

# OSHNC UPDATE

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# November 2022

**Ask The Director:** We receive a lot of OSHA complaints each week. Some are assigned to a CSHO for inspection, whereas the majority are investigated by letter. I know we covered this during the OSHA 100 course, but that was a *long* time ago. Can you please refresh my memory on some of the terms commonly used when describing OSHA complaints, such as valid vs. non-valid and formal vs. non-formal?

**Answer:** Safety and health complaints are addressed under North Carolina General Statute (NCGS) 95-136 (d)(1) of the OSH Act of North Carolina and in Chapter IX of the OSH Division Field Operations Manual (FOM). A “valid” complaint is defined in the OSHNC FOM, whereas the NCGS outlines specific criteria for what we’ve termed as a “formal” complaint. Once we determine a complaint is valid, it is further evaluated to see if meets the criteria for a formal complaint per the NCGS. If it doesn’t meet that criteria, it is considered a “non-formal” complaint.

An OSH complaint is considered **valid** if it alleges a hazard that threatens physical harm to employees exists or could recur in the workplace or that an OSHA standard or the general duty clause of the OSH Act of N.C. is violated. That definition is *very* broad and hence most of our complaints are considered valid. However, each complaint must be evaluated by the district supervisor (or CSHO II POC) to determine whether the specific allegation(s) are truly valid. For example, a complaint that an employer is not taking adequate precautions to protect employees from an infectious disease (like COVID or TB) would be a valid complaint. One alleging exposure to second-hand tobacco smoke is also a valid complaint (see Appendix B of FOM Chapter IX). However, a complaint specifically alleging the employer is not requiring the use of face masks to protect against COVID would not be a valid complaint, since there are no OSHA standards requiring it, nor would the general duty clause apply. Similarly, a complaint alleging only two bathrooms for 30 employees would not be valid since that number does not violate the requirements of 29 CFR 1910.141. Other complaints may be more difficult to evaluate in terms of validity. For example, we recently received an anonymous complaint against an “unknown contractor” alleging high noise exposures due to jackhammer use on a construction site. While high noise is certainly a hazard that threatens harm to employees, a jackhammer is a necessary piece of equipment on many construction sites and there are no *feasible* controls to reduce that exposure – which is the language in the OSHA construction noise standard. That standard also requires the implementation of a hearing conservation program, but the complaint didn’t allege the lack of hearing protection or audiograms. In the end, there was no way to abate the alleged hazard, nor a requirement to do so. As a result, the complaint was closed as **non-valid**, and the appropriate justification was added in OE by the district supervisor. The FOM requires us to notify the complainant when that decision is made (if their contact information is provided).

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to Know Com

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Once a complaint is determined to be valid, it must be further evaluated to see if it meets the criteria for a **formal** complaint per NCGS 95-136(d)(1). To be considered formal, it must meet all the following requirements. First, it must be filed by a *current* employee or a representative of that employee, such as a union representative, attorney, physician, spouse, child, or parent. The employer named in the complaint must be the one employing the exposed employee. An employee can't file a *formal* complaint against a different employer, such as a subcontractor employee filing one against the general contractor. Second, the complaint must be in writing and signed by the complainant. A complaint submitted through the Federal OSHA or OSHNC websites with an electronic signature meets that requirement. Finally, and most importantly, the complaint must set forth with reasonable particularity the grounds that either an OSHA violation that threatens physical harm or an imminent danger exists. If a complaint does not meet all the aforementioned criteria, it is **non-formal** per the OSHNC FOM – and typically investigated by letter. We commonly receive complaints in writing from current employees that have either signed or are willing to sign, but where they don't provide *reasonable grounds* that an OSHA violation or imminent danger exists. Some examples are complaints alleging mold/mildew exposure, heat stress *indoors* due to air conditioning not working, poor illumination in an office, or employees coming to work after testing positive for COVID. There is no OSHA standard addressing each of these issues, nor evidence they are a recognized hazard in the industry, which is required to cite under the general duty clause. As a result, while these are all *valid* complaints filed by a current employee, they do not meet the criteria listed in NCGS 95-136(d)(1) and hence are not considered *formal* complaints.

It is very important for our staff, especially the district supervisor or CSHO II POC, to properly evaluate complaints when they are received. If a complaint is determined to be formal, that means it meets all the criteria under NCGS 95-136(d)(1). In that situation, the law allows the complainant (e.g., the employee or their representative) to "request an inspection" simply by submitting their written complaint. It then says the Commissioner or Director or their authorized agents (i.e., the CSHOs) "shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists." The OSHNC FOM goes one step further and requires that "all formal complaints...will be scheduled for workplace inspections unless the complainant agrees to allow the complaint to be investigated using nonformal complaint procedures." Given our limited resources, we don't want to classify a complaint as "formal" if it is not filed by a current employee or does not outline reasonable grounds of an OSHA violation.

