

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

Field Information System

Operational Procedure Notice 120

Subject: Scope of Unprogrammed Inspections.

- A. **Purpose.** This Operational Procedure Notice (OPN) has been issued to clarify OSHNC's position related to the scope of unprogrammed inspections. OSHNC schedules unprogrammed inspections in response to alleged hazardous working conditions that have been identified at a specific work site. Unprogrammed inspections include imminent danger, fatality, complaint, referral, follow up, and monitoring inspections.
- B. **Scope.** This OPN applies to all safety and health unprogrammed inspections.
- C. **Discussion.** Since the beginning of the North Carolina OSH (OSHNC) program, the scope of unprogrammed inspections has for the most part been a complete inspection. This is especially true for high hazard industries. A complete inspection covers the entire facility and includes a review of required injury and illness records, general safety and health programs, and programs required by specific standards applicable to the employer such as Hazard Communication, Bloodborne Pathogens, and Lockout/Tagout. When OSHNC adopts new standards, they become part of the inspection's program review.

However, the courts have ruled in a number of recent decisions that OSHA cannot establish inspection procedures to expand unprogrammed employee complaint investigations. According to the courts, this action violates the employer's right of protection from an unreasonable search. This is demonstrated most often when OSHA pursues a warrant after an employer withholds consent of entry. The courts have not granted warrants for comprehensive inspections to cover items beyond those included in the original complaint unless additional evidence exists that hazards may permeate the entire workplace. Due to these decisions, OSHNC finds it necessary to clarify and limit the scope of unprogrammed inspections.

- D. **Action.** The OSHNC Compliance Bureau will limit the scope of unprogrammed inspections to the specific working conditions or practices forming the basis for the inspection. However, the CSHO will review all injury and illness records required by the OSHAct and that are essential to assess the impact of a work practice which may be reflected in site injury and illness records. Injury and illness records review can also aid in pinpointing the scope of the inspection in terms of specific hazardous locations.

The CSHO may also review the employer's general safety and health program in anticipation of the fact that it might address the working conditions that form the basis of the inspection and for purposes of penalty adjustment. Besides written documents, the circumstances of an unprogrammed inspection demand consideration as to the viability of the safety program and the appropriateness of good faith consideration as a penalty reduction factor.

The District Supervisor and CSHO will determine whether the inspection scope will be expanded further according to the following criteria:

1. There is evidence of serious violations in plain view; or
2. The employer gives consent to inspect additional areas; or
3. The company history and/or safety record demonstrates the need for a comprehensive or expanded inspection; or
4. The company is in a high hazard industry and has had no inspection history over the past two years.

If an employer denies a CSHO's request to expand an unprogrammed inspection, an attempt may be made to obtain a warrant.

Inconsistencies between this policy and the NC Operations Manual will be addressed in future revisions. This OPN also supersedes compliance directives for specific standards, such as CPL's, which predate more recent court decisions. This OPN is effective on the day that it is signed. It will remain in effect until revised or canceled.

Signed on Original

Steven Sykes
State Plan Coordinator

Signed on Original

Robert K Andrews, Jr.
Director

7/31/98

Date of Signature