DEPARTMENT OF CORRECTIONS

Policy Number: 105.127
Title: OSHA Site Visit Guideline
Effective Date: 12/17/19

PURPOSE: To provide procedures for participating in and responding to Minnesota Occupational Safety and Health Administration (OSHA) site visits.

APPLICABILITY: Department-wide

DEFINITIONS:
Abatement – process of correcting identified deficiencies.

Authorized employee representative – designated employee representative during an OSHA site visit opening conference, walk around, and closing conference.

Citation – OSHA notification of alleged standard violation, including deadline for violation abatement, to employer/employees.

Closing conference – meeting at conclusion of site visit when the occupational safety and health investigator (OSHI) discusses all unsafe or unhealthful conditions observed during the inspection, including violations for which a citation and penalty may be issued, with the employer and authorized employee representative.

Employer representative – designated department representative during the opening conference, walk around, and closing conference.

Occupational safety and health investigator (OSHI) – OSHA's compliance safety representative.

Penalties – fines based on severity and probability of injury likely to result from an employee exposure to the cited hazard. Violations and monetary penalties are categorized as follows:

A. Other than serious – when only a minor injury or illness has resulted or would reasonably be expected to result from an employee's exposure to a violation of a standard.

B. Serious – death or serious physical harm has resulted or would reasonably be expected to result from an employee exposure to the cited hazard.

C. Willful – employer intentionally and knowingly exposes employees to harm. In order to cite a willful violation, the OSHI collects evidence that the employer is aware a hazardous condition exists, knows the condition violates a standard or other obligation of Minn. Stat. Ch. 182 and does not make a reasonable effort to eliminate it. No credit is given for good faith on a willful violation.

D. Repeated – serious or non-serious violation exposing employees to harm where, upon re-inspection, the same standard or a substantially similar standard is found in violation at the same establishment within a three-year period, and the original citation has become a final order.

E. Failure-to-abate – failure to correct (abate) a prior violation, which may bring an additional penalty for each day the violation continues beyond the prescribed abatement date.

F. Fatality penalty – when any serious, willful, repeated or failure-to-abate violation causes or contributes to the death of an employee, the minimum total nonnegotiable fine is assessed for all citations connected to the death of the employee if there is a willful or repeated violation, or if there is no willful or repeated violation. Violations of Minn. Stat. §182.653, subd. 2, are exempt from the required minimum penalty.

Walk around – OSHI, accompanying representatives, and authorized employee representative(s) on an inspection of work site areas for safety or health hazards.

PROCEDURES:

A. Site visits

1. Upon occupational safety and health investigator (OSHI) arrival:

a) Staff must sign-in, issue a visitor badge to the occupational safety and health investigator (OSHI) as appropriate, notify the person-in-charge (warden/superintendent, district supervisor or designee), and notify the department safety director.

(1) The person-in-charge contacts the appropriate assistant commissioner or deputy commissioner and ensures the site safety administrator is contacted.

(2) If the site's safety administrator is unavailable, staff must attempt to contact another site's site safety administrator, if this person is providing coverage, or the department safety director at central office.

(3) The person in charge verifies the OSHI's credentials by contacting MNOSHA offices at 651-284-5050.

(4) The OSHI may bring in photographic equipment.

b) Upon notification of the OSHI's arrival, department representatives meet with the inspector and escort the investigator to a location for the opening conference.

c) The department representatives must also invite the designated authorized employee representative to the opening conference.

(1) The employee labor union(s) president(s) for the facility or site normally designates employee representatives for OSHA site visits.

(2) The occupational safety and health investigator (OSHI) has final authority to determine the appropriate employee representatives.

d) If the site visit is prompted by an employee complaint, OSHA is required to provide a copy of the complaint prior to the start of the inspection.

2. Opening conference:

a) The person-in-charge, warden, associate warden(s), site safety administrator or designee(s) must attend the opening conference. The authorized employee representative has the option to attend the opening conference.

b) The person-in-charge must inquire as to the purpose of the visit, the scope of the inspection, and the standards that apply. The person-in-charge must request a copy of any employee complaint, if applicable.

3. Walk around:

a) The OSHI and accompanying department personnel inspect the site work areas for safety or health hazards.

b) A walk around may cover part or all of an establishment even if the inspection resulted from a specific complaint, fatality, or catastrophe.

c) The OSHI determines the route and duration of the inspection. The OSHI must attempt to minimize work interruptions while talking with employees.

(1) The employer or employees must not attempt to lead the OSHI to or away from certain areas.

