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## SAFETY POLICY & PROCEDURE

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# Right of Inspection

# SPP# 1926.03

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### Quick Reference

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#### Quick Reference

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## 1.0 Purpose

The purpose of this safety policy and procedure is to establish guidelines for North Carolina Department of Transportation (NCDOT) employees to cooperate effectively with Occupational Safety and Health Administration (OSHA) compliance inspections and to ensure that OSHA compliance inspections are conducted in a professional and structured manner.

## 2.0 Scope and Applicability

The North Carolina Department of Labor, Division of Occupational Safety and Health, is designated to administer and enforce OSHA within both the private and public sectors in North Carolina. The enforcement of OSHA is accomplished in part by work site inspections conducted by compliance officers.

This safety policy and procedure provides guidelines to be followed when an OSHA inspection occurs. It includes provisions for informing employees about typical OSHA inspections and discussion on the components of an OSHA inspection.

This safety policy and procedure also details the areas of responsibility for managers/unit heads, supervisors, employees, and Safety and Risk Management within NCDOT.

This safety policy and procedure affects every NCDOT employee.

## 3.0 Reference

This safety policy and procedure is established in accordance with the Occupational Safety and Health Act of 1970 which authorizes OSHA to conduct workplace inspections.

## 4.0 Policy

It is the policy of NCDOT to provide the right of entry to any regulatory agency official or its representative to any work site or facility owned or operated by NCDOT upon presentation of appropriate credentials.

## 5.0 General Responsibilities

It is the responsibility of each manager/unit head, supervisor, and employee to ensure implementation of NCDOT's safety policy and procedure on OSHA Inspections. Upon the arrival of any OSHA compliance Office (State or Federal), employees shall notify their Immediate Supervisor, County Maintenance Engineer and Safety Staff. The CME and/or Safety Consultant/Officer shall notify the respective Department Head and Division Engineer. If immediately needed, they shall notify Safety and Risk Management. Safety & Risk Management shall notify their Legal Counsel. It is also the responsibility of each NCDOT employee to report immediately any OSHA inspection activity to his or her supervisor if they are noted on the jobsite with a contractor.

## 6.0 Procedure

This section provides applicable definitions, establishes general provisions, and identifies specific responsibilities required by NCDOT's safety policy and procedure on OSHA Inspections.

### 6.1 Definitions

#### **Compliance Officer**

A representative of OSHA who has been trained and has been authorized to conduct workplace safety inspections.

#### **OSHA**

Occupational Safety and Health Act. In North Carolina, the OSHA Act is administered by the North Carolina Department of Labor (NCDOL).

#### **Safety and Risk Management**

The central office of Safety and Risk Management for NCDOT or a member of the central Safety & Risk Management team for NCDOT.

#### **Types of Inspections (Defined)**

1. **Employee Complaint Inspection** – Employee or former employee files a complaint alleging a violation of OSHA standard in their workplace.
2. **Programmed Inspection** – OSHA schedules their Program Inspections of workplaces based on historical DART (Days Away from Work and Restricted Work or Job Transfer) rates. This is the most common type of Inspection.
3. **Follow-Up Inspection** – To determine if violation cited by prior Inspection has been corrected.
4. **Investigation Inspection** – To determine if violation of OSHA standards resulted in event of workplace fatality or hospitalization of employee.
5. **Imminent Danger Inspection** – If an OSHA compliance officer observes situation at worksite where a danger of serious harm or fatality may be present.

### 6.2 General Provisions

This section details the provisions of this safety policy and procedure with each provision discussed in a separate subsection. These provisions are:

- Training
- Validating OSHA Officers' Credentials
- NCDOT Notification Process
- Opening Conference
- OSHA Inspection Process
- Closing Conference
- Citation and Notification of Penalty
- Request for Informal Conference
- Contesting of Citation

## 6.2.1 Training

NCDOT OSHA Inspection Process Training Video is available in LMS for Division and Unit management and safety staff that may be required to participate in an OSHA inspection. The training video covers the following:

- How a typical OSHA compliance inspection is conducted
- Employees' responsibilities when an OSHA compliance officer arrives on a job site

## 6.2.2 Validating OSHA Compliance Officer's Credentials

OSHA compliance officers should present their credentials once they arrive on jobsites or at facilities for an inspection. Employees should ask to see their identification if it is not presented. As needed, NCDOL can be called to verify the identity of the compliance officer.