**NCGS 95-136(d)(1):** *Any employees or an employee representative of the employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice of such violation or danger to the Commissioner or Director. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or the employee representatives of the employees, and a copy shall be provided the employer or his agent no later than at the time of inspection. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy of any record published, released or made available pursuant to subsection (e) of this section. If upon receipt of such notification the Commissioner or Director determines there are reasonable grounds to believe that such violation or danger exists, the Commissioner or Director or their authorized agents shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the Commissioner or Director determines there are not reasonable grounds to believe that a violation or danger exists, he shall notify the employees or representatives of the employees, in writing, of such determination.*

## You Look Familiar. Are You New Around Here?



Meet George Calvery.

George started working for NCDOL on November 14, 2016, as a CSHO in John Saunders' District 3 in the Charlotte office and three years later transferred to the District 1 office in Asheville. George currently serves as the chair of the NCDOL Amputation SEP Committee.

George grew up in Memphis, Tennessee (where they have REAL humidity) in a time when kids walked or rode their bikes (without helmets) to and from school, finished their homework before going out to play, put band-aids on cuts that likely could have used a stitch or two, played outside until the streetlights came on, and were always home on time or else. (It was also a time where the rod was not spared).

He graduated high school in 1982 and completed his Associates Degree in Industrial Engineering with a minor in Mechanical Engineering in 1985. He then went on to complete his Bachelor of Science in Industrial Business Management in 1988 from the University of Tennessee. Immediately out of college George started working as a shift supervisor for a subsidiary of ALCOA known as ALCOA CSI (Closure Systems International), which used thermoplastic injection and compression molding machines to make plastic bottle caps (billions of bottle caps). When the facility

went from four shifts to three shifts, George had the opportunity to become the Safety and Environmental Coordinator. He fell in love with safety and the opportunity to help analyze near-misses and accident causes, develop and implement corrective actions, and help prevent future injuries. While working for ALCOA, George served on the Corporate Safety Audit Team and visited and assisted with the development and implementation of safety programs at facilities in Budapest, Hungary and Tianjin, China. He also assisted the Corporate Safety Department in conducting safety training for a facility located in Shanghai, China. Following the 9 years spent at ALCOA-CSI he worked as a Safety Manager in hospitals, a steel mill, and for a government contractor. Additionally, he served as a Regional Loss Prevention Manager for Promus/Hilton Hotels, and the Director of Safety for a crane company. During this time, he lived in several different towns and states including Atlanta, GA, Augusta, GA, Fort Mill, S. C., Charlotte, N. C., and Asheville, N. C.

George remembers that while in training, then Supervisor Paul Sullivan said something to the effect of "as compliance officers, our work helps prevent future accidents and fatalities, so we may never know exactly what it was that was prevented through our efforts." George took this to heart, and he looks at every compliance inspection as an opportunity to help employers find, understand, and resolve compliance issues to help prevent future accidents. When it comes to amputations or fatalities, George helps the employer, to the extent possible, find and correct the causes of the accidents and focus on making sure the same accident does not happen again.

George enjoys his rigorous 'boot camp' style workouts five days a week and loves to hike and visit the many waterfalls and mountain vistas that Asheville offers. He also enjoys hosting game, movie, and dinner nights for friends and has a love of photography, landscape and deck design, construction, and home renovation and design. Though not currently active, George is also a private pilot with about 200 hours of flying time and had the chance to log one hour of flight time with the Air Force 2 flight crew in the Boeing 707 simulator in Miami, FL. George loves Asheville and he and his partner plan to retire and continue to live in the area.

# Kevin Beauregard Retires



Thank you to all those who came to Kevin's retirement events, to see him off to his new adventures.

Several of our recent retirees came out to wish him well, which he very much appreciated, as well as the phone calls and cards. He will be greatly missed.



