

## CHAPTER XII

### CONSTRUCTION

- A. General CO Responsibilities. CO responsibilities for construction inspections are the same as for general inspections. (See Chapter III.) Special situations arising in the construction industry are discussed in this chapter.
- B. Standards.
1. Applicability. The Federal standards, 29 CFR 1910 and 1926 have been adopted as occupational safety and health standards by 11 NMAC 5.3. They shall apply to every employment 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. If any question arises as to whether an activity is deemed to be construction for purposes of the Act, the Compliance Manager shall be consulted.
    - b. Part 1910 Standards Applicable to Construction. Certain Part 1910 standards have been identified as being applicable to construction work. The Compliance Manager shall ensure that they are enforced as appropriate, consistent with their scopes and definitions.
  2. Enforcement. In the event of violations, citations shall be issued and penalties assessed in accordance with procedures set forth in Chapters IV, V and VI.
- 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. In cases when such large geographical areas overlap between Area Offices, generally only operations of the employer within the jurisdiction of any Bureau will be considered as the worksite of the employer.

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 which are governed by Chapters III, H.2. and IV, B.5. For instructions regarding multi-employer worksites, see Chapter V, F.

D. Advance Notice.

1. General. The same general policies and procedures on advance notice set forth in Chapter III, C. are applicable to construction inspections. Thus, in general, advance notice will be given only where it will enhance the effectiveness of the inspection.
2. Authorized. When advance notice is authorized, the CO shall contact the 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 CO shall attempt to ascertain the identity of all such general contractors and contact each of them. The general contractor(s) shall be told to advise all subcontractors working on the job that the inspection will take place. The general contractor shall also be asked to advise the labor organizations representing employees and to instruct each subcontractor to take similar action, in accordance with the requirement of 11 NMAC 5.1.21. 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 shall be continued when weather permits. If the work continues and the weather creates hazardous working conditions, these facts shall 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.
2. Opening Conference. In conducting the opening conference the CO shall follow the procedures outlined in Chapter III, D.3. Upon arrival at the construction site, the CO shall contact the "prime" or general contractor's representative in charge of the job; usually, this will be the superintendent or project manager. The CO shall 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 OHS Act.

- a. Subcontractors. Normally, there will be several subcontractors at the site. In such cases, the individual in charge shall be asked to identify them and to provide the name of the individual in charge of each subcontractor's operations at the site. This person shall also be requested to notify such individuals immediately of the inspection and to ask them to assemble in the general contractor's office or some other suitable place to discuss the inspection with the CO. Although the inspection shall not be postponed or substantially delayed because of the unavailability of one (or more) representatives, a subcontractor who has not been notified at all of the inspection of his premises shall not be included in the inspection.
- b. Employee Representative. Authorized representatives of employees for each contractor and subcontractors, if any, shall be informed of the inspection and invited to an opening conference. That conference may be a joint conference with employers at the option of the employers.
- c. Other Agency. The CO shall ascertain whether there is a representative of a Federal or State contractor agency at the worksite. If there is, the CO shall contact the representative, advise him/her of the inspection and request that he/she attend the opening conference.
- d. Closing Conference. The CO shall advise all employers and the employee representatives that a closing conference will be held with each of them following the complete 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 CO shall 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:

(1) A copy of every complaint, including complaints against subcontractors, shall be provided to the general contractor.

(2) A copy of every complaint against the general contractor shall, if possible, be provided to every subcontractor whose employees may be exposed to the alleged hazard.

(3) A copy of every complaint against a subcontractor shall be provided to that subcontractor and, if possible, to others whose employees may be exposed to the alleged hazard.

(4) Care shall be taken to protect the identity of the complainant including the typing of handwritten complaints and the covering of all signatures.

(5) For further details see procedures outlined in Chapter IX.

3. Selecting Employer and Employee Representatives. The CO shall conduct a walkaround inspection in accordance with the provisions of Chapter III.

a. Authorized Representative. Each employer is entitled to select an authorized representative to accompany the CO 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 shall select the authorized employee representative. If there is no representative, the CO shall normally interview a reasonable number of employees to determine whether hazards exist. A reasonable number of employees shall include at least some employees of each employer and each craft on the job.

b. Employee Interviews. Pursuant to 11 NMAC 5.1.21.E, during the walkaround the CO shall consult with individual employees as well as the employee

representative concerning working conditions, as judged appropriate by the CO.

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 CO 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.

(1) An attempt shall be made to encourage employer and employees to select, respectively, a limited number of representatives for accompaniment purposes. It shall be pointed out by the CO that this arrangement make 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 shall be called in to participate in that phase of the inspection.

(2) The CO 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 CO shall avoid, to the extent possible, inspecting the same areas of the worksite more than once.

d. Too Many Representatives. The CO shall conduct the inspection accompanied by the representatives designed by the employers and employees. However, if during the course of the inspection, the CO determines that, because of the large number of persons involved, the inspection is not being conducted in a n effective manner or that work is being unduly disrupted, the participants shall 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 CO shall resume the inspection with such representatives.

F. Closing Conference.

1. General. Upon completion of the inspection, the CO shall 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. (See Chapter II for further details.)
2. Contractor Names and Addresses. The CO shall make certain before leaving the worksite that he has obtained the names and addresses of the general contractor and all other employers at the worksite who may be cited for violations.

G. Citations and Penalties.

1. Mailing. Upon the completion of citations and notifications of penalties, the original OSHA-2 for each employer shall be sent to the employer's home office or branch office.
2. Where to Post Citations. At many construction sites, the employer (whether prime contractor or subcontractor) provides a trailer or other worksite office. Where such a facility is provided and employees are likely to be in the vicinity of the facility on a daily basis, the citation shall be posted at that location.
  - a. Other Location. A copy of the citation shall also be posted at any other location of the employer where employees are required to report on a daily basis. In some situations, such a location would be the employer's main or branch office; in other situations, such as highway construction, the location would be the place where employees actually work.
  - b. No Place to Post Citation. Where no obvious place for posting the citation exists (such as in highway construction where the trailer may be a considerable distance away and employees do not report to the trailer) the employer shall be required to furnish a suitable object on which to post the citation in a conspicuous location or immediately adjacent to the worksite. In any case, where the citation will be exposed to rain or snow, the citation shall be protected from the elements.