The OSHA compliance officers should be asked to wait for the assigned qualified safety professional who has been notified prior to the start of inspection process. Let the OSHA compliance officer know what the estimated response time by the safety professional may be.

## 6.2.3 NCDOT Notification Process

Your site NCDOT management and assigned safety professional as well as the Safety and Risk Management's office should be contacted immediately in the event of an OSHA inspection. All employees should inform the compliance officer that they are required to notify their supervisor and NCDOT's safety personnel. All employees should make every effort to contact their supervisor and NCDOT's assigned safety professional, so they can be present during the inspection. Once contact is made, request that the inspection process began on arrival of the Division Safety Consultant or Officer and employee representatives. The inspector will likely wait a reasonable amount of time before going ahead with the walkthrough or inspection. If they elect to begin, they shall begin with the Senior Supervisor who shall take detailed notes, photographs and videos or other recording of the equipment and areas inspected by the compliance officer.

In the event your local safety professional is not available, Safety and Risk Management will provide onsite assistance.

## 6.2.4 Opening Conference

The OSHA compliance officer will conduct an initial meeting in which he or she will explain how the site was selected, the purpose and type of inspection for the visit, the scope of the inspection, and the standards that apply. Ensure the scope of the type of inspection is clearly defined.

NCDOT will be asked to select a representative(s) to accompany the officer during the inspection. This representative(s) should be NCDOT managers/unit heads,

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supervisors and a qualified safety professional or a Safety and Risk Management representative, if possible. If needed, NCDOT's legal counsel may also attend.

### 6.2.5 OSHA Inspection Process

The inspection process typically begins with:

- Proof of credentials
- Reason for inspection, which may include:
  1. Imminent Danger Situation
  2. Fatality/Catastrophe (Hospitalization (admitted), Amputation, or Loss of Eye)
  3. Complaint Investigations
  4. Referral Investigations
  5. Programmed Inspections (Based on jobs or occupations with high incident rates.)
- Scope of inspection including description of the areas and/or equipment to be inspected
- Review of Safety records
- Review of site or facility, which may include:
  - Collection of sample gases or noise levels including monitoring of toxic fumes gases or dust.
  - Taking photographs or videos. (The NCDOT representative should take their own time-stamped photos and video of the areas and equipment photographed or examined by the compliance officer. Use of a body camera by DOT representative is encouraged to capture dialog with Compliance Officer during the inspection. This will allow NCDOT to document the conditions at the time of the inspection.
  - Escorting the compliance officer to specific locations if noted based on the opening conference. They are allowed to inspect within the scope of the complaint or programed inspection. If they spot something within their field of vision going to or from a specific area, do not interfere. Do not limit, but do not volunteer additional areas.
- Taking Statements from employees: The compliance officer will interview employees and take statements from selected individuals.
  - By regulatory mandate, NCOSHA can conduct private interviews without management's presence. (Employees may request the presence of a supervisor if needed or request that they speak to a supervisor). Employees are encouraged to be honest when interviewed. They should also know that it is their choice to participate in the interview. They may choose to just simply state their name, address, and advise the officer they do not wish to participate.

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- All employees should respond truthfully to all questions from the compliance officer. If the employee does not know the answer, the employees should simply state, "I do not know. You will need to speak with my supervisor."
- Conducting a closing conference.

### 6.2.6 Closing Conference

At the end of the inspection, the compliance officer will conduct a closing conference. The compliance officer will discuss all unsafe or unhealthful conditions observed during the inspection and will indicate all apparent violations for which a citation and a penalty may be issued or recommended. The compliance officer will inform NCDOT of its rights under the OSHA Act.

If the compliance officer deems that a second closing conference or follow-up is necessary by phone or in person, the DOT Safety Professional will schedule for suitable date when the compliance officer and NCDOT representatives can be present. If the OSHA compliance officer shows up unannounced for a follow-up inspection or second closing conference, ask them to wait for the assigned qualified safety professional who has been notified prior to the start of the inspection.

### 6.2.7 Citation and Notification of Penalty

If the Division or Unit receives a Citation and Notification of Penalty:

- Notify the administrative staff of Safety & Risk Management including the Deputy Director as soon as possible. Provide a copy of the Citation letter and any evidence that may have been gathered during the inspection.
- The Division or Unit will be required to post a copy of the Citation and Notification of Penalty at a location readily observable by all affected employees. Take a time-stamped photograph showing the posting.
- The Division or Unit must not sign the Citation or pay any proposed Penalty amounts without approval of the Executive Leadership delegated authority.