## NCDOL Promotions

Name	Date of Promotion	Old Position	New Position
Kirby Atwood	2/1/2022	West Compliance - SCO II - District 5	Consultation - Safety Consultant
Madelyn Edwards	3/21/2022	East Compliance - HCO I - District 9	ETTA - IH Training Specialist
Kevin McGuire	3/28/2022	West Compliance - HCO II - District 6	West Compliance Supervisor - District 5
Chris Fombin	5/1/2022	West Compliance - SCO I - District 5	West Compliance - SCO II - District 5
George Thrower	5/9/2022	West Compliance - SCO I - District 4	West Compliance - SCO II - District 4
Grant Quiller	5/16/2022	West Compliance - HCO II - District 3	OSH Administration - Program Analyst
Robert Tipton	5/16/2022	West Compliance - SCO I - District 3	West Compliance - HCO I - District 3
Jennifer Busick	6/8/2022	West Compliance - SCO I - District 5	West Compliance - HCO I - District 6
Ben Teal	6/9/2022	West Compliance - HCO I - District 4	West Compliance - HCO II - District 3
Paul Sullivan	8/1/2022	West Compliance - Bureau Chief	OSH Administration - Assistant Director
Lee Peacock	8/1/2022	West Compliance District 2 Supervisor	West Compliance - Bureau Chief
Ted Hendrix	9/16/2022	West Compliance - HCO II - District 4	West Compliance District 2 Supervisor

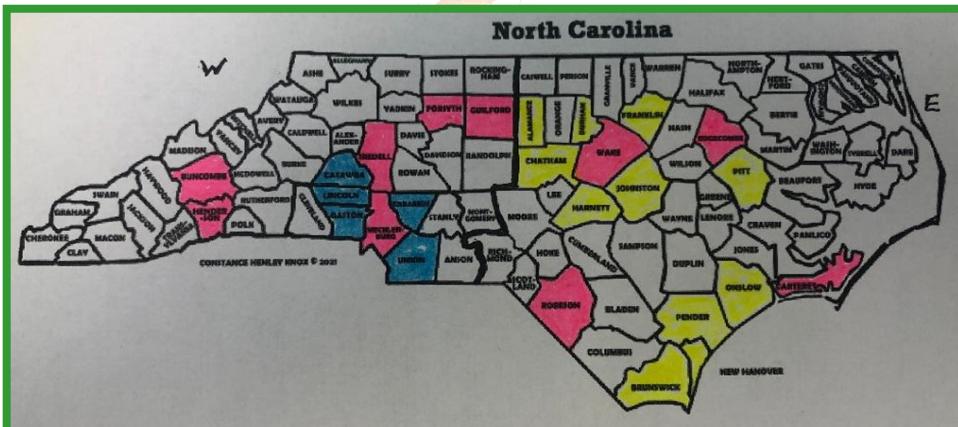
## Peggy Reme Retires with 30 years

On October 1, 2022, Peggy Reme retired with 30 years of service with the N.C. Department of Labor. Peggy started her career with OSH Compliance in 1993. During her tenure, Peggy has excelled in every compliance officer position she held under OSH's structure, specifically as a Safety Compliance Officer I, Health Compliance Officer I and Health Compliance Officer II. Through the years, Peggy has been an active member of the Ergonomics Committee, Long Term Care Committee, and the Safety and Health Committee. During the recent retirement celebration, Peggy received the OSH Director's Certificate of Service from Paul Sullivan, The Order of The Long Leaf Pine from Jennifer Haigwood and the Commissioner's Certificate of Appreciation from Lee Peacock. Peggy's hard work, dedication, expertise, personality, and contagious smile will be missed by her coworkers. In retirement, Peggy hopes to spend more time with her family and travelling across the world.



# FFY 2022- 2023 Construction SEP Counties

The Construction SEP meeting was held on October 6<sup>th</sup> 2022. Compliance did not make their inspection goals for FFY 2021-22. There were 959 inspections conducted versus the goal of 1,050 that was listed in the Strategic Management Plan. There were 61 total fatalities in FFY 2021-22, 22 of which were in construction. Fifteen of the 22 construction fatalities were in SEP counties, seven in fatality counties, eight in High Activity Counties. \*For FFY 2020-21, there were 90 fatalities (many were COVID); 18 in construction. Several counties have been added as SEP counties and several have been removed.



## East Counties

Newly added: Chatham, Pender, Pitt  
Newly Removed: Moore

## West Counties

Newly added: Jackson, Rowan  
Newly Removed: None

## FIS Updates

### CFR

#### [CFR 191 – Incorporation by Reference: Notice of Corrections](#)

86 FR 54611 – On October 4, 2021, the Occupational Safety and Health Administration (OSHA) published a final rule making minor corrections to the Incorporation by Reference section in 29 CFR 1910.1915 due to inadvertent mistakes in the three final rules.

