

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XII – Construction



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Table of Contents

- A. [General CSHO Responsibilities](#)
- B. [Standards](#)
- C. [Employer Worksite](#)
- D. [Advance Notice](#)
- E. [Entry of the Workplace](#)
- F. [Special Health Concerns](#)
- G. [Closing Conference](#)
- H. [Citations and Penalties](#)

Chapter XII

Construction

A. **General CSHO Responsibilities.** CSHO responsibilities for construction inspections are the same as for general inspections. Special situations arising in the construction industry are discussed in this chapter.

B. **Standards.**

1. **Applicability.** The standards issued under the Construction Safety Act and published as 29 CFR Part 1926 have been adopted as occupational safety and health standards under NCGS 95-131. They will apply to every employer and place of employment of every employee engaged in construction work, including noncontract construction work.

a. **Definition.** The term "construction work" means work for construction, alteration, and/or repair, including painting and decorating. These terms are discussed in 29 CFR 1926.13. Replacement in kind is general industry maintenance. Upgrades or improvements are construction work. To eliminate confusion over how to properly classify and document inspections associated with construction related tree felling operations, the OSH Division inspection classification will be based on the primary SIC/NAICS code of the employer whose employee is exposed to the hazard. If any question arises as to whether an activity is deemed to be construction for purposes of the Act, the supervisor will be consulted.

b. **Part 1910 Standards Applicable to Construction.** Many Part 1910 standards, such as those published in the Construction Industry Standards, are applicable to construction work. The supervisor will ensure that they are enforced as appropriate, consistent with their scopes and definitions.

i. Among the identified Part 1910 standards, all health standards in Subpart Z, except for:

A. The exposure limits contained in 29 CFR 1910.1000, Tables Z-1, Z-2, and Z-3. The applicable exposure limits for construction are referenced in 29 CFR 1926.55(a).

B. Asbestos regulations in 29 CFR 1910.1001. The applicable standard regulating occupational exposure to asbestos, tremolite, anthophyllite, and actinolite in construction is 29 CFR 1926.1101.

C. Lead regulations in 29 CFR 1910.1025. The applicable standard regulating occupational exposure to lead in construction is 29 CFR 1926.62.

FOM Chapter XII, cont'd.

- ii. 29 CFR 1910.1020, Access to Employee Exposure and Medical Records, has been identified as applicable to construction.
- iii. The CSHO will not recommend a citation of a 1910 standard other than one identified as applicable to construction work without the approval of the supervisor and bureau chief.

2. **Enforcement.** In the event of violations, citations will be issued and penalties assessed in accordance with procedures set forth in other chapters in this manual.

C. Employer Worksite.

1. **General.** Inspections of employers in the construction industry are not easily separable into distinct worksites. The worksite is generally the site where the construction is being performed (e.g., the building site, the dam site). Where the construction site extends over a large geographical area (e.g., road building), the entire job will be considered a single worksite.
2. **Administrative Convenience.** The definition of worksite in this chapter is only for administrative convenience and has no effect upon the issuance of failure-to-abate notifications or repeat citations that are governed by the manual's general inspection procedures. For instructions regarding multi-employer worksites, the manual's chapter on citations should be reviewed.

D. Advance Notice.

1. **General.** The same general policies and procedures on advance notice set forth in chapter III on inspection procedures are applicable to construction inspections. Thus, in general, advance notice will be given only where it will enhance the effectiveness of the inspection and must be authorized by the director's office, as stated in NCGS 95-136(f)(2).
2. **Authorized.** When advance notice is authorized, the CSHO will contact the prime or general contractor's office by telephone. If there is more than one general contractor (e.g., if two or more general contractors have formed a joint venture for purposes of the job in question), the CSHO will attempt to ascertain the identity of all such general contractors and contact each of them. The general contractor(s) will be told to advise all subcontractors working on the job that the inspection will take place. The general contractor will also be asked to advise the labor organizations representing employees and to instruct each subcontractor to take similar action. Where there are no labor organizations or other representatives of employees, advance notice need not be given to the employees.