### 6.2.8 Request for Informal Conference

Safety & Risk Management Deputy Director will determine and direct a request for Informal Conference by email to the Division Safety Professional, The Division Safety Professional will make the informal request to the appropriate OSH District Supervisor within (15) working days of receipt of the Citation letter. The Informal Conference will seek to reach a Settlement Agreement satisfactory to both parties. Do not sign an agreement without approval of the Executive Leadership delegated authority.

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## **6.2.9 Contesting of Citation**

If Executive Leadership with delegated authority determines the Settlement Agreement is not acceptable, Safety and Risk Management will consult with our assigned DOJ legal representative prior to any submissions of a Notice to Contest the Citation(s).

## **6.3 Specific Responsibilities**

### **6.3.1 Managers/Unit Heads**

Managers/Unit Heads are responsible for ensuring that adequate funds are available for the purchase of proper equipment and training for compliance with applicable safety policy and procedures. Managers/Unit Heads will ensure they maintain on site Workplace Safety and Safety Policy and Procedure Manuals. Compliance with applicable standard operating procedures and safety policy and procedures will help ensure compliance with applicable OSHA regulations.

Managers/Unit Heads will obtain and coordinate the required training for affected employees. Managers/Unit Heads will also ensure compliance with all applicable safety policy and procedures through their auditing process.

Managers/Unit Heads will contact Safety and Risk Management or their assigned safety engineer as soon as possible when OSHA compliance officers arrive on site.

### **6.3.2 Supervisors**

Supervisors are responsible for ensuring that their employees are aware of what they should do if an OSHA compliance officer arrives for an Inspection.

Speaking to a compliance officer is not a requirement, it is a right. Therefore, supervisors are NOT compelled to answer questions during a private interview with a compliance officer.

### **6.3.3 Employees**

Employees are responsible for informing their supervisors when OSHA compliance officers arrive on site.

Employees should truthfully respond to all questions posed by the compliance officer. Guesses or speculation is not acceptable.

### **6.3.4 Division or Unit Safety Staff**

Division and Unit Safety Staff are qualified Safety Professionals that shall make every effort to attend OSHA Compliance Inspections upon notification of Unit being inspected.

Communications that occur with NCDOL after a walkthrough should make every effort to protect Personal Health Information. If 300 Logs are to be transmitted they should be transmitted utilizing fax, encrypted email, or certified mail.

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The designated safety professional shall be the primary point of contact while the inspection is being conducted.