#### [CFR 192 – CFR Correction: Occupational Safety and Health Standards](#)

87 FR 32999 – On June 1, 2022, the Occupational Safety and Health Administration (OSHA) published a final rule to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations. The correction was made to the equation in section II of appendix A of the OSHA standard on occupational noise exposure in general industry, 29 CFR 1910.95.

#### [CFR 193 – CFR Correction: Safety and Health Regulations for Construction](#)

87 FR 38657 – On June 29, 2022, the Occupational Safety and Health Administration (OSHA) published a final rule to correct an editorial or technical error that appears in the most recent annual revision of the Code of Federal Regulations. The correction was made to the OSHA standard on lead in construction, 29 CFR 1926.62(d)(4)(ii).

#### [CFR 194 – Correcting Amendment: Safety and Health Regulations for Construction - Lead](#)

87 FR 38985 – On June 30, 2022, the Occupational Safety and Health Administration (OSHA) published a final rule to correct an inadvertent removal of regulatory text resulting from a notice of correcting amendments issued February 18, 2020. The correcting amendment revises 29 CFR 1926.62(d)(2)(iv).

### CPL

#### [CPL 02-00-042 – Interagency Agreement between the Mine Safety and Health Administration and OSHA – USDOL](#)

This instruction provides guidelines for implementing the Interagency Agreement between the Mine Safety and Health Administration and the Occupational Safety and Health Administration.

## NCDOL Wordsearch



Answer Key on Page 6

## Status of Fiscal Year Compliance Inspection Goals\*

Type of Inspection	12th Month Goal	12th Month Actual	FY Goal	% of FY Goal
Amputation SEP Inspections	150	160	150	107%
Total Compliance Inspections	1950	1955	1950	100%
Construction SEP Inspections Totals	1050	972	1050	93%
Logging/Arborist Inspections Totals	25	29	25	116%
Health Hazards SEP Inspections Totals	60	91	60	152%
LTC SEP Inspections	25	32	25	128%
Total Public Sector Inspections	100	94	100	94%
Grocery & Related Product SEP Inspections	20	21	20	105%
Food Manufacturing Compliance Totals Inspections	25	39	25	156%
Food Manufacturing Compliance Totals	25	16	25	64%

## Status of Fiscal Year Compliance Strategic Goals\*

Strategic Goal	Goal	Actual
In-Compliance Rate Safety	< 35%	37.8%
In-Compliance Rate Health	< 35%	38.8%
Total SAMM Health Lapse Time	< 40 Days	54.8
Total SAMM Safety Lapse Time	<40 Days	52.7
Follow-up Inspections Percentage	5%	2.9%
Logging Fatalities	(7 fatalities average during baseline years)	Logging Fatalities: 3
Construction Fatalities	(32 Fatalities average during baseline years)	Construction Fatalities: 22

## Status of Fiscal Year ASH Compliance Strategic Goals\*

Strategic Goal	12th Month Goal	12th Month Actual	FY Goal	% of FY Goal
Pre-Occupancy Camps Inspected	1800	2037	1800	113%
Certificates Issued	1600	1952	1600	122%
Education Material Distributed	2400	6752	2400	281%
Outreach to Hispanic farm workers	200	142	200	71%

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

\*Preliminary fiscal year data

## Status of Fiscal Year Consultation Strategic Goals\*

Strategic Goal	12th Month Goal	12th Month Actual	FY Goal	% of FY Goal
PRIVATE Consultative Visits	1115	1250	1115	112%
Hazards Eliminated	4800	5839	4800	122%
Construction Visits	250	435	250	174%
LTC Visits	35	41	35	117%
Documentation of Health Hazards Inspections	125	185	125	148%
Program Improvements	750	1352	750	180%
Logging Visits	15	17	15	113%
Food Inspections	12	24	12	200%

## Status of Fiscal Year ETTA Strategic Goals\*

Strategic Goal	12th Month Goal	12th Month Actual	FY Goal	% of FY Goal
Total Persons Trained by ETTA	5350	7221	5350	135%
Total Persons Trained in identified areas	1500	2699	1500	180%
Publications Distributed	35000	52591	35000	150%
Program Improvements	60	91	60	152%
Construction SEP 30 Hour Course	1	2	1	200%
Construction SEP 10 Hour Course	5	5	5	100%
Logging/ Arborist Events	3	11	3	367%
LTC Events	2	3	2	150%
Health Hazards Events	20	26	20	130%
Public Sector Training Events	5	22	5	440%
Total Star Program Interventions	100	166	100	166%
Total Star Sites (new/recertifications)	20	39	20	195%

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**Thanks for all you do!**  
-Paul Sullivan

ANSWER KEY