E. Entry of the Workplace.

1. **Severe Weather Conditions.** If severe weather conditions encountered during an inspection cause construction activities to shut down, the inspection will be continued when weather permits. If the work continues and the weather creates hazardous working

conditions, these facts will be reported, since they may be the subject of citations and proposed penalties based on a specific standard or, if no such standard is applicable, the General Duty Clause (NCGS 95-129(1)). In no case will the CSHO put themselves in danger (e.g., stay out in a lightning storm.)

2. **Opening Conference.** In conducting the opening conference the CSHO will follow the procedures outlined in the Inspection Procedures chapter. Upon arrival at the construction site, the CSHO will contact the "prime" or general contractor's representative in charge of the job; usually, this will be the superintendent or project manager. The CSHO will advise this individual that the purpose of this visit is to make an inspection of the worksite in order to determine compliance with the requirements of the Act.
 - a. **Focused Inspections.** On a construction site, all construction inspections start out as comprehensive in scope, but are candidates for focused inspections and the site must meet the requirements outlined in the most current revision of OPN 96 - Focused Inspections in Construction. The CSHO will determine if there is project coordination by the general or prime contractor with an adequate and effective safety and health program and a designated, competent person responsible for implementing the program. If any or all of these elements are not found, the CSHO will conduct a comprehensive inspection. If all these elements exist, the CSHO will conduct a focused inspection, concentrating on falls, electrical hazards, "caught-in" and "struck-by" hazards. If any or all of these elements are not found, the CSHO will conduct a comprehensive inspection.
 - b. **Subcontractors.** Normally, there will be several subcontractors at the site. *A list of all subcontractors will be requested during the opening conference with the general contractor, prime contractor or other controlling entity. If the site qualifies for a focused inspection and no serious hazards are observed during the walkthrough, inspections will not be opened with subcontractors. If serious hazards are observed during the walkthrough the CSHO will hold an opening conference with the affected employer(s) or his representatives on the jobsite and may cite the affected subcontractor, and/or other employers, as per the multi-employer worksite policy. (See CPL 02-00-124).*
 - c. **Employee Representatives.** Authorized representatives of employees for each contractor and subcontractor, if any, will be informed of the inspection and *provided* an opening conference. Based upon inspection circumstances the CSHO may hold individual conferences with the subcontractor and the employee representative or may hold a joint conference with employers if both parties are in agreement.
 - d. **Closing Conference.** The CSHO will advise all employers and employee representatives that a closing conference will be held with each of them following their respective portion of the inspection, and request that each of them arrange to have a representative available.

- e. Responsibilities for Common Services. At the opening conference, or at some other suitable time during the inspection, the CSHO will ascertain who is responsible for providing such special services as common sanitation, eating facilities, first aid, etc., available to all employees on the worksite. Even though arrangements have been made for one subcontractor or for the general contractor to provide common services, each employer is responsible for his/her own employees in this regard. Any or all of the employers can be cited for lack of such services.
- f. Complaints. If the inspection is being conducted as a result of a complaint, a copy of the complaint is to be furnished as follows:
 - i. A copy of every complaint against the general contractor and information concerning complaints against subcontractors will be provided to the general contractor.
 - ii. A copy of every complaint against the general contractor will, if possible, be provided to every subcontractor whose employees may be exposed to the alleged hazard.
 - iii. A copy of every complaint against a subcontractor will be provided to that subcontractor and, if possible, to others whose employees may be exposed to the alleged hazard.
 - iv. Care will be taken to protect the identity of the complainant including the typing of handwritten complaints and the covering of all signatures.
 - v. For further details see the procedures outlined in FOM Chapter IX.
- g. Collecting Recordkeeping Information.
 - i. *If a site has been or expects to be under construction for more than one year, an OSHA 300 log is required specific to that site for each employer who will have employees assigned to the site for longer than one year. The CSHO will request the recordkeeping data from each employer and enter it into the IMIS system and to produce the DART rate.*
 - ii. If the site has been under construction for less than one year and/or the general contractor has fewer than 11 employees, do not attempt to collect the data. Any site less than one year old should be treated as a non-fixed establishment. Although construction employers are required to keep injury and illness records, employers at projects under construction for less than one year are not required to maintain their injury and illness records on the site. Construction contractors that employ fewer than 11 workers are not required to maintain recordkeeping logs.

