OSHA

PLAINTIFF'S EXHIBIT

MGC-456

FROM THE DESK OF:

JACK RYBURN

TO: Mike Bach DATE: 4/24/89

Please process this citation & penalty. The cost of legal aid to contest is not worth the price.

Copy to File
DIHC
JFC

McGCon 1958

Kentucky Labor Cabinet
Department of Workplace Standards
Occupational Safety and Health Program
Division of Compliance
Frankfort, KY 40601

APR 1 9 1989

Citation and Notification of Penalty

3. Issuance Date	4. Inspection Number
04/18/89	104339841
5. Reporting ID	6. CSHO ID
0452110	S0062
7. Optional Report No.	8. Page No.
030-89	1 of 1

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

1. Type of Violation(s)	2. Citation Number
Serious	01

10. Inspection Date(s): 3/7/89 - 3/14/89

11. Inspection Site: Armco, Inc., U. S. 23 N.
Ashland, KY 41101

RECEIVED
APR 2 1 1989

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested

9. To:

McGraw Construction Co., Inc.
and its successors
P. O. Box 2803
Ashland, KY 41101

THE LAW REQUIRES that a copy of this citation be prominently posted in a conspicuous place at or near each place that an alleged violation referred to in the citation occurred. The Citation must remain posted until all alleged violations cited therein are corrected, or for 3 working days*, whichever period is longer.
This Citation describes violations of the Provisions of KRS Chapter 338. The penalty(ies) listed below are based on these violations. You must correct the violations referred to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends, State and Federal holidays) from your receipt of this Citation you mail a notice of contest to the Kentucky Labor Cabinet at the address shown above.

12. Item Number 13. Standard, Regulation or Section of the Act Violated 803 KAR 2:020 adopts by reference 29 CFR Part 1910 803 KAR 2:030 adopts by reference 29 CFR Part 1926	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1		03/07/89	420.00

29 CFR 1926.859(g): During demolition, continuing inspection by a competent person was not made as the work progressed to detect hazards resulting from loosened material and such hazards were not corrected by shoring, bracing, or other effective means:

(a) Stainless steel heat shield approximately thirty-five feet long which was attached to a girder at Armco, Inc. Building 783 was not inspected for stability and collapsed, injuring three (3) employees.

Jack,
Due 15 working days from 4-18.

McGCon 1959

17. Director of Compliance [signature] Program Manager

18. $ 420.00
Total Penalty for This Citation
Make Check or Money Order Payable to: "Kentucky State Treasurer"
Indicate Inspection Number on Remittance

RIGHTS OF EMPLOYEES

Any employee or representative of employees, whose employer has received a citation, may file a written notice of contest with the Division of Compliance contesting the citation, the abatement period or the penalty. All such notices of contest shall be postmarked within 15 working days of the receipt by the employer of the citation and notice of proposed penalty.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Chapter or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Chapter." KRS 338 121(3)(a).

***803 KAR 2:040 the term "Working Day" means Mondays through Friday but does not include Saturdays, Sundays, Federal or State holidays.**

CITATION AND NOTIFICATION OF PENALTY　　KYOSH-2 (Rev 1/84)

ORIGINAL COPY

RECEIVED
APR 2 1 1989

McGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1465 DATE: April 20, 1989

TO: C.J. Ryburn
FROM: R.F. Austin
SUBJECT: Kentucky OSHA Citation
Accident of February 21, 1989

Attached is the citation and notification of penalty we received from the Kentucky OSHA office concerning the job accident of February 21, 1989. I have also attached copies of the three (3) memos recording Mr. Conley's, Kentucky OSHA investigator, site visits.

Payment of this penalty is due to the Kentucky Labor Cabinet by Friday, May 5, 1989.

Ron Austin

Ronald F. Austin
Project Manager

RFA/jc

Attachments

McGCon 1960

Kentucky Labor Cabinet
Department of Workplace Standards
Occupational Safety and Health Program
Division of Compliance
Frankfort, KY 40601

APR 19 1989

Citation and Notification of Penalty

3. Issuance Date	4. Inspection Number
04/18/89	104339841
5. Reporting ID	6. CSHO ID
0452110	S0062
7. Optional Report No.	8. Page No.
030-89	1 of 1

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested

1. Type of Violation(s)	2. Citation Number
Serious	01

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

10. Inspection Date(s): 3/7/89 - 3/14/89

11. Inspection Site:

Armco, Inc., U. S. 23 N.
Ashland, KY 41101

9. To:

McGraw Construction Co., Inc.
and its successors
P. O. Box 2803
Ashland, KY 41101

THE LAW REQUIRES that a copy of this citation be prominently posted in a conspicuous place at or near each place that an alleged violation referred to in the citation occurred. The Citation must remain posted until all alleged violations cited therein are corrected, or for 3 working days*, whichever period is longer.
This Citation describes violations of the Provisions of KRS Chapter 338. The penalty(ies) listed below are based on these violations. You must correct the violations referred to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends, State and Federal holidays) from your receipt of this Citation you mail a notice of contest to the Kentucky Labor Cabinet at the address shown above.

12. Item Number 13. Standard, Regulation or Section of the Act Violated 803 KAR 2 020 adopts by reference 29 CFR Part 1910 803 KAR 2 030 adopts by reference 29 CFR Part 1926 — 14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
9 CFR 1926.859(g): During demolition, continuing inspection by a ompetent person was not made as the work progressed to detect hazards esulting from loosened material and such hazards were not corrected by horing, bracing, or other effective means: (a) Stainless steel heat shield approximately thirty-five feet long which was attached to a girder at Armco, Inc. Building 783 was not inspected for stability and collapsed, injuring three (3) employees.	03/07/89	420.00

McGCon 1961

7. Director of Compliance Walter [signature] Program Manager

18. $ 420.00 Total Penalty for This Citation

Make Check or Money Order Payable to "Kentucky State Treasurer"

Indicate Inspection Number on Remittance

RIGHTS OF EMPLOYEES

Any employee or representative of employees, whose employer has received a citation, may file a written notice of contest with the Division of Compliance contesting the citation, the abatement period or the penalty. All such notices of contest shall be postmarked within 15 working days of the receipt by the employer of the citation and notice of proposed penalty.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Chapter or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Chapter." KRS 338.121(3)(a).

***803 KAR 2:040 the term "Working Day" means Mondays through Friday but does not include Saturdays, Sundays, Federal or State holidays.**

NOTIFICATION OF ABATEMENT OF APPARENT VIOLATIONS

RETURN THIS FORM TO:

Kentucky Labor Cabinet
Division of OSH Compliance
U.S. Highway 127 South
Frankfort, Kentucky 40601
Phone: 502-564-7360

Company: McGraw Construction Co., Inc.
Address: P. O. Box 2803
Ashland, KY 41101

CSHO Number: S0062
Report Number: 030/89
Date of Insp.: 3/7,14/89

DATE BY WHICH ALLEGED VIOLATION(S) MUST BE CORRECTED: March 7, 1989

Citation Number	Item No.	Date Corrected	Description of Corrective Action Taken
1	1	02/21/89	McGraw Construction Company, Inc. has assigned competent personnel to inspect all structural demolition and erection to prevent, to the best of our abilities, such an accident from occurring in the future. McGraw Construction Ashland Field Office has reorganized the weekly safety meetings held with craft and office personnel. The new split safety meeting schedule of 50% at 7:30 a.m. and 50% at noon every Monday, allows our safety personnel to better stress all the items necessary to complete an accident free construction project.

NOTE: This form, when completed, provides notification that the apparent violation(s) discovered during our inspection of your facility has (have) been corrected.

SIGNATURE: Ron Curtis
TITLE: Project Manager
DATE: 4/20/89

McGCon 1962

KENTUCKY LABOR CABINET
Occupational Safety & Health Program
Division of Compliance
Frankfort, Kentucky 40601

IMPORTANT
READ THE FOLLOWING

Subject: Citation(s) for Alleged Occupational Safety and Health Violation(s)

An inspection of a workplace under your operation, ownership, control, or where you have employees working has revealed conditions which we believe do not comply with the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972). The nature of such alleged violation(s) is described in the enclosed citation(s) with references to applicable standards, rules, regulations, and provisions of the said Chapter. These conditions must be corrected on or before the date shown to the right side of each violation therein.

