued an ETS1 pertaining to COVID-19 in the Healthcare Industry to help reduce exposures to the coronavirus that leads to COVID-19. ETS1 went into effect in federal jurisdictions on 6/21/21. Per [1953.5\(b\)\(1\)](#), State Plans are required to adopt OSHA emergency standards or standards that OSHA deems "at least as effective as" theirs within 30 days. OSHA made it clear to State Plans that "at least as effective as" meant adopting either identical or more restrictive standards. NC adopted OSHA's ETS1 verbatim and NC employers were required to comply with all requirements of ETS1, except for requirements in paragraphs (i), (k), and (n) by July 21, 2021. NC employers were required to comply with the requirements in paragraphs (i), (k), and (n) by August 5, 2021. OSHA can only issue an ETS in federal jurisdictions for 6 months. For an emergency standard to be in effect beyond 6 months in federal jurisdictions, OSHA must promulgate a permanent standard. OSHA did not enact a permanent standard by the end of 6 months, therefore on 12/21/21 [OSHA withdrew](#) most sections of their ETS1. OSHA retained ETS1 provisions for maintaining logs associated with employees that tested positive for COVID and reporting requirements. OSHA indicated that they could continue to require the logs and reporting under [Section 8](#) of the federal OSHA Act.

The standard known as ETS1 on the federal level is still in effect in NC, for several reasons. The rulemaking process is different in NC and does not match the federal rulemaking process for emergency temporary standards. NC Emergency rules can only be in place 60 days. NCDOL could not adopt OSHA's ETS1 as an emergency standard since we had to have standards that could potentially be in place for up to 6 months. There is a Temporary Rule process in NC, but if that process is used it is usually preceded with an NC emergency standard and then the temporary standard MUST be in place at least 9 months. Therefore, the process NCDOL used to adopt ETS1 verbatim was by way of adopting a **permanent** rule. Although many refer to the rule in NC as "ETS1", unlike the federal standard the NC standard is not an "emergency" standard it was enacted as a permanent standard that could later be withdrawn.

After the permanent healthcare standards have been in place in NC for 6 months, NCDOL can petition to withdraw the rules. However, unlike OSHA, NCDOL is not required to withdrawal the rule at the end of 6 months since it was adopted as a permanent rule, unless we

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believe it is appropriate to do so. The standard known as ETS1 on the federal level is still applicable to the Healthcare Industry in NC. There are protections afforded to healthcare workers under ETS1 that are not covered by other OSHA standards. Over the past month NC has experienced the highest number of daily COVID cases and hospitalizations since the pandemic began. The healthcare industry is on the front lines caring for individuals that are ill with COVID-19 and unfortunately healthcare workers have experienced a high number of COVID infections, hospitalizations, and fatalities. NCDOL has decided to keep the COVID-19 healthcare standards in place for a while longer, to better protect those employees that are at a higher risk of exposure to infected individuals. The healthcare standards effectiveness dates have been extended, in NC, until at least February 28, 2022. The Commissioner and the OSH Director’s Office will continue to monitor the impact of COVID-19 in the healthcare industry and will decide on a month-to-month basis whether to extend the effectiveness dates further or move to withdraw the standards.

ETS2 (Vaccination, Testing and Face Coverings) issued by OSHA late last Fall went into effect on 1/9/22 in federal jurisdictions after several court and self-imposed delays. There were multiple lawsuits associated with ETS2 and complainants included 27 State governments. On 1/13/22, the Supreme Court issued a “stay” against OSHA enforcing the requirements of ETS2. This was done prior to State Plans needing to adopt ETS2. The Supreme Court opinion indicated that not only would the “stay” be in effect until the 6<sup>th</sup> Circuit Court ruled on the case, but it would also remain in effect, if the 6<sup>th</sup> Circuit Court ruled in favor of USDOL and the complainants filed a writ with the Supreme Court. Although the stay was issued via an opinion, that opinion indicated that the Supreme Court (by a vote of 6-3) felt that OSHA overstepped their authority. That and other statements in the opinion provide a good indication of how the Supreme Court would rule, if the case made it back to them on appeal. That means that ETS2 is off the table for the foreseeable future in federal jurisdictions. Commissioner Dobson issued a [media statement](#) following the release of the Supreme Court opinion.

The Supreme Court indicated in their opinion that OSHA would more likely be within their authority, if they issued a standard that covered a smaller subset of employers whose employees would be at higher risk of COVID-19 exposure (i.e., healthcare, industries with employees working near one another, employers with congregate living, etc...). So, it’s possible we could see something else from OSHA down the road and they have already indicated that there is an Infectious Disease standard on their Regulatory Agenda.

Also of note is that on 1/13/22 the Supreme Court provided a separate opinion denying a different COVID-19 stay request pertaining to the Healthcare Industry. Among other issues, that opinion acknowledged a higher COVID risk among Healthcare workers and the federal government was within their rights to withhold funding to those establishments if they did not implement the specified COVID-19 related procedures. Both opinions can be viewed via [our website](#).