(2) Staff must allow the OSHI to view what is requested.

d) The employer representative is responsible to note any unsafe or unhealthful working conditions and possible abatement methods discussed by the OSHI, and to initiate corrective action as soon as possible.

e) If the visit was generated by a complaint, the OSHI addresses the specific issue that was brought to attention. The OSHI may also cite other hazards identified during the visit. If the OSHI finds a violation in open view, the OSHI may ask permission to expand the inspection.

f) Even though some apparent violations detected by the OSHI may be corrected immediately, these apparent violations may still serve as the basis for a citation and penalty. However, prompt action may be considered as a mitigating factor during penalty assessment.

g) Accompanying staff must photograph all deficiencies identified by the OSHI.

4. Closing conference

a) At inspection conclusion, the OSHI conducts a closing conference with the department representatives and the authorized employee representative.

b) The OSHI discusses all unsafe or unhealthful conditions observed during the inspection and indicates violations subject to a citation and penalty. The OSHI may explain the basis for penalty calculation but may not indicate any specific penalties.

c) When appropriate, the person-in-charge must produce records to show compliance efforts and provide information to the OSHI that may help the Occupational Safety and Health Administration (OSHA) determine how much time may be needed to abate an alleged violation.

d) The OSHI may inform the department personnel of contestation rights and the procedure to have the abatement time extended.

B. Post-visit activities

1. Response to citations

a) The department safety director/designee must review and approve all responses to OSHA.

b) The OSHI prepares a report of inspection findings including the basis for all proposed citations and penalties.

c) The employer receives a citation and notification of penalty and progress report (OSHA forms) by certified mail.

d) The employer must post a copy of each citation at or near the place where the violation occurred for a minimum of 20 days or until the violation is corrected, whichever is longer, (even if the citation is contested) until the review commission has issued a final order vacating the citation.

e) Upon receiving a citation, the employer must correct the cited hazard by the abatement date listed on the citation, unless contesting the citation or abatement date. If there is no contest, the employer may be allowed to use the expedited informal settlement agreement (OSHA form) and thereby reduce the assigned penalty amount by up to 30 percent.

f) Factors beyond the employer's control (such as parts on back order) may prevent completion of corrections by the abatement date. In such a situation, the employer may file a petition for modification of abatement (PMA) (OSHA form). Instructions for submission of PMA are listed on the citation received by the employer.

2. Abatement

a) The employer must correct cited hazards by the abatement date unless the citation or abatement date is being contested.

b) Within 30 calendar days of receiving a citation, the employer must submit to OSHA a progress report about the correction of alleged violations that were not immediately abated.

c) The progress report must state the specific corrective action taken for each cited item, date the action was completed and the anticipated abatement date of all uncompleted items.

d) The employer must submit additional written progress reports every 30 days until all items are fully abated. Progress reports may be submitted by mail or faxed to the area office noted on the progress report form.

e) The employer must notify affected employees and their representatives of the abatement and the right to examine and copy all abatement documents. The employer must post a copy of the progress report at the place where the violation occurred. The progress report must remain posted for 15 days. If required progress

reports are not submitted, the employer may be subject to additional citations, penalties, and/or follow-up inspections.

3. Contestation (employer)
   a) The safety administrator may send the OSHA area director written notification of intent to contest before the OSHA review commission. The notice of intent to contest (OSHA form) must be postmarked within 20 calendar days of the department's receipt of the citation/notice of proposed penalty. Every notice of intent to contest must specify whether the department is contesting the citation, assessment of the type of violation, proposed penalty, or period of time fixed in the citation given for correction of violation.

   b) The notice to contest must be completed according to instructions contained on the citation and on the form.

   c) OSHA arranges an informal conference with the department to discuss the issues of the case and determine if an out-of-court settlement may be negotiated.

4. Appeals
   a) Employees
      (1) Employees may not contest citations, amendments to citations, proposed penalties, or lack of penalties. Employees may contest time allowed for abatement of a hazardous condition.

      (2) Employees may contest the department's PMA.

      (3) Employees must contest the petition within ten working days of the citation's posting or within ten working days after the copy is posted.

      (4) Employee appeal rights are listed on the citation received by the employer and posted in the work area.

   b) Employers
      (1) A written objection must be submitted to OSHA within 15 working days of receiving the citation.

      (2) Employers are encouraged to have informal conferences with the OSHA area director to provide additional information or request further clarification regarding citations.

INTERNAL CONTROLS:

A. All documents regarding complaints, citations, corrective action reports, and other forms relating to an inspection or citation are retained by the site safety administrator.

ACA STANDARDS: 2-CO-3B-01, 2-CO-2A-01

REFERENCES: Minn. Stat. Ch. 182
Occupational Safety and Health Act of 1970, Pub. L. No. 91-596 (codified as amended at 29 U.S.C §§ 651-678 (2004)).
Minn. R. 5210.0480 (2008)

REPLACES: Policy 105.127, "OSHA Site Visit Guideline," 2/3/15.
All facility/unit policies, memos, or other communications whether verbal, written, or distributed by electronic means, regarding this topic.

ATTACHMENTS: None

APPROVALS:
Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Facility Services