

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

Administrative Information System

Administrative Procedure Notice 161

Subject: OSH Director's Office Citation Authorization and Settlement Authorization

- A. **Purpose.** This Administrative Procedure Notice describes the citation review process at the Director's Office level of review. The purpose of citation and settlement review and authorization by the OSH director's office is 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 citation 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. **Background.** The need for a management citation 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. .
- C. **Cases Requiring Citation Review.** Types of inspections that require OSH director's office review and citation authorization are listed on the citation authorization form located under the OSHA-167I tab, in the inspection form in OSHA Express (OE). A settlement authorization is also required for all informal and formal settlement agreements that meet any applicable item listed on the OSHA-167I form. If an inspection file goes through the citation authorization review process initially, any subsequent settlement agreement would also be required to go through the authorization review process. A closing conference will not be scheduled for these cases until the citation review process has been completed. Prior to the completion of any high profile inspection or investigation that requires citation authorization; the bureau chief may request a preliminary case file discussion for the purpose of providing an update to the director's office. Additionally, a discussion may be requested for the purpose of receiving direction or advice regarding any aspect of the inspection/investigation. The supervisor and bureau chief must complete and submit a citation authorization form. The completed form should have the "other" box checked and must include a clear description of the purpose of the requested preliminary case file discussion.
- D. **Actions required prior to an OSH Director's Office Inspection Review.**
1. The field level case file review process will be completed prior to submitting the file for review by the director's office. This will include the CSHO and district supervisor review process. 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.
 2. The CSHO must contact an attorney in the Attorney General's (AGs) Office prior to submitting an inspection for director's office review. 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 sufficient and defensible case file is developed.

E. **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 OSHA Express.
2. Inspection files shall not be submitted for review until the narrative, violation form (OSHA-1B), 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", "Note" 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 "note" tab and they can request a review meeting.
3. The citation or settlement authorization form, located under the OSHA-167I tab of the OSHA Express inspection form, must be accurately completed including the must issue date and dates of supervisor/CSHO availability. The file must be routed to the administrative assistant in the assistant director's office using OE workflow queues and an email should be sent to the administrative assistant in the assistant director's office and the assistant director to make sure the file is received. If a review meeting is necessary, AG's Office availability will be confirmed once the case file has reached the director's office via the OE workflow queue. An inaccurate "must issue date" could affect the completion of the citation review process within the required six months issuance deadline. If the availability section of the form is left blank, the case file will be sent back to the supervisor for completion.
4. For inspection files requiring a review meeting, a citation review committee consisting of a director's office representative, an AG's Office representative and a NCDOL Legal Affairs Division representative will be assembled to meet on Wednesday or Friday of each week. The CSHO, supervisor and bureau chief associated with the inspection file will also attend the meeting. Scheduling conflicts of committee members might result in meeting cancellations.
5. To schedule an inspection file for a committee review meeting on Wednesday, a complete case file must be received in the assistant director's administrative assistant's workflow queue by 12 p.m. on Monday.
6. To schedule an inspection file for a committee review on Friday, a complete case file must be received in the assistant director's administrative assistant's workflow queue by 12 p.m. on Wednesday.
7. The six month statute of limitations must be considered by the CSHO, supervisor and bureau chief when submitting an inspection file for review by the citation review committee, to ensure that sufficient time will be available to complete the review process. If an inspection file requiring authorization is submitted near the end of the 6 month statute of limitation cycle and there is insufficient time for AG's Office or director's

office review, it may be required to go out under the authorization of the bureau chief. If this occurs, the bureau chief, supervisor and CSHO will be held responsible for any resulting issues.

8. A completed package, including the following materials, must be included in OE at the time a file is submitted for OSH director's office review permit scheduling for case file review:
 - a. Citation or settlement authorization form with all items completed correctly including required approval signatures and availability dates for the CSHO and supervisor. (Only one case/inspection will be included on a single form. Each case requires a separate completed citation or settlement authorization form. Related inspections will be included on a separate form.) An updated citation or settlement authorization form must be submitted with each revision and/or new action. All revisions must be reviewed by the supervisor and bureau chief and require signature and date of review;
 - b. Completed violation (OSHA 1B) forms;
 - c. For follow-up inspections where FTAs are recommended, completed OSHA 2B forms and copies of the OSHA 1Bs from the original case file;
 - d. Inspection form (OSHA 1);
 - e. Inspection narrative (OSHA -1AC);
 - f. Any documents referenced in the narrative including relevant photos (if needed for clarification);
 - g. Copies of the draft citation(s);
 - h. Accident form, referral form or complaint form and , if the inspection file is associated with an accident or fatality;
 - i. Informal conference notes including a written justification or explanation must accompany a proposed settlement agreement along with all citations;
 - j. Any other documents that the CSHO will reference during the citation review.
 - k. The AG's Office will provide the supervisor with the formal settlement agreement documents associated with any case file that required case file review/authorization prior to citation issuance. The supervisor or bureau chief will submit a completed settlement authorization form with the formal settlement proposal routed to the assistant director's office. The formal settlement should be added as an attachment under the OSHA file tab of OE. Anytime an inspection is routed in OE, it should be accompanied by an email to the applicable parties to let them know the file is in their OE workflow queue. If the AG's Office or bureau chief wishes to discuss a proposed formal settlement agreement prior to drafting a written document, they should contact the administrative office of the assistant director to place the discussion on the calendar.
9. Once the complete inspection or settlement agreement package has been received in the assistant director's office workflow queue, it will be determined as to whether or not the AG's Office is in agreement 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 brought up by either the AG's Office or the Compliance Bureau a review committee meeting will 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.

10. Pertinent photos will be attached to violation forms in OE.
11. The assistant director's administrative assistant will send the schedule of cases to be considered to committee participants by e-mail. This schedule will be e-mailed on Monday by 5 p.m. and on Wednesday by 5 p.m.

F. **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 intended by the affected bureau chief, district supervisor, and CSHO. Participation by the bureau chief and district supervisor is particularly important if changes had 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 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.

G. **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/supervisor via their workflow queue in OSHA Express.
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 OSHA Express.
4. If an inspection file must be resubmitted as a result of the case file review process, a complete package must be prepared and resubmitted as described at E.8.
5. The complete package must be resubmitted to the assistant director's administrative assistant, as soon as possible, in the interest of keeping citation lapse time to a minimum.
6. The goal of the OSH Division is to complete fatality investigations within 90 calendar days of the inspection open date. Fatality citation lapse time is tracked on a special report maintained in the assistant director's office.

H. **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 to the federal OSHA regional administrator these employers with additional worksites outside the state.

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

Signed on Original
Kevin Beauregard
Assistant Director

Signed on Original
Allen McNeely
Director

9/08/2015
Date of Signature