- iii. The CSHO will collect site recordkeeping data from the corporate office when the office maintains the original with copies going to the site. (29 CFR 1904.)
- 3. Selecting Employer and Employee Representatives. The CSHO will conduct a walkaround inspection in accordance with general inspection provisions outlined in this manual.
 - a. Authorized Representative. Each employer is entitled to select an authorized representative to accompany the CSHO during the inspection. Similarly, the employees of each employer have the right to select an authorized representative for this purpose. If the job is unionized, then the labor organization representing the employees will select the authorized employee representative. If there is no representative, the CSHO will normally interview a reasonable number of employees to determine whether hazards exist. A reasonable number of employees will include at least some employees of each employer and each craft on the job.
 - b. Employee Interviews. Pursuant to NCGS 95-136, during the walkaround the CSHO will consult with individual employees as well as the employee representative concerning working conditions, as judged appropriate by the CSHO.
 - c. Walkaround Provisions. The main difficulty in implementing the walkaround provisions on construction sites derives from the fact that in the usual situations there will be numerous employers on the job. If all employers and groups of employees selected a different representative to accompany the CSHO on the inspection, the group participating in the inspection could be so large that work on the worksite might be disrupted and the effectiveness of the inspection would be diminished.
 - i. An attempt will be made to encourage employer and employees to select, respectively, a limited number of representatives for accompaniment purposes. It will be pointed out by the CSHO that this arrangement makes an effective inspection possible without diminishing the accompaniment rights. If any matter comes up during the course of the inspection that requires special knowledge, the representative of the appropriate employer or employees will be called in to participate in that phase of the inspection.
 - ii. The CSHO may also divide the inspection into separate phases; e.g., excavation work followed by electrical work, and so forth. If this procedure is followed, the number of employer and employee representatives for each phase of the inspection can be limited to those immediately involved. The CSHO should avoid, to the extent possible, inspecting the same areas of the worksite more than once.

d. **Excessive Representation.** The CSHO will conduct the inspection accompanied by the representatives designated by the employers and employees. However, if during the course of the inspection, the CSHO determines that, because of the large number of persons involved, the inspection is not being conducted in an effective manner or that work is being unduly disrupted, the participants will be advised that walkaround representation is discontinued and instead a reasonable number of employees will be interviewed. If the participants then agree to a limited number of representatives for accompaniment purposes, the CSHO will resume the inspection with such representatives.

F. **Special Health Concerns.** The potentially hazardous operations that bring a health compliance officer to a construction site, especially with complaints or referrals of airborne asbestos, silica and lead, are often of short duration and completed prior to the CSHO arriving on site. In these cases the CSHO will contact the complainant or other reliable source and determine if the same conditions exist at another worksite. If they do, the CSHO will open an inspection at that alternate worksite.

G. **Closing Conference.**

1. **General.** Upon completion of the inspection, the CSHO will confer with the general contractors and all appropriate subcontractors or their representatives, together or separately, at their option, and advise each one of all the apparent violations disclosed by the inspection to which each one's employees were exposed. The closing conference with each general contractor and subcontractor may be a joint conference with employer and employee representatives.

Note: For information on citing violations at multi-employer worksites, refer to Chapter V on citations. It discusses citing non-exposing employers and legitimate defenses of exposing employers.

2. **Contractor Names and Addresses.** The CSHO should make certain before leaving the worksite that he has obtained the names and addresses of the general contractor and all other employers at the worksites.

H. **Citations and Penalties.**

1. **Mailing.** Upon the completion of citations and notifications of penalties, the OSHA 2 Form for each employer will be sent to each employer's home office.
2. **Where to Post Citations.** The citations will be posted at a location where they are protected from the elements and the employees have daily access.