803 KAR 2:125 requires that a copy of the enclosed citation(s) be prominently posted "in a conspicuous place upon receipt" at or near each place a violation referred to in the citation(s) occurred. It must remain posted until all violations cited therein are corrected, or for three working days*, whichever period is longer. A sufficient number of copies of the attached citation(s) should be prepared to permit posting in accordance with the requirements of said regulation. KRS Chapter 338 provides for penalties for violation(s) of the posting requirements. If you contest the citation(s) you may post a notice to this effect near the citation(s) contested.

You have a right to request an informal conference with the Division of OSH Compliance concerning the results of the inspection (citation, penalty, abatement dates, etc.). Please direct correspondence to the office at the address listed above or call 502-564-7360 to request such conference. Please note that the informal conference should be held within 15 working day* period from the date of your receipt of the citation(s) for reasons noted in the following paragraph. Therefore, the request for the conference should be made as soon as possible following receipt of the citation(s).

If a penalty(ies) has been proposed as a result of the cited violation(s), it is contained within the enclosed citation(s). You have the right to contest the citation(s), the proposed penalty(ies), or both, before the Kentucky Occupational Safety and Health Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citation(s) and proposed penalty(ies). IF YOU DO CONTEST, YOU MUST SO NOTIFY THE DIVISION OF OSH COMPLIANCE WITHIN 15 WORKING DAYS* AFTER RECEIPT OF THE NOTICE REGARDING ALLEGED VIOLATION(S) AND/OR PROPOSED PENALTY(IES). If you fail to contest within the 15 working day period, the citation(s) and the proposed assessment of penalty(ies) shall be deemed to be a final order of the Review Commission and not subject to review by any court or agency.

If an employer contests the citation(s), the abatement period specified therein does not begin to run until the date of the Commission's final order in the case PROVIDED the employer initiated his contest in good faith and not solely for delay or avoidance of penalties.

An employee or representative of employees may file a written notice to contest the citation(s) and/or penalty(ies) within 15 working days* after receipt of the citation(s). Contest filed by an employee or representative of employees will not suspend the abatement period specified in the citation(s).

Alleged violation(s) that are not contested shall be corrected within the abatement period specified in the citation. A follow-up inspection may be made for the purpose of ascertaining that the employer has posted the citation(s) as required by KRS Chapter 338 and corrected the alleged violation(s) and the date of such action. Failure to correct an alleged violation(s) within the abatement period may result in a further proposed assessment of penalties. Full credit where feasible has been applied to the assessment of penalty(ies). Timely correction of an alleged violation(s) does not further alter the proposed penalty(ies) shown.

Correction of alleged violation(s) which have an abatement period of 30 days or less should be reported in writing to the Director of Compliance promptly upon correction. Reports of corrections should show specific corrective action on each such alleged violation and the date of such action. On alleged violation(s) having an abatement date of more than 90 working days*, a written progress report should be submitted at the end of each 90 day period. The progress report should detail what has been done, what remains to be done, and the time needed to fully abate each violation. When the alleged violation(s) is fully abated, the Director of Compliance shall be so advised.

KRS 338 provides that whoever knowingly gives false information pursuant to matters contained in this Chapter is subjected to a fine of not more than $10,000, imprisonment up to 6 months, or both.

If you wish additional information, you may direct such requests to the address listed above.

*Under the Occupational Safety and Health Act, the term "Working Day" means Mondays through Fridays but does not include Saturdays, Sundays, State or Federal Holidays.

McGCon 1963

KY-OSH-2C
Revised 7-86

McGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1465 DATE: March 14, 1989

TO: C.J. Ryburn

FROM: L.E. Walsh

SUBJECT: KOSHA Visit

At 1:10 p.m. this afternoon, Mr. Scott Conley, KOSHA Investigator, and Mr. Charles Holman, Armco Safety Technician (observer only), arrived on-site. We made a thirty (30) minute walk through of the job site - there were no violations; "everything looks in order".

At 1:40 p.m. Mr. Conley held a private meeting with the Ironworkers Steward, Mr. Doug Daniel, and the Laborers Steward, Mr. Bob Corey.

After his private meeting with the Stewards, Mr. Conley discussed the only possible violation that McGraw could be cited with. It is procedure 1926.859 (g) - Overstress of Structural Steel under Demolition and Lack of Proper Inspection. Mr. Conley left us copies of Post Inspection Guide, Kentucky OSHA Standards, and Kentucky OSHA Standards Supplements. Mr. Conley said we would receive a copy of his report and possible violation as soon as it was processed by the Main KOSHA Office.

L. E. Walsh

LeRoy E. Walsh
Mechanical Superintendent

Ron Austin

Ronald F. Austin
Project Manager

LEW/jc

cc: D.H. Kramer R. Chesbro
J.F. Crum File 1465

McGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1465 DATE: March 14, 1989

TO: C.J. Ryburn

FROM: L.E. Walsh

SUBJECT: KOSHA Visit

At 9:50 a.m. Mr. Scott Conley, Kentucky OSHA Investigator, and Mr. Charles M. Holman, Armco Safety Technician, were on-site. Mr. Holman was present as an observer only.

Mr. Conley, Mr. Holman and myself drove to the scrap yard to examine the heat shield that fell causing the February 21, 1989 accident. Mr. Conley measured the piece for length and inspected it.

After the inspection, we returned to the job site and took a walk through inspection of approximately fifteen (15) minutes. Mr. Conley stated that everything looked in order and that he would return on Tuesday, March 14, 1989 to complete the paperwork on the accident.

LeRoy E. Walsh
Mechanical Superintendent

Ronald F. Austin
Project Manager

LEW/jc

cc: D.H. Kramer R. Chesbro
J.F. Krum File 1465

McGRAW CONSTRUCTION COMPANY, INC./ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1465 DATE: March 8, 1989

TO: C.J. Ryburn
FROM: L.E. Walsh
SUBJECT: Incident Report

Reference: Accident of February 21, 1989

At 2:10 p.m. on Tuesday, March 7, 1989 Mr. Scott Conley, State of Kentucky OSHA Inspector, was on-site to investigate the accident of February 21, 1989 in building 783. He was accompanied by Mr. Jim Hodges of Armco Safety Department. Mr. Hodges was along as an observer only.

Mr. Conley requested to see our 1989 and 1988 OSHA Accident Logs and the accident reports for the three men involved in the February 21, 1989 accident.

Mr. Conley then interviewed Mr. Angell and Mr. See, in private, concerning the accident. Mr. Conley said he would call and set up an interview with Mr. McCoy.

At 2:45 p.m. Mr. Conley, Mr. Hodges and myself walked through the job site to the area where the accident occurred. Mr. Conley made comments on the use of one grinder without guard and lack of full face shield by two men using surface grinders. He said the job looked very well kept and that he would be returning on Monday, March 13, 1989 for a complete inspection of the job site.

LeRoy E. Walsh
Mechanical Superintendent

Ronald F. Austin
Project Manager

LEW/jc

cc: D.H. Kramer R. Chesbro
J.F. Crum File 1465

McGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1465 DATE: March 14, 1989

TO: C.J. Ryburn
FROM: L.E. Walsh
SUBJECT: KOSHA Visit

At 9:50 a.m. Mr. Scott Conley, Kentucky OSHA Investigator, and Mr. Charles M. Holman, Armco Safety Technician, were on-site. Mr. Holman was present as an observer only.

Mr. Conley, Mr. Holman and myself drove to the scrap yard to examine the heat shield that fell causing the February 21, 1989 accident. Mr. Conley measured the piece for length and inspected it.

After the inspection, we returned to the job site and took a walk through inspection of approximately fifteen (15) minutes. Mr. Conley stated that everything looked in order and that he would return on Tuesday, March 14, 1989 to complete the paperwork on the accident.

