CONOCO

Interoffice Communication

To Safety Directors

From Tom Grumbles

Date October 29, 1981

Subject OSHA MULTI-EMPLOYER WORKSITE POLICY

For your information, enclosed is the current OSHA citation policy for multi-employer worksites. It is expected to be effective November 1. While not answering all of our questions on contractor policies it does at least give us guidance on how OSHA will cite. The legal department is still considering the remaining questions of contractor education and supplying of personnal protective equipment to contractors.

Tom

Thomas G. Grumbles

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Enclosure

OCT 2 6 1991

There may be some changes
Nov 1 is projected effective date
MCE 10/22

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

OSHA Instruction CPL

Office of Compliance Programming

SUBJECT: Multi-Employer Citation Policy

A. Purpose. This instruction provides a revised procedure for citing violations on multi-employer worksites.

B. Scope. This instruction applies OSHA-wide.

C. References. This instruction affects OSHA Instruction CPL 2.45, Interim Field Operations Manual, Chapter X, section F.

D. Action. On multi-employer worksites, citations normally shall be issued only to employers whose employees are exposed to hazards. When these employers have a valid defense to a citation, the employer responsible for the correction of the hazard may be cited instead. Regional Administrators and Area Directors shall ensure that the citation policy outlined in H of this instruction is adhered to when citing violations on multi-employer worksites.

E. Federal Program Change. This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:

1. Ensure that this change is forwarded to each State designee.

2. Explain the technical content of the change to the State designee as requested.

3. Ensure that the State designees are asked to acknowledge receipt of the Federal Program change in writing, within 30 days of notification, to the Regional Administrator. This acknowledgment should include a description either of the State's plan to implement the change or of the reasons why the change should not apply to that State.

4. Review policies, instructions and guidelines issued by the State to determine that this change has been

communicated to State program personnel. Routine monitoring activities (accompanied inspections and case file reviews) shall also be used to determine if this change has been implemented in actual performance.

F. Background. OSHA's Field Operations Manual (Chapter X, section F) presently directs the Area Director to issue citations for inspections of multi-employer worksites, such as most construction projects, only to employers with employees exposed to a violation of the Act (the exposing employer). In 1976, OSHA proposed revised guidelines on the citation policy for multi-employer worksites and received extensive public comment on those guidelines. In addition, numerous cases have been decided by the courts and the Occupational Safety and Health Review Commission on this issue. OSHA has decided to retain its current policy of citing employers with employees exposed to violative conditions with, however, a qualification reflecting the evolving case law, the public comments on the original proposal, and agency field experience in this area.

G. Definitions.

1. Multi-Employer Worksite: A worksite where the employees of more than one employer are working.

2. Exposing Employer: An employer who has or had employees actually or potentially exposed to hazardous conditions.

3. Controlling Employer: An employer who may not have employees exposed but who can be placed into at least one of the following categories:

   a. The prime contractor, the general contractor, or the construction manager, by virtue of being in the best position to prevent or to detect and correct the hazard as a result of general supervisory responsibilities over the entire worksite.

   b. A (sub)contractor with contractual responsibility to deal with particular hazard(s); e.g., a carpentry subcontractor who is charged with specific responsibility for erecting guardrails.

c. A (sub)contractor who created a hazard(s); e.g., a pipe fitter who removed guardrails that were in place to receive material and then failed to replace them.

H. Guidelines.

1. The Area Director will ordinarily issue citations on multi-employer worksites to the exposing employer who is primarily responsible for the health and safety of its employees. If employees of more than one employer are exposed to a hazard, it may be appropriate to issue citations to each of the exposing employers.

2. In issuing citations to exposing employers, however, an attempt will be made to determine whether the exposing employer(s) has a legitimate defense to the citation, as set forth below:

   a. The employer did not create the hazard;

   b. The employer does not have the authority and/or the ability to correct the hazard;

   c. The employer has made a reasonable effort to persuade the controlling employer to correct the hazard;

   d. The employer has instructed and, where necessary, trained employees to avoid or minimize the hazard and, where feasible, has taken alternative means of protecting employees from the hazard short of walking off the job (except when special circumstances require such extreme action).

   NOTE: All of these items must be documented in the case file.

3. If all the above conditions (a-d) are met, the exposing employer(s) will not be cited; instead, a citation may be issued to the employer(s) who created the hazardous condition or is in the best position to correct the hazard or to assure its

correction (the controlling employer). This would normally not be done, however, unless all exposing employers met the conditions of the defense.

4. The controlling employer may be cited even though no employees of that employer are exposed to the violative condition. For general duty clause violations, however, only the employer(s) whose own employees are exposed to the violation may be cited.

5. In some situations it may be difficult, on the basis of the facts available during an inspection, to determine whether the exposing employer(s) meet the tests outlined above and, therefore, whether or not they are exempt from a citation. In such situations, the Area Director, in appropriate circumstances and after consulting with the Regional Administrator, may issue citations to both the exposing employer(s) and the controlling employer(s). Moreover, in rare instances, the Area Director, after consulting with the Regional Administrator, may issue citations to the controlling employer in addition to or instead of the exposing employer if in his/her judgment the circumstances in a particular case are such that the citations would lead to more effective abatement of the hazard(s).

Thorne G. Auchter
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