To summarize, the Healthcare COVID-19 standards known as ETS1 are still in effect in NC. NCDOL does not plan to take any further action pertaining to ETS2 vaccination or testing requirements, unless the outcome of current litigation on the federal level requires additional action.

## You Look Familiar. Are you new around here?



Meet Leaton Jones. Leaton began working for NCDOL as a health compliance officer in District 4 and after a few years moved to his current position as the OSH Review and Program Analyst in the OSH Division’s Directors Office. Leaton’s duties included reviewing high profile case files (fatalities, amputations, hospitalizations), reviewing division policies and procedures, making recommendations to improve policies and procedures, and supporting the division in reaching strategic goals.

Leaton was born and raised in Phoenix Arizona. After high school, Leaton joined the Army as a combat medic where he was deployed to the middle east and eastern Europe. After 6 years, Leaton left the Army and moved to Tucson, Arizona where he attended the University of Arizona obtaining a bachelor’s degree in public health and a master’s degree in industrial hygiene. Leaton took a year off college to participate in a wagon train where he rode a horse and supervised mule teams pulling covered wagons from the Arizona Mexico border to Flagstaff Arizona (about 400 miles). Currently, Leaton lives in East Charlotte with his partner of 14 years Amanda and two dogs Ripley and Toby. When not working, Leaton enjoys wandering around the woods and building and flying high power model rockets.

# Superlative Awards

Commissioner Dobson had the pleasure of presenting the department's annual Superlative Awards at the end of last year. Once again, we were not able to hold our annual employees' banquet, but the Commissioner did personally present the awards to deserving staff in Raleigh. Paul Sullivan presented an award, on behalf of the Commissioner, in Charlotte. The Employee of the Year is selected by a small group of NCDOL employees representing each of the three Divisions. The "selection committee" voted to select one employee based on nominations submitted earlier this year from department employees.

**The 2021 NCDOL Employee of the Year is our very own**



***Carla Delgado***

*Agricultural Safety and Health Bureau*

**And this year's recipients of the Commissioner's Awards for Excellence in Service were:**



***Rose Gray-Shindler***

*Planning, Statistics, & Information Management*



***Jill Warren***

*OSH Compliance West Bureau*

## Toys for Tots - THANK YOU FOR ALL WHO DONATED!!!

A big thank you to everyone in the ORB that donated toys to the Toys for Tots campaign and any staff members that donated statewide. We were not able to have our familiar festivities this past year, but the Marines were happy to receive all these gifts to donate. This year we had 99 toys and 4 bicycles donated from the Old Revenue Building towards the Toys for Tots Campaign.





# Safety and Health Steering Committee Meeting Highlights

The first meeting of the year was held on January 19, 2022. The following items were discussed and reported.

**Fire Extinguisher Maintenance** -The annual maintenance of fire extinguishers in the ORB and Labor Building that the Department of Administration is responsible for are running about a month behind schedule.

**AED Maintenance** -Floor monitors indicated at the meeting that some of the AED pads had expired. If pads or batteries need to be replaced then each unit, building or office is responsible for purchasing a replacement.

**NCDOL hazard reporting tool update** – The internal hazard reporting system has had some recent issues, but it is hoped that committee members will be contacted to test it out soon. DOL staff will be notified when the reporting tool is available for statewide use.

**NCDOL COVID-19 return to work plans** – Kevin Beauregard and Scott Mabry met with Commissioner Dobson in November 2021 to discuss plans for employees returning to the offices for in person work. At that time COVID cases statewide had decreased significantly, but a decision was made to wait until after the holidays to decide due to the possibility of a holiday related gatherings surge. In December, the Omicron COVID variant emerged in NC, followed by a post-holiday surge. NCDOL management will continue to monitor the situation and make plans accordingly. In the interim each Bureau Chief has a plan in place for having staff in the offices on a rotating basis to limit the number of staff in the office.

**Building Emergency Coordinators** – It has been noted and discussed that the ORB is not accessible by card reader during power outages. Kevin Beauregard currently has a key to be able to access the side gate and door. A procedure will be put in place to cover this circumstance if it comes up in the future.

**NC DOL Injury and Illness Update** – There were four recordables for the entirety of 2021. No lost workdays or restricted activity were required.

Next meeting – April 12, 2022, 2:00 pm.

## FIS Updates

### **Compliance Directives (CPL)**

Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P

Updated 12/17/2021

This instruction provides guidance and inspection procedures for the enforcement of Subpart P. This supersedes CPL 02-00-087 – Inspection Procedures for Enforcing the Excavation Standards – 29 CFR 1926, Subpart P (issued 02/20/1990)

### **Memorandum of Understanding (MOU)**

DHHS-MOU4 – DHHS Occupational Health Surveillance Program

Updated 11/30/2021

Memorandum of Understanding between the NCDOL, OSH Division and the NCDHHS, Occupational Health Surveillance Program

## OCSS - Confined Space Training- December 2021



OSH staff participated in Confined Space training in December. Thankfully the weather cooperated. The course provided an advanced study of the confined space standards, 29 CFR 1910.146 and 29 CFR 1926 Subpart AA. There was a classroom portion and an onsite portion to this class. Topics discussed included identification of confined spaces, the differences between permit and non-permit spaces, confined space hazard identification, permit requirements, and responsibilities for all permit-required confined space participants (entrant, attendant and entry supervisor). Students saw practical examples of Confined space equipment and were able to discuss procedures with operators.