LeRoy E. Walsh
Mechanical Superintendent

Ronald F. Austin
Project Manager

LEW/jc

cc: D.H. Kramer R. Chesbro
J.F. Krum File 1465

McGRAW CONSTRUCTION COMPANY, INC./ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1465 DATE: March 14, 1989

TO: C.J. Ryburn
FROM: L.E. Walsh
SUBJECT: KOSHA Visit

At 1:10 p.m. this afternoon, Mr. Scott Conley, KOSHA Investigator, and Mr. Charles Holman, Armco Safety Technician (observer only), arrived on-site. We made a thirty (30) minute walk through of the job site - there were no violations; "everything looks in order".

At 1:40 p.m. Mr. Conley held a private meeting with the Ironworkers Steward, Mr. Doug Daniel, and the Laborers Steward, Mr. Bob Corey.

After his private meeting with the Stewards, Mr. Conley discussed the only possible violation that McGraw could be cited with. It is procedure 1926.859 (g) - Overstress of Structural Steel under Demolition and Lack of Proper Inspection. Mr. Conley left us copies of Post Inspection Guide, Kentucky OSHA Standards, and Kentucky OSHA Standards Supplements. Mr. Conley said we would receive a copy of his report and possible violation as soon as it was processed by the Main KOSHA Office.

L. E. Walsh

LeRoy E. Walsh
Mechanical Superintendent

Ron Austin

Ronald F. Austin
Project Manager

LEW/jc

cc: D.H. Kramer R. Chesbro
J.F. Crum File 1465

McGCon 1968

MCGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. 1429, 1430, 1450 DATE: 01-24-89

TO: R. S. Slade

FROM: C. J. Ryburn

SUBJECT: **OSHA CITATION AND NOTIFICATION OF PENALTY INSPECTION #017731688 DATED 01-18-89**

Please provide the response required for the attached citation. Since no monetary penalty was assessed, you will not be required to send a check.

CJR/cao

Attachments

cc: D. H. Kramer
L. J. Warner
N. R. Patel
M. A. Bach
C. J. Vanderpool
K. R. Blevins
V. N. Handley

U.S. Department of Labor

Occupational Safety & Health Administration
Room 324, FBUSCH
550 West Fort Street, Box 007
Boise, Idaho 83724

Telephone: (208) 334-1867
Reply to the Attention of:

January 15, 1989

McGraw Construction Company Inc.
Post Office Box 370
Middleton, OH 45044

Dear Sir:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussion in person or by telephone.

You will note on page 9 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 10 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation. The running of this contest period is not interrupted by an informal conference You must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so.

CERTIFIED
P 919 280 063
MAIL

McGCon 1970

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the citations as soon as the time, date, and place of the informal conference have been determined.

Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Sincerely,

for Roger B. Sams
Ryan E. Kuehmichel
Area Director

Enclosures

McGCon 1971

NOTICE TO EMPLOYEES

An informal conference has been scheduled with OSHA to discuss the citations issued on January 18, 1989. The conference will be held at the OSHA office located at Federal Building/USCH - Room 324, Boise, ID on ______________________ at ____________________.

N O T I C E

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the Department of Labor (29 CFR Part 20), effective March 8, 1985, the Occupational Safety and Health Administration is required to assess interest, penalties, and fees to cover the administrative costs of collecting delinquent penalties for violations of the Occupational Safety and Health Act.

Interest charges are assessed at an annual rate determined by the Secretary of the Treasury. This rate is currently 6 %.

Interest shall accrue from the date on which the citation and penalty (as proposed or adjusted) became a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the citation and proposed penalty, unless you file a notice of contest). Interest charges shall be waived if the full amount owed is paid within 30 days of the final order.

After 30 calendar days, the debt shall be delinquent unless a satisfactory payment arrangement has been made. Agencies of the Department of Labor are required to assess the administrative costs of recovering delinquent debts. If the debt remains delinquent for more than 90 calendar days, an additional penalty of six percent (6%) per annum shall be assessed accruing from the date that the debt became delinquent.

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties shown on the citation. Make your check or money order payable to: "DOL- OSHA." Please indicate OSHA's Inspection Number and Reporting ID (see citation) on the remittance.

Sincerely,

Roger B. Sand

for Ryan E. Kuehmichel
Area Director

Date: January 18, 1989

McGCon 1973

MCGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO.

DATE: 01-18-89

TO: DISTRIBUTION

FROM: C. J. Ryburn

SUBJECT: **OSHA REPORTING REQUIREMENTS, WORKERS COMPENSATION REPORTING REQUIREMENTS AND McGRAW REPORTING REQUIREMENTS AS APPLIES TO ACCIDENTS AND INCIDENTS ON McGRAW PROJECTS**

The following requirements for OSHA reporting are to be handled by each construction project site superintendent:

FORM OSHA 200

This form must be completed for each accident involving a personal injury or job-related illness on your project. You are to provide complete information in accord with the instructions on this form. Particular attention should be paid to first-aid cases. You are required to furnish first-aid on your project. If you do not employ persons who qualify to provide first-aid, select responsive persons and provide training to qualify same. If you do not have a doctor engaged to provide the services required for doctor cases, secure the services of a doctor. If you have not established use of an emergency room, you should secure such by making contact with the local hospital.

Please note the recordable injuries and illnesses, and also those that are not recordable.

The OSHA 200 Form is to be kept current in your work place and on display in accord with the regulations.

FORM FIRST REPORT OF INJURY

The First Report of Injury Form must be completed for each injury or illness. The form must be filled out completely for every item that requires an entry to be made. The requirement for completeness is imperative. Care must be taken to correct the sloppy documentation.

FORM IMS REPORT OF ACCIDENT OR THEFT

The Form IMS-503 must be completed for every item that requires an entry. Care must be taken to correct the sloppy documentation.

MCGRAW
CONSTRUCTION COMPANY INC
ENGINEERS & CONSTRUCTORS

You should keep the Goldenrod copy for your file. Send the remaining copies to the Middletown office to the attention of Carol Vanderpool.

CJR/cao

DISTRIBUTION:

Bill Brewer
Mark Brewer
Bruce Hilt
Ron Austin
Linvel Estep
Dick Slade
Larry Arnett
John Blount
Don Stutts
Bobbie Brewer

cc: D. H. Kramer
N. R. Patel
L. J. Warner
J. D. Chivers
M. A. Bach
C. J. Vanderpool
C. S. Heffner

McGRAW CONSTRUCTION COMPANY, INC./ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO. DATE: 01-30-89

TO: **DISTRIBUTION**

FROM: C. A. Osborne Chris

SUBJECT: **OSHA 200 REPORT FOR 1988**
ADDITIONAL INFORMATION/VERIFICATION

Attached please find copies of the completed OSHA 200 Report for 1988. I have only attached the pages that pertain to your jobsite. As you will note, the majority of the entries have been crossed out. These were reported injuries, when in reality, they were "first-aid only" cases. These "first-aid only" cases **ARE NOT** recordable to OSHA.

Please look over these entries, especially the ones that have been crossed out, and respond no later than Tuesday, January 31, 1989 if you have additional information which would change the status to a reportable injury or illness.

As an assist in determining whether or not an illness or injury is recordable, I have also attached some pages from the Recordkeeping Guidelines for Occupational Injuries and Illnesses, a publication I will be glad to secure for you if you desire.

Please FAX any additional information you may have to me prior to the cutoff date of January 31, 1989. If you are in agreement with the information contained in this report, **POST ONLY THE RIGHT SIDE OF EACH SHEET IN YOUR TRAILER BY FEBRUARY 1, 1989. THIS IS OSHA REQUIRED!**

If you need additional information, feel free to give me a call.

/cao

DISTRIBUTION: D. H. Kramer
C. J. Ryburn
Bill Brewer
Mark Brewer
Ron Austin
Dick Slade
Don Stutts
Larry Arnett
Linvel Estep
Bobbie Brewer
Bruce Hilt
Elmer Helton
John Blount

McGCon 1976

The instructions also refer to recording illnesses which were "diagnosed or recognized."

Therefore, for OSHA recordkeeping purposes occupational illnesses include any abnormal condition or disorder, other than one resulting from an occupational injury, caused by exposure to environmental factors associated with employment. Illness exposures ultimately result in conditions of a chemical, physical, biological, or psychological nature.