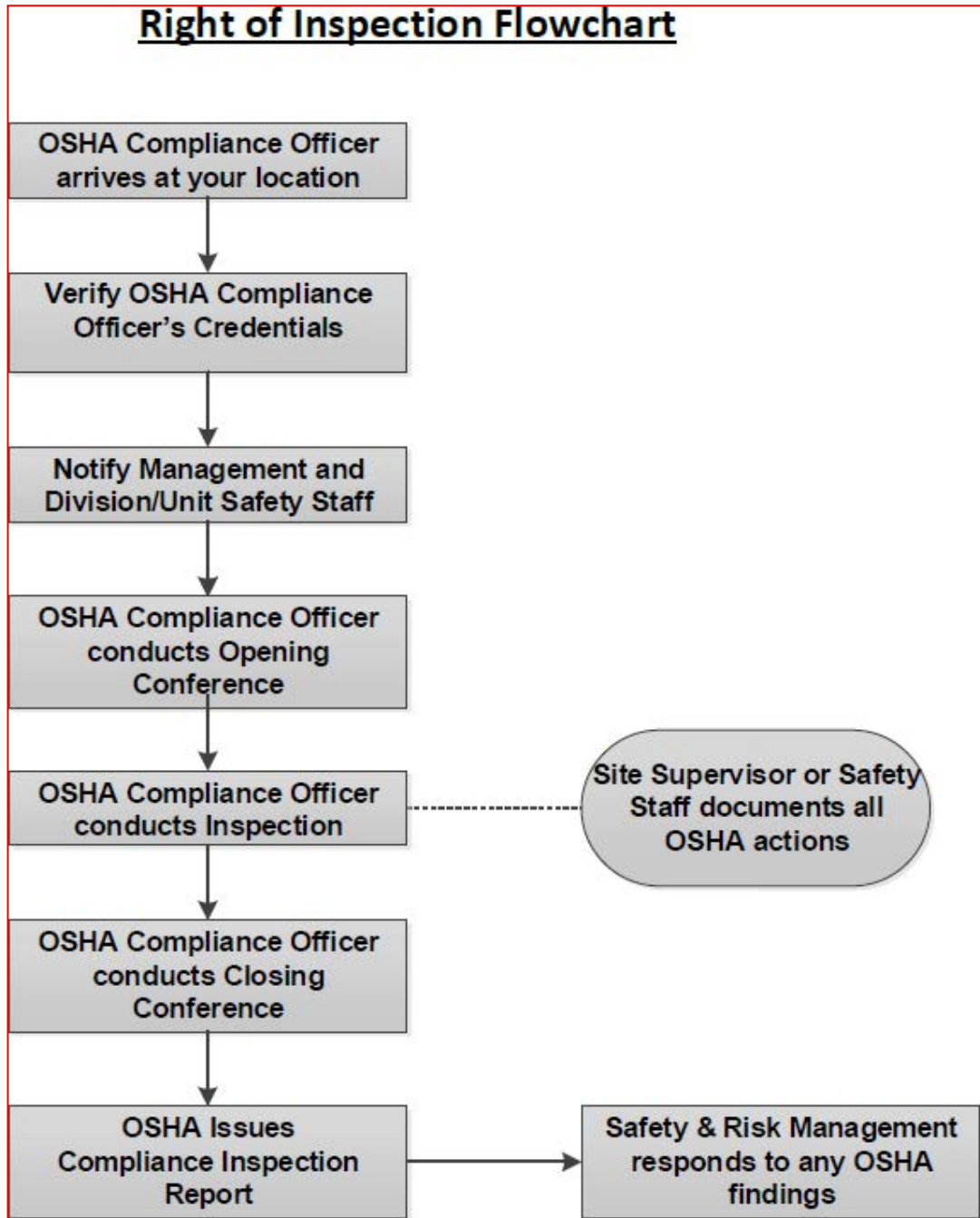
### **6.3.5 Safety and Risk Management**

Safety and Risk Management will provide prompt assistance to managers/unit heads, supervisors, or others as necessary when notified of an OSHA compliance inspection or on any matter concerning an OSHA inspection. Safety and Risk Management will assist in developing or securing the required training. Safety and Risk Management will take a lead role in assessing any outcome of an OSHA inspection and in determining the appropriate follow up action to an OSHA inspection, including but not limited to contesting or settling any citations or penalties arising from an inspection.

The Safety & Risk Management Deputy Director shall review all Division and Unit Citations and Notification of Penalties and determine whether to request an Informal Conference or negotiate a Settlement Agreement. A request for Informal Conference to reach a Settlement Agreement shall be initiated within (15) days of receipt of Citation. If the Settlement Agreement is not acceptable a Notice to Contest will be submitted after consultation with DOT's assigned DOJ legal counsel.

Additionally, safety engineers will provide consultative and audit assistance to ensure effective implementation of this safety policy and procedure.

**Appendix A: Right of Inspection Flowchart**



**Appendix B: NCDOT OSHA Inspection Checklist Form**

Yes    No  
     Did the OSHA Compliance Officer show identification?

**General**

OSHA Compliance Officer's Name \_\_\_\_\_  
Date of Inspection \_\_\_\_\_  
Location of Inspection \_\_\_\_\_  
Time Inspection Began \_\_\_\_\_  
Time Inspection Ended \_\_\_\_\_

What safety and health conditions and practices were examined? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

What records were examined? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Air Samples**

Yes    No  
     Were any air samples taken? If yes, indicate below

Air Sample Log					
Air Sample #	Date	Time	Type of Sample	Location	Work Conditions

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## Noise Measurements

Yes    No

    Were any noise measurements taken? If yes, indicate below.



Noise Measurements Log						
Noise Sample #	Date	Time	Type of Instrument Used	Location	Work Conditions	dB Reading

## Exposure Measurements

Yes    No

    Were any other exposure measurements taken? If so, describe.

Exposure Measurements Log							
Contaminant	Sample ID	Date	Start Time	End Time	Media Measurement Instrument	Location	Work Conditions