At the end of the course, students had an advanced understanding of the regulatory requirements and potential safety and health hazards associated with permit-required confined spaces within the construction industry. By attending OCSS Modules, employees can work towards the

OCSS designation. Employees must complete a minimum of 6 modules, have completed all the OSH core courses and be a career state employee at the time of the completion. If you are interested in participating in the advanced classes, contact ETTA.



## Status of FY Compliance Inspection Goals

Type of Inspection	Three Month Goal	Three Month Actual	FY Goal	% of FY Goal
East Safety Inspections	172	93	688	54%
West Safety Inspections	238	184	950	77%
East Health Inspections	101	19	404	19%
West Health Inspections	140	139	558	100%
Compliance Inspections Total	650	435	2600	67%
East Construction Inspections	105	52	420	50%
West Construction Inspections	158	187	630	118%
Construction Inspections Total	263	239	1050	91%
East Logging/Arborist Inspections	6	0	22.5	0%
West Logging/Arborist Inspections	6	2	22.5	33%
Logging/Arborist Inspections Total	11	2	45	18%
East Health Hazards Inspections	13	1	50	8%
West Health Hazards Inspections	13	5	50	38%
Health Hazards Inspections Total	25	6	100	24%
East LTC Inspections	6	2	24	33%
West LTC Inspections	6	6	24	100%
LTC Inspections Total	12	8	48	67%
Public Sector Inspections Targeted Total	33	34	63	103%
East Grocery & Related Product Wholesalers	2	2	7.5	100%
West Grocery & Related Product Wholesalers	2	5	7.5	250%
Grocery & Related Product Wholesalers Total	4	7	15	175%
Food Manufacturing Compliance Inspections	10	7	20	70%

## Status of FY Compliance Strategic Goals

Strategic Goal	Three Month Goal	Three Month Actual	FY Goal	% of FY Goal
Program Improvements	263	112	1050	43%
Serious Hazards Eliminated	1025	573	4100	56%
Total Health Lapse Days	33	55.04	33	60%
Total Safety Lapse Days	30	54.04	30	56%
On-Site Hours/Week HEALTH	1642	732.5	6569	45%
On-Site Hours/Week SAFETY	1906	856	7625	45%
Logging Fatality Rate Baseline .02623	Goal Rate: .02623 (7 fatalities average during baseline years)	<b>Fatality Rate: 0.0</b> Logging Fatalities: 0	Reduce Rate by .4%	<b>On pace for 0 fatalities</b>
Construction Fatality Rate Baseline .00088	Goal Rate: .00088 (32 Fatalities average during baseline years)	<b>Fatality Rate: .0013</b> Construction Fatalities: 3 In Emphasis Counties: 2	Reduce Rate by .4%	<b>On pace for 12 fatalities</b>

**Key:** Green = meeting or exceeding goal    Blue= within 10% of goal    Orange= less than 90% of goal met  
 \*Total lapse days is determined by the total number of working days from the opening conference to citation issuance.

### Status of FY ASH Compliance Strategic Goals

Strategic Goal	Three Month Goal	Three Month Actual	FY Goal	% of FY Goal
Pre-Occupancy Camps Inspected	450	210	1800	47%
Certificates Issued	400	143	1600	36%
Education Material Distributed	600	309	2400	52%
Outreach to Hispanic farm workers	50	0	200	0%

### Status of FY Consultation Strategic Goals

Strategic Goal	Three Month Goal	Three Month Actual	FY Goal	% of Goal
PRIVATE Consultative Visits	278	285	1115	103%
Hazards Eliminated	1200	1221	4800	102%
Construction Visits	63	96	250	152%
LTC Visits	8	6	35	75%
Documentation of Health Hazards Inspections	31	50	125	161%
Program Improvements	188	331	750	176%
Logging Visits	3	3	15	100%
Food Inspections	3	4	12	133%

### Status of FY ETTA Strategic Goals

Strategic Goal	Three Month Goal	Three Month Actual	FY Goal	% of FY Goal
Total Persons Trained by ETTA	1338	1631	5350	122%
Total Persons Trained in identified areas	375	442	1500	118%
Publications Distributed	5750	12055	23000	210%
Program Improvements	15	24	60	160%
Construction SEP 30 Hour Course	1	1	1	100%
Construction SEP 10 Hour Course	1	2	5	200%
Logging/ Arborist Events	1	1	3	100%
LTC Events	1	0	2	0%
Health Hazards Events	5	7	20	140%
Public Sector Training Events	4	1	5	25%
Total Star Program Interventions	25	29	100	116%
Total Star Sites (new/recertifications)	5	6	20	120%

**Key:** Green = meeting or exceeding goal Blue= within 10% of goal Orange= less than 90% of goal met

\*Total lapse days is determined by the total number of working days from the opening conference to citation issuance.



Thanks for all you do!  
-Kevin B.