Occupational illnesses must be diagnosed to be recordable. However, they do not necessarily have to be diagnosed by a physician or other medical personnel. Diagnosis may be by a physician, registered nurse, or a person who by training or experience is capable to make such a determination. Employers, employees, and others may be able to detect some illnesses, such as skin diseases or disorders, without the benefit of specialized medical training. However, a case more difficult to diagnose, such as silicosis, would require evaluation by properly trained medical personnel.

In addition to recording the occurrence of occupational illnesses, employers are required to record each illness case in 1 of the 7 categories on the front of the log.

The back of the log form contains a listing of types of illnesses or disorders and gives examples for each illness category. These are only examples, however, and should not be considered as a complete list of types of illnesses under each category. See appendix A, Glossary of Terms, for a list of these illness categories.

Recording and classifying occupational illnesses may be difficult for employers, especially the chronic and long-term latent illnesses. Many illnesses are not easily detected; and it is often difficult to determine whether an illness is work related. Also, employees may not report illnesses because the symptoms may not be readily apparent, or because they do not think their illness is serious or work related.

Lack of expertise in occupational medicine is not limited to employers and employees. Few doctors in private practice have adequate training in occupational medicine. Even physicians in the workplace have difficulty determining the influence of a job on a worker's health.

The following material is provided to *assist* in detecting occupational illnesses and in determining their work relationship.

1. *Detection and diagnosis of occupational illnesses.* An occupational illness is defined in the instructions on the log as any work-related abnormal condition or disorder (other than an occupational injury). Detection of these abnormal conditions or disorders, the first step in recording illnesses, is often difficult. When an occupational illness is suspected, employers may want to consider the following:

a. A medical examination of the employee's physiological systems, for example:

- Head and neck
- Eyes, ears, nose, and throat
- Endocrine
- Genitourinary
- Musculoskeletal
- Neurological
- Respiratory
- Cardiovascular, and
- Gastrointestinal;

b. Observation and evaluation of behavior related to emotional status, such as deterioration in job performance which cannot be explained;

c. Specific examination for health effects of suspected or possible disease agents by competent medical personnel;

d. Comparison of date of onset of symptoms with occupational history;

e. Evaluation of results of any past biological or medical monitoring (blood, urine, other sample analysis) and previous physical examinations;

f. Evaluation of laboratory tests: Routine (complete blood count, blood chemistry profile, urinalysis) and specific tests for suspected disease agents (e.g., blood and urine tests for specific agents, chest or other X-rays, liver function tests, pulmonary function tests.); and

g. Reviewing the literature, such as Material Safety Data Sheets and other reference documents, to ascertain whether the levels to which the workers were exposed could have produced the ill effects.

In addition, the National Institute for Occupational Safety and Health (NIOSH) has prepared a Sentinel Health Event (Occupational) List (SHEO) which encompasses disease conditions potentially linked to the workplace. A Sentinel Health Event is defined by NIOSH as a disease, disability, or untimely death which is occupationally related and whose occurrence may: 1) provide the impetus for epidemiologic or industrial hygiene studies; or 2) serve as a warning signal that materials substitution, engineering control, personal protection, or medical care may be required. The list includes only those conditions for which NIOSH found "objective documentation of an associated agent, industry, and occupation . . . in the scientific literature." NIOSH has indicated that the list will be expanded in the future.

Appendix C of this report contains a table of work-related illnesses based upon the NIOSH Sentinel Health Event (Occupational) List. The table is provided for *informative purposes only, to assist* employers in recognizing certain illnesses and diseases. The table lists illness conditions, the industry and/or occupation where each condition is likely to occur, symptoms associated with each condition, the agent likely to cause the condition, and the appropriate illness column to be checked on the log, OSHA No. 200. IT DOES NOT INCLUDE EVERY CONDITION, ILLNESS, OR DISEASE THAT MAY RESULT FROM AN EXPOSURE IN THE WORK ENVIRONMENT. FURTHER, IT SHOULD NOT BE INTERPRETED TO MEAN THAT A SPECIFIC CONDITION CAN ONLY BE CONTRACTED IN THE INDUSTRIES OR OCCUPATIONS LISTED. IT ALSO DOES NOT MEAN THAT EVERY CONDITION LISTED IS RECORDABLE IF EXPERIENCED BY EMPLOYEES IN THESE INDUSTRIES AND/OR OCCUPATIONS. FOR THE CASE TO BE OSHA RECORDABLE, EMPLOYERS MUST STILL ESTABLISH THAT THE CONDITION IS A RESULT OF AN EXPOSURE IN THEIR WORK ENVIRONMENT.

2. *Determining whether the illness is occupationally related.* The instructions on the back of the log define occupational illnesses as those "caused by environmental factors associated with employment." In some cases, such as contact dermatitis, the relationship between an illness and work-related exposure is easy to recognize. In other cases, where the occupational cause is not direct and apparent, it may be difficult to determine accurately whether an employee's illness is occupational in nature. In these situations, it may help employers to ask the following questions:

a. Has an illness condition clearly been established?
b. Does it appear that the illness resulted from, or was aggravated by, suspected agents or other conditions in the work environment?
c. Are these suspected agents present (or have they been present) in the work environment?
d. Was the ill employee exposed to these agents in the work environment?
e. Was the exposure to a sufficient degree and/or duration to result in the illness condition?
f. Was the illness attributable solely to a nonoccupational exposure?

Employers may want to check the "Material Safety Data Sheets" for those substances suspected of causing employee illnesses to verify the relationship between the exposure and the resulting symptoms.

E–1. Q. Should employers record only those occupational illnesses which require treatment beyond the initial day of onset of illness?

A. No. Any diagnosed occupational illness reported to the employer is recordable, whether or not medical treatment is given or lost workdays are involved.

E–2. Q. Do occupational illnesses have to be diagnosed by a physician to be recordable?

A. No. "Diagnosis" is commonly defined as the act or process of detecting and deciding the nature of a diseased condition by examination of the symptoms. Diagnosis may be by a physician, registered nurse, or a person who by training or experience is capable to make such a determination.

E–3. Q. Does this mean that employers are capable of diagnosing occupational illnesses?

A. Yes. However, their ability to properly diagnose cases depends upon their training and experience and the nature of the particular illness in question. Employers, employees, and others may be able to detect various illnesses, such as skin diseases or disorders, without the benefit of specialized medical training. However, a case more difficult to diagnose, such as silicosis, would require evaluation by properly trained medical personnel.

E–4. Q. What is meant by an "abnormal condition or disorder"?

A. An "abnormal condition or disorder" is an atypical condition of the employee which may be of either a chemical, physical, biological, or psychological nature. These conditions are recordable when they result from exposure in the work environment.

E–5. Q. Are the illnesses listed in appendix C the only illnesses that need be recorded on the log, OSHA No. 200?

A. No. These are a listing of disease conditions for which NIOSH found objective documentation of association between occupation/industry/agent in the scientific literature. In addition to the Sentinel Health Event (Occupational) List, many other abnormal conditions or diseases may be OSHA recordable.

E–6. Q. Do employers record only those illnesses directly caused by work-related exposures, or is it sufficient for the work exposure to be a contributing factor to an illness or to aggravate a preexisting illness condition?

A. Yes, it is sufficient for the exposure to be a contributing and/or aggravating factor to the illness for the case to be recordable.

E–7. Q. What are the reporting requirements for test results which indicate an elevated blood-lead level?

A. Employers are required to conduct surveillance and monitoring tests for employees working with hazardous substances, such as lead. However, test results showing elevated blood-lead levels are not recordable unless the elevated blood-lead levels exceed 50 micrograms per 100 grams of whole blood.

On the other hand, employers are still required to record cases where the worker: (1) Has symptoms of lead poisoning, such as colic, nerve, or renal damage, anemia, and gum problems; or (2) receives medical treatment for lead poisoning or to lower blood-lead levels.

Employers may want to reference the OSHA lead standard 29 CFR 1910.1025 for additional information.

E-8. Q. The chest X-ray of an employee is found to have an abnormality due to a prolonged exposure at work. However, the abnormality does not impair his lung function or cause him to lose workdays. Is this a recordable occupational illness?

A. Yes. An occupational illness is defined as any abnormal condition or disorder, other than one resulting from an injury, caused or aggravated by exposure to environmental factors associated with employment. Any such job-related abnormality reported to the employer is recordable, whether or not functional impairment is present or lost workdays are involved.

E-9. Q. Is fibrosis the only asbestos-related disorder that must be recorded on the OSHA No. 200?

A. No. Asbestos-related disease encompasses not only fibrosis, but also mesothelioma, asbestosis, and various cancers of the lung, stomach, and pleural lining and asbestos-induced pleural abnormalities (e.g., pleural plaques and calcifications).

E-10. Q. Is hearing loss recordable? If so, how should it be recorded?

A. Hearing loss should be evaluated solely on the existing criteria for recordability contained in the Occupational Safety and Health Act and 29 CFR Part 1904. Once work-related hearing loss is established, it may be classified as either an injury or an illness, depending upon the type of event or exposure which caused the loss. If the hearing loss resulted from or was aggravated by an instantaneous exposure, it is considered an injury, and is recordable only if it involves medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. If the hearing loss resulted from or was aggravated by anything other than an instantaneous exposure it should be classified as an occupational illness. All job-related illnesses are recordable.

E-11. Q. Is this case recordable? An employee goes to a doctor who informs her that prescription glasses must be worn as a result of work-related eye deterioration caused by the nature of her job.

A. If work relationship could be established, this case would be recordable as an occupational illness since it involves the recognition of an abnormal condition or disorder. However, employers should distinguish work-related eye problems from those due to aging or heredity factors unrelated to the job.

E-12. Q. How should a massive heart attack be classified?

A. Work-related heart attacks are classified as illnesses because they normally do not result from work accidents or single instantaneous incidents in the work environment. When they occur, an entry should be made in column 7(g) of the log under "All other occupational illnesses."

E-13. Q. Must a heart attack occur in the work environment to be recordable?

A. Heart attacks must satisfy the same requirements for work relationship as any other type of illness before they are recordable on the OSHA No. 200. Under the OSHA system, this does not mean that heart attacks are necessarily recordable if they occur in the work environment, but rather that they must result from an exposure in the work environment. (See section C of this chapter for an analysis of work relationship.)

E-14. Q. How should a work-related illness, diagnosed as an emotional disorder, be classified? Is this a disorder associated with repeated trauma?

A. "Disorders associated with repeated trauma," column 7(f) of the log, OSHA No. 200,

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involve conditions caused by repeated contact or repetitious movement. Cases involving work-related stress should be classified as "All other occupational illnesses" in column 7(g) of the log.

E-15. Q. Does the difference in individual tolerances to specific substances affect decisions on recordability?

A. No. Variations in the characteristics of particular employees or their susceptibility to various illnesses should not affect decisions of recordability. If a recordable illness occurs, employers should enter it on the OSHA No. 200.

E-16. Q. Are employee complaints of such common subjective symptoms as general malaise, headache, and/or nausea, etc., recordable as cases of illnesses if there are no indications that the symptoms are work related?

A. No. Such subjective symptoms are not recordable if there is no apparent association with the employee's work environment. However, in evaluating these cases, employers should be aware that many subjective complaints, including feelings of malaise, headache, nausea, etc., are symptomatic of a wide range of diseases, a number of which are occupational in origin. In this regard, employers should pay attention to the distribution of such subjective complaints with respect to time and place, particularly when such complaints are observed to occur among one or more groups of employees.

F. **Deciding if work-related injuries are recordable**

Although the act requires that all work-related deaths and illnesses be recorded, it limits the recording of injuries to certain specific types of cases. Sections 8(c)(2) and 24(a) of the act refer to maintaining records for work injuries ". . . other than minor injuries requiring only first aid treatment, and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job." Consequently, a work-related injury must involve at least 1 of these 4 conditions before it is deemed recordable. Minor injuries requiring only first aid treatment are not recordable.

1. *Medical treatment.* It is important to understand the distinction between medical treatment and first aid treatment since many work-related injuries are recordable only because medical treatment was given.

Part 1904.12(d) of the regulations and the instructions on the back of the log and summary, OSHA No 200, define medical treatment as any treatment, other than first aid treatment, administered to injured employees. Essentially, medical treatment involves the provision of medical or surgical care for injuries that are not minor through the application of procedures or systematic therapeutic measures.

The act also specifically states that work-related injuries which involve only first aid treatment must *not* be recorded. Therefore, the definition of first aid treatment has important implications for evaluating potential medical treatment cases. First aid is commonly thought to mean emergency treatment of injuries before regular medical care is available. However, first aid treatment has a different meaning for OSHA recordkeeping purposes. Part 1904.12(e) of the regulations defines first aid treatment as:

> Any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and followup visit for the purpose of observation is considered first aid even though provided by a physician or registered professional personnel.

The distinction between medical treatment and first aid depends not only on the treatment provided, but also on the severity of the injury being treated. First aid is: (1) Limited to *one-time treatment* and subsequent observation; *and* (2) involves treatment of only *minor* injuries, *not* emergency treatment of serious injuries. Injuries are *not* minor if:

(a) They must be treated *only* by a physician or licensed medical personnel;

(b) They impair bodily function (i.e., normal use of senses, limbs, etc.);

(c) They result in damage to the physical structure of a nonsuperficial nature (e.g., fractures); or

(d) They involve complications requiring followup medical treatment.

Physicians or registered medical professionals, working under the standing orders of a physician, routinely treat minor injuries. Such treatment constitutes first aid. Also, some visits to a doctor do not involve treatment at all. For example, a visit to a doctor for an examination or other diagnostic procedure to determine whether the employee has an injury does not constitute medical treatment. Conversely, medical treatment can be provided to employees by lay persons; i.e., someone other than a physician or registered medical personnel.

The following classifications list certain procedures as either medical treatment or first aid treatment. These criteria are also listed in the one-page Recordkeeping Summary provided following appendix E.

The following are generally considered medical treatment. Work-related injuries for which this type of treatment was provided or should have been provided are almost always recordable:

- Treatment of INFECTION
- Application of ANTISEPTICS during second or subsequent visit to medical personnel
- Treatment of SECOND OR THIRD DEGREE BURN(S)
- Application of SUTURES (stitches)
- Application of BUTTERFLY ADHESIVE DRESSING(S) or STERI STRIP(S) in lieu of sutures
- Removal of FOREIGN BODIES EMBEDDED IN EYE
- Removal of FOREIGN BODIES FROM WOUND; if procedure is COMPLICATED because of depth of embedment, size, or location
- Use of PRESCRIPTION MEDICATIONS (except a single dose administered on first visit for minor injury or discomfort)
- Use of hot or cold SOAKING THERAPY during second or subsequent visit to medical personnel
- Application of hot or cold COMPRESS(ES) during second or subsequent visit to medical personnel
- CUTTING AWAY DEAD SKIN (surgical debridement)
- Application of HEAT THERAPY during second or subsequent visit to medical personnel
- Use of WHIRLPOOL BATH THERAPY during second or subsequent visit to medical personnel
- POSITIVE X-RAY DIAGNOSIS (fractures, broken bones, etc.)
- ADMISSION TO A HOSPITAL or equivalent medical facility FOR TREATMENT.

The following are generally considered first aid treatment (e.g., one-time treatment and subsequent observation of minor injuries) and should not be recorded if the work-related injury does not involve loss of consciousness, restriction of work or motion, or transfer to another job:

- Application of ANTISEPTICS during first visit to medical personnel
- Treatment of FIRST DEGREE BURN(S)
- Application of BANDAGE(S) during any visit to medical personnel
- Use of ELASTIC BANDAGE(S) during first visit to medical personnel
- Removal of FOREIGN BODIES NOT EMBEDDED IN EYE if only irrigation is required
- Removal of FOREIGN BODIES FROM WOUND; if procedure is UNCOMPLICATED, and is, for example, by tweezers or other simple technique
- Use of NONPRESCRIPTION MEDICATIONS AND administration of single dose of PRESCRIPTION MEDICATION on first visit for minor injury or discomfort
- SOAKING THERAPY on initial visit to medical personnel or removal of bandages by SOAKING
- Application of hot or cold COMPRESS(ES) during first visit to medical personnel
- Application of OINTMENTS to abrasions to prevent drying or cracking
- Application of HEAT THERAPY during first visit to medical personnel
- Use of WHIRLPOOL BATH THERAPY during first visit to medical personnel
- NEGATIVE X-RAY DIAGNOSIS
- OBSERVATION of injury during visit to medical personnel.

The following procedure, by itself, is not considered medical treatment:

- Administration of TETANUS SHOT(S) or BOOSTER(S). However, these shots are often given in conjunction with more serious injuries; consequently, injuries requiring these shots may be recordable for other reasons.

2. *Loss of consciousness.* If an employee loses consciousness as the result of a work-related injury, the case must be recorded no matter what type of treatment was provided. The rationale behind this recording requirement is that loss of consciousness is generally associated with the more serious injuries.

3. *Restriction of work or motion.* Restriction of work or motion is the third criterion specified by the act for determining whether an injury is serious enough to be recorded. The decision that a case involves restricted work activity should be made solely on the rules set forth in Part 1904.12(f) of the *Code of Federal Regulations* and in the instructions to the Log and Summary of Occupational Injuries and Illnesses, OSHA No. 200. The central concept established in these sections is that restricted work activity occurs when the employee, as a result of a job-related injury or illness, is physically or mentally unable to perform *all or any part* of his or her normal assignment during *all or any part* of the workday or shift. The emphasis is on the employee's *ability* to perform normal job duties. Restriction of work or motion may result in either a lost worktime injury or a nonlost worktime injury, depending upon whether the restriction extended beyond the date of injury. This distinction is discussed at length in chapter VI.

Restriction of work or motion sometimes is the sole reason for recording a case. For example, if an employee suffers a cut on a joint of the first finger and the wound requires only a small bandage, the bandage may prevent bending the finger. This case involves a work-related injury, but is it recordable? The employer can reasonably conclude that no medical treatment was involved nor was there any loss of consciousness or transfer to another job. The case would be recordable only if it involves restriction of work motion; that is, if the motion that was limited affected the employee's ability to perform his or her normal job duties. It is important to differentiate that concept from limitation of motion in the abstract. In this situation, the case would be recordable if it involved a typist who was unable to type, but probably not if it involved an executive.

4. *Transfer to another job.* Injuries requiring transfer of the employee to another job are also considered serious enough to be recordable regardless of the type of treatment provided. Transfers are seldom the sole criterion for recordability because injury cases are almost

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always recordable on other grounds, primarily medical treatment or restriction of work or motion.

F-1. Q. Are all first aid injury cases nonrecordable?

A. Medical treatment is only one criterion for determining whether or not injuries are recordable. Injuries which require only first aid treatment are recordable if they involve loss of consciousness, restriction of work or motion, or transfer to another job.

F-2. Q. Our plant does not have a nurse available on the second and third shifts. Injuries on these shifts are sent to the hospital. If this is the only time the injury is treated, does it have to be recorded?

A. If medical treatment is administered, the case is recordable. If only first aid treatment is administered, then the case is not recordable. (See the definitions in the preceding narrative section.) The *kind of treatment* which is, or should have been, provided is the determining factor, not the place or person providing the treatment.

F-3. Q. Can medical treatment be provided by anyone other than a physician or trained medical personnel?

A. The regulations have been interpreted to mean that medical treatment may be administered by medical or nonmedical personnel. The treatment is the main factor to consider in distinguishing medical treatment from first aid, not the person who is administering it.

In distinguishing between medical treatment and first aid, Congress intended to focus on the seriousness of the injury. Doctors or medical personnel often provide first aid treatment for minor injuries; nonmedical personnel often provide medical treatment for certain injuries that are relatively serious in nature.

F-4. Q. If an employee is treated in the medical department for an injury such as a cut, burn, etc., but does not need a doctor's care, does a report need to be made of the injury?

A. If the case comes under the definition of "medical treatment" rather than "first aid," a record would have to be maintained. On the other hand, first aid treatment would not be recorded, even if given by a doctor. Again, the key factor to be considered is the type of treatment which was, or should have been, provided, not the person administering it.

F-5. Q. Does the requirement for recording medical treatment injuries encompass only those injuries where the treatment was actually provided to the individual?

A. This requirement focuses on whether the injury was serious enough that medical treatment was actually provided or should have been provided. Cases should be recorded where medical treatment was *clearly* required, but for one reason or another, was not actually provided.

F-6. Q. When are bruises experienced by employees considered recordable?

A. When they are serious enough to involve 1 of the 4 criteria for recording injuries–medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

F-7. Q. How are fractures classified? What about a hairline fracture that is given no treatment and does not interfere with the employee's work activities?

A. Injuries resulting in fractures should be recorded because they are not minor in nature and ordinarily require medical treatment or involve restriction of work or motion. This is in keeping with the mandate of the Occupational Safety and Health Act of 1970 to record all injuries that are not minor.

F-8. Q. Are injuries that result in chipped or broken teeth recordable?

A. These injuries would normally be recordable because they ordinarily require medical treatment.

F-9. Q. What about situations where an employee damages a prosthetic device, such as an artificial arm or leg? Is this recordable?

A. Generally, work-related situations such as this are recordable if they involve either some form of medical treatment or restriction of work or motion.

F-10. Q. If there is more than one followup visit to a doctor for minor cuts or burns, is such an injury recordable?

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A. If the second visit is simply for observation or to change an adhesive or small bandage, the injury would not be recorded. It would be recorded, however, if any medical treatment was provided.

F-11. Q. What if an employee is injured and loses worktime in traveling to or from a doctor's office for a medical examination? Does this loss of worktime constitute restriction of work or motion, and make the case recordable for OSHA purposes?

A. Injuries should be evaluated on the extent of medical treatment required, not on the amount of time spent seeking treatment. If the examination revealed that no medical treatment was required, the case would not be recordable. Restriction of work or motion concerns the employee's ability to perform normal job duties; it does not include loss of worktime for travel to or from a doctor's office.

F-12. Q. If an employee has a minor scratch but the doctor gives him a tetanus shot anyway, does this constitute medical treatment and make it a recordable case?

A. Such tetanus shots should not be regarded as medical treatment. Consequently, the case would not be recordable unless other treatment was provided.

F-13. Q. Do rabies vaccinations constitute medical treatment?

A. Yes. Rabies vaccinations constitute medical treatment since they are considered absolutely necessary and involve a series of injections far more extensive than the concept of first aid contemplated in the act and defined in the regulations.

F-14. Q. Is a series of treatments given by a chiropractor considered medical treatment?

A. Yes. When required to treat the work-related injury, this is considered medical treatment since it involves considerably more extensive treatment than first aid as defined in Part 1904.12(e) of the regulations.

F-15. Q. Is the use of prescription medications considered medical treatment?

A. Use of prescription medications to treat an occupational injury normally constitutes medical treatment. However, it is considered first aid when a single dose of a prescription medication is administered on the first visit for minor injury or discomfort. A "single dose" is the measured quantity of a therapeutic agent to be taken at one time.

F-16. Q. What about prescription drugs provided to employees solely for psychological care? Should this be considered medical treatment?

A. If the prescription medications are being provided in connection with a job-related psychological condition, the medical treatment issue would be irrelevant since the case would be considered an occupational illness. All occupational illnesses are recordable.

F-17. Q. Suppose a nonprescription medication is dispensed to an employee with a minor injury, who then suffers an adverse reaction. Is this recordable? If so, is it an injury or an illness?

A. This case should be considered an injury since the case determination must relate back to the original event. This is because the affected employee would not have suffered the adverse reaction to the medication *but for* the occupational injury. Initially, the case was not recordable because the provision of a nonprescription medication does not constitute medical treatment. THE CASE MAY NOW BE RECORDABLE. To be recordable, the adverse reaction must have been serious enough to require additional medical treatment or involve loss of consciousness, restriction of work or motion, or transfer to another job.

G. Relationship of OSHA recordkeeping requirements to those of State workers' compensation systems

OSHA recordkeeping and reporting requirements differ from those established under various State workers' compensation laws. Differences exist in both the mechanics of the recordkeeping process and in the criteria used for evaluating the recordability of individual cases. Section 4(b)(4) of the act states:

> Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of or in the course of employment.

Consequently, recordkeeping determinations under the OSH Act should not affect the employer obligations under State workers' compensation systems. Also, workers'

Employer Rights & Responsibilities Following an OSHA Inspection

U.S. Department of Labor
Occupational Safety and
Health Administration
1986 (Revised)

OSHA 3000

An inspection of your workplace was recently conducted in accordance with the Occupational Safety and Health Act of 1970. The inspection revealed conditions which we believe to be in violation of the Act. The detailed nature of the violation(s) and the penalties is described in the Citation and Notification of Penalty form sent with this booklet. The items listed on the enclosed citation were discussed generally with your representative by the OSHA Compliance Officer.

This booklet contains important information regarding your responsibilities and opportunities to respond to this notice. For further information not covered in this booklet, contact the OSHA Area Director at the location listed on the citation form. Please refer to the OSHA number located in the upper right-hand corner of the enclosed documents in all correspondence.

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Employer Rights & Responsibilities Following an OSHA Inspection

U.S. Department of Labor
William E. Brock, Secretary

Occupational Safety and Health Administration
John A. Pendergrass, Assistant Secretary
1986 (Revised)

To the Reader

The Occupational Safety and Health Act of 1970 was created in order to "assure so far as possible every working man and woman in the nation safe and healthful working conditions." OSHA is expending every effort to make this goal a reality, but we cannot do it without your continuing help and support. Therefore, we are providing you with this pamphlet so that you can help us help you. *Employer Rights and Responsibilities Following an OSHA Inspection* is designed to explain the options available to you and is part of our ongoing program to promote cooperation among labor, management, and government.

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After An Inspection

An inspection of your workplace was conducted in accordance with the Occupational Safety and Health Act of 1970. The compliance safety and health officer (CSHO) who conducted the inspection has found conditions which may be in violation of the Act. The information relevant to these conditions will be evaluated by the CSHO's supervisor. If it is determined that a violation does exist, you will be issued a Citation and Notification of Penalty which explains in detail the exact nature of the violation(s) and any associated penalties.

This pamphlet contains important information regarding your rights and responsibilities under the Act. The information contained herein can and should be used as a discussion guide during your closing conference with the OSHA compliance officer. For each apparent violation found during the inspection, the compliance officer has discussed or will discuss with you the:

- Nature of the violation;
- Possible abatement measures which you may take to correct the violative condition; and
- Possible abatement dates you may be required to meet.

The CSHO is a highly trained professional who can help you recognize and evaluate hazards as well as suggest appropriate methods of correcting violations To minimize employee exposure to possibly hazardous conditions, abatement efforts should always begin as soon as possible.

The following general information defines the types of violations and explains the actions you may take if you receive a citation as the result of an inspection.

Types of Violations

Willful: A willful violation is defined as a violation in which the employer knew that a hazardous condition existed and made no reasonable effort to eliminate it and that the condition violated a standard or regulation.

Serious: A serious violation exists when the workplace hazard could cause an accident or illness which would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.

Repeated: An employer may be cited for a repeated violation if that employer has been cited previously for a **substantially similar condition** and the citation has become a final order. A citation is viewed as a repeated violation if it occurs within three years either from the date that the earlier citation becomes a final order or from the final correction date, whichever is later. For purposes of determining whether a violation is repeated, the following criteria apply:

1. **Fixed Establishments:** Citations issued to employers having fixed establishments (e.g., factories, terminals, stores) are limited to the cited establishment. A multifacility employer, for example, would not be cited for a repeated violation if the violation recurred at a plant other than the one previously cited.
2. **Nonfixed Establishments:** For employers engaged in businesses having no fixed establishments (e.g., construction sites, oil and gas drilling sites) repeated violations are alleged based on prior violations occurring anywhere within the same OSHA Area Office jurisdiction.
3. **Longshoring Establishments:** Longshoring employers are subject to repeated violation citations based on prior violations occurring anywhere within a designated port area.

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4. **Maritime Establishments:** Other maritime establishments covered by OSHA standards (e.g., shipbuilding, ship repairing) are generally defined as fixed establishments. (See [1] above.)

Other: A violation which has a direct relationship to job safety and health, but is not serious in nature, is classified as "other."

Posting Requirements

When you receive a Citation and Notification of Penalty, you must post the citation (or a copy of it) at or near the place each violation occurred to make employees aware of the hazards to which they may be exposed. The citation must remain posted for three working days or until the violation is corrected, whichever is longer. (Saturdays, Sundays, and Federal holidays are not counted as working days.) **You must comply with these posting requirements even if you contest the citation.**

Employer Options

As an employer who has been cited, you may take either of the following courses of action:

1. If you agree to the Citation and Notification of Penalty, you should correct the condition by the date set in the citation and pay the penalty, if one is proposed.
2. If you do not agree, you have 15 working days from the date you receive the citation to contest any or all of the following:
   - Citation,
   - Proposed penalty, and/or
   - Abatement date.

How to Comply

For violations you do not contest, you must (1) promptly notify the OSHA Area Director by letter that you have taken the appropriate corrective action within the time set forth in the citation, and (2) pay any penalties itemized therein.

The notification you send the Area Director is generally referred to as a "Letter of Corrective Action." It must explain the specific action taken with regard to each violation and state the date each corrective action was taken.

When the citation permits an extended time for abatement, you must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. When such is the case, you must also provide OSHA with periodic progress reports on your actions.

The penalties itemized on the Citation and Notification of Penalty are payable within 15 working days of receipt of the penalty notice. However, if you contest the citation or penalty in good faith, abatement and payment of penalties for those items contested are suspended until the Occupational Safety and Health Review Commission reviews your case and issues a final order. The Review Commission is an independent agency and is **not** a part of the U.S. Department of Labor. The final order of the Commission will either uphold, modify, or eliminate the penalties. However, penalties for items not contested are still due within 15 working days. For further details, see the section on **How to Contest.**

Payment should be made by check or money order payable to DOL-OSHA. Please indicate on your payment the OSHA number from the upper right-hand corner of your citation and **send it to the OSHA Area Office listed on the Citation and Notification of Penalty.**

Informal Conference and Settlement

Before deciding whether to file a Notice of Contest, you may request an informal conference with the OSHA Area Director to discuss the Citation and Notification of Penalty. You may use this opportunity to:

- Obtain a better explanation of the violations cited;
- Obtain a more complete understanding of the specific standards which apply;
- Negotiate and enter into an Informal Settlement Agreement;
- Discuss ways to correct the violations;
- Discuss problems with the abatement dates;
- Discuss problems concerning employee safety practices;
- Resolve disputed citations and penalties; and
- Obtain answers to any other questions you may have.

You are encouraged to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the citation. Please note, however, that an informal conference will neither extend the 15 working day Notice of Contest period nor take the place of the filing of a written notice if you desire to contest. Employee representative(s) have the right to participate in any informal conference or negotiations between the Regional Administrator or Area Director and the employer.

If you agree that the cited violations do exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the Area Director in an informal conference. He or she may issue an amended citation which changes the abatement date prior to the expiration of the 15 working day period without your filing a Notice of Contest.

If you do not contest within 15 working days, your citation will become a final order. After this occurs, the OSHA Area Director may continue to provide you with information and assistance on how to abate the hazards cited in your citation. However, he or she may not amend or change any citation or penalty which has become a final order. The Area Director may only advise you on abatement methods or extend the time you need to abate the violation (see Petition for Modification of Abatement).

How to Contest

If you wish to contest any portion of your citation, a written Notice of Contest must be submitted within 15 working days after receipt of the citation and notice of penalty even if you have orally stated your disagreement with a citation, penalty, or abatement date during a telephone conversation or an informal conference.

The Notice of Contest must clearly state what is being contested — the citation, the penalty, the abatement date, or any combination of these factors. In addition, the notice should state whether all the violations on the citation, or just specific violations, are being contested. (For example, "I wish to contest the citation and penalty proposed for items 3 and 4 of the citation issued June 27, 1984.")

Your contest must be made in good faith. A contest filed solely to avoid your responsibilities for abatement or payment of penalties will not be considered a good-faith contest.

A proper contest of any item suspends your obligation to abate and pay until the item contested has been judicially resolved. If you contest only the penalty, you must still correct all violations by the dates indicated on the citation. If only some items on the citation are contested, the other items must be corrected by the abatement date and the corresponding penalties paid within 15 days of notification.

After you file a Notice of Contest, your case is officially in litigation. If you wish to settle the case,

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you may contact the OSHA Area Director who will give you the name of the attorney for OSHA handling your case. All settlements of contested cases are negotiated between you and the attorney according to the rules of procedure of the Occupational Safety and Health Review Commission.

The Contest Process

If the written Notice of Contest has been filed within the required 15 working days, the OSHA Area Director forwards your case to the Occupational Safety and Health Review Commission. The Commission assigns the case to an administrative law judge who usually will schedule a hearing in a public place close to your workplace. Both employers and employees have the right to participate in this hearing which contains all the elements of a trial, including examination and cross-examination of witnesses. You may choose to represent yourself or be represented by an attorney. The administrative law judge may affirm, modify, or eliminate any contested items of the citation or penalty.

As with any other legal procedure, there is an appeals process. Once the administrative law judge has ruled, any party to the case may request a further review by the full Review Commission. In addition, any of the three commissioners may, on his or her own motion, bring the case before the entire Commission for review. The Commission's ruling, in turn, may be appealed to the U.S. Court of Appeals for the circuit in which the case arose or for the circuit where the employer has its principal office.

Petition for Modification of Abatement

Abatement dates are assigned on the basis of the best information available at the time the citation is issued. When you are unable to meet an abatement date because of uncontrollable events or other circumstances, and the 15 working day contest period has expired, you may file a "Petition for Modification of Abatement" (PMA) with the OSHA Area Director.

The PMA must be in writing and must be submitted no later than one working day after the abatement date. To show clearly that you have made a good-faith effort to comply, the PMA must include all of the following information.

- Steps you have taken in an effort to achieve compliance, and dates they were taken;
- Additional time you need to comply;
- Why you need additional time;
- Interim steps you are taking to safeguard your employees against the cited hazard(s) until the abatement;
- A statement that the petition has been posted, the date of posting and, when appropriate, a statement that the petition has been furnished to an authorized representative of the affected employees. The petition must remain posted for 10 working days, during which employees may file an objection.

A PMA may be granted or opposed by the OSHA Area Director. If it is opposed, it automatically becomes a contested case before the Review Commission. Further information on PMAs may be obtained from the OSHA Area Office.

Temporary and Permanent Variances

If you are unable to comply with a newly promulgated standard because of the unavailability of materials, equipment, or professional or technical personnel, you may apply to OSHA for a **temporary variance** from that standard.

To be eligible for a temporary variance, the employer must put into force an effective program for coming into compliance with the standard or regulation as quickly as possible. In the meantime, the employer must demonstrate to OSHA that all available steps are being taken to safeguard employees.

A temporary variance may be granted for up to one year; it can be renewed twice, each time for six months.

You may also apply for a **permanent variance** from a standard if you can prove that your present facilities or methods of operation are at least as safe and healthful as those required by the OSHA standard.

In making a determination on a permanent variance, OSHA reviews the employer's evidence and, where appropriate, arranges a visit to the workplace to confirm the circumstances of the application. If the request has merit, OSHA may grant a permanent variance. Final variance orders detail the employer's specific responsibilities and requirements and explain exactly how the employer's method varies from the OSHA requirement.

Please note, however, that whenever an employer applies for either a temporary or a permanent variance, he or she must inform employees of the application and of their right to request a hearing.

Employee Courses of Action

Employees or their authorized representatives may contest any or all of the abatement dates set for violations if they believe them to be unreasonable. A written Notice of Contest must be filed with the OSHA Area Director within 15 working days after the employer receives the citation.

The filing of an employee contest does not suspend the employer's obligation to abate.

Follow-Up Inspection and Failure to Abate

If you receive a citation, a follow-up inspection may be conducted to verify that you have:

- Posted the citation as required;
- Corrected the violations as required in the citation; and/or
- Adequately protected employees during multi-step or lengthy abatement periods.

In addition to providing for penalties for failure-to-post citations and failure-to-abate violations, the Act clearly states that you have a **continuing responsibility** to comply with the Act and assure your employees of safe and healthful working conditions. Any new violations discovered during a follow-up inspection will be cited.

To achieve abatement by the date set forth in the citation, it is important that abatement efforts be promptly initiated.

Employer Discrimination

The Act prohibits employers from discharging or otherwise discriminating against an employee who has exercised any right under this law, including the right to make safety and health complaints or to request an OSHA inspection. Complaints from employees who believe they have been discriminated against will be investigated by OSHA. If the investigation discloses probable violations of employee rights, court action may follow.

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Employees who feel they have been discriminated against must file their complaints within **30 days** of the alleged act of discrimination. To obtain further information on this matter employees may contact OSHA and inquire about Section 11(c) procedures.

Providing False Information

All information reported to OSHA by employers and employees must be accurate and truthful. Providing false information on efforts to abate cited conditions or in required records is punishable under the Act.

Additional Information

For further information and assistance, please feel free to contact your OSHA Area Director.

Related Publications

OSHA-2056 — All About OSHA
OSHA-3047 — Consultation Services for the Employer
OSHA-3071 — Job Hazard Analysis
OSHA-3084 — Chemical Hazard Communication
OSHA-3088 — How to Prepare for Workplace Emergencies
BLS Publication 421-3 — What Every Employer Needs to Know about OSHA Recordkeeping

U.S. Department of Labor Occupational Safety and Health Administration Regional Offices

Region I
(CT*, MA, ME, NH, RI, VT*)
16-18 North Street
1 Dock Square Building
4th Floor
Boston, MA 02109
Telephone: (617) 223-6710

Region II
(NJ, NY*, Puerto Rico*
Virgin Islands*)
1 Astor Plaza, Room 3445
1515 Broadway
New York, NY 10036
Telephone: (212) 944-3426

Region III
(DC, DE, MD*, PA, VA*, WV)
Gateway Building, Suite 2100
3535 Market Street
Philadelphia, PA 19104
Telephone: (215) 596-1201

Region IV
(AL, FL, GA, KY*, MS, NC*, SC*, TN*)
1375 Peachtree Street, N.E.
Suite 587
Atlanta, GA 30367
Telephone: (404) 347-3573

Region V
(IL, IN*, MI*, MN*, OH, WI)
230 South Dearborn Street
32nd Floor, Room 3244
Chicago, IL 60604
Telephone: (312) 353-2220

***These states and territories operate their own OSHA-approved job safety and health programs (except Connecticut whose plan covers public employees only).**

OSHA Regional Offices (Cont.)

Region VI
(AR, LA, NM*, OK, TX)
525 Griffin Square Building, Room 602
Dallas, TX 75202
Telephone: (214) 767-4731

Region VII
(IA*, KS, MO, NE)
911 Walnut Street, Room 406
Kansas City, MO 64106
Telephone: (816) 374-5861

Region VIII
(CO, MT, ND, SD, UT*, WY*)
Federal Building, Room 1554
1961 Stout Street
Denver, CO 80294
Telephone: (303) 844-3061

Region IX
(American Samoa, AZ*, CA*, Guam, HI*, NV*, Pacific Trust Territories)
P.O. Box 36017
450 Golden Gate Avenue
San Francisco, CA 94102
Telephone: (415) 556-7260

Region X
(AK*, ID, OR*, WA*)
Federal Office Building
Room 6003
909 First Avenue
Seattle, WA 98174
Telephone: (206) 442-5930

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