



NCDOL
N.C. Department of Labor

NC OSHA Update

Carolinas AGC Conference – Regulatory Roundtable
March 31, 2022

Presented by:

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Occupational Safety and Health Division
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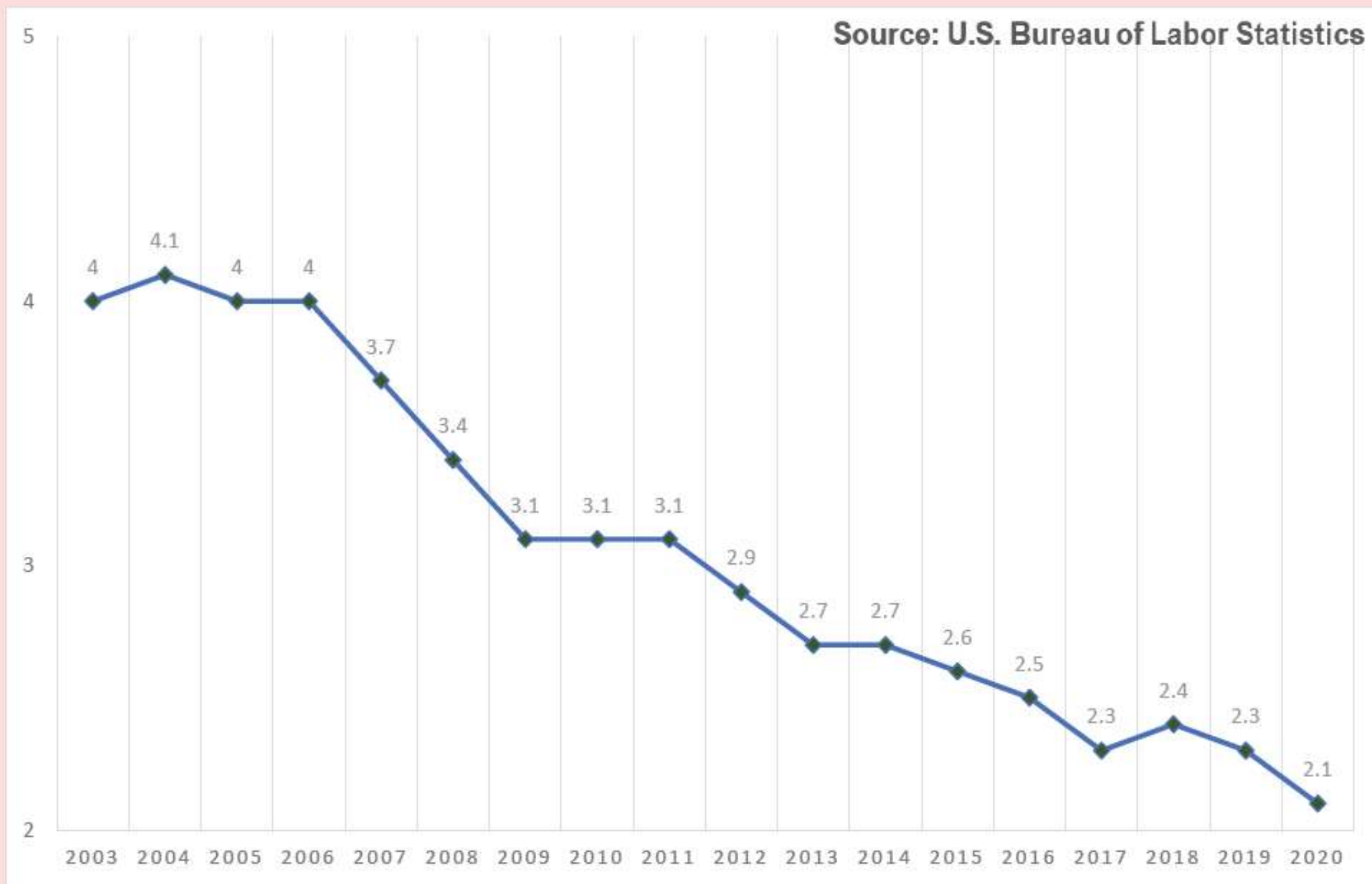


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Objectives

- Discuss current issues in construction safety from a regulator's perspective.
- Become familiar with the OSHNC programs
 - Consultative Services
 - Recognition Programs/Building Star
 - Alliances & Partnerships
 - Emphasis Programs
 - Compliance Activities/Challenges
- Q & A



*Occupational Injury and Illness Rate Per 100 Full-Time Workers
North Carolina, Private Sector, Calendar Years 2003 Through 2020*

NCDOL/OSHNC

- The low injury and illness rates are the result of combined efforts by employers, employees, OSHNC, professional associations, and others with an interest in worker safety & health.
- OSHNC uses a multi-pronged approach, including (but not limited to):
 - Education & training
 - Consultative services
 - Recognition programs
 - Compliance



OSHNC Consultative Services



Consultative Services Bureau For North Carolina Employers



Cherie Berry

Commissioner of Labor

1-800-NC-LABOR
(1-800-625-2267)

www.nclabor.com



Safety and Health Consultation Program

The N.C. Department of Labor has a program to assist small employers, especially those in high hazard industries, to reach their goal of achieving a safe and healthful workplace for their employees. Experienced professional safety and industrial hygiene consultants will identify safety and health hazards in your business or industry, supply recommendations to reduce or eliminate these hazards, and assess your safety and health management program. Our goal is to help your business meet safety and health regulations and develop an ongoing, effective safety and health management program.

In some instances, a return visit may be necessary. For example, the consultant may need to remonitor air quality or verify that hazards have been properly corrected.

Additional Information:

Two types of surveys are available. An employer may request a facility-wide (full-service) safety and health survey or a specific safety and/or health survey limited to only one or more issues.



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OSHNC Consultative Services



Request for **FREE** Safety and Health Consultation

Please complete, print and sign form. Then scan and email to dol.consultationmail@labor.nc.gov or fax to 919-807-2902.

You will receive an acknowledgment letter confirming your receipt.

Name of company/employer: _____
(PLEASE USE THE LEGAL NAME)

Site address: _____
(STREET ADDRESS, CITY, STATE, ZIP)

Mailing address: _____
(STREET ADDRESS, CITY, STATE, ZIP)

Have you moved within the past two years? If so, please provide previous address: _____

Person to contact: | _____ Job title: _____

Telephone number: _____ Ext.: _____ Fax number: _____

Email address: _____

Type of business and description of process: _____

North American Industry Classification System (NAICS): _____

To determine your NAICS code, visit www.census.gov/eos/www/naics

Number of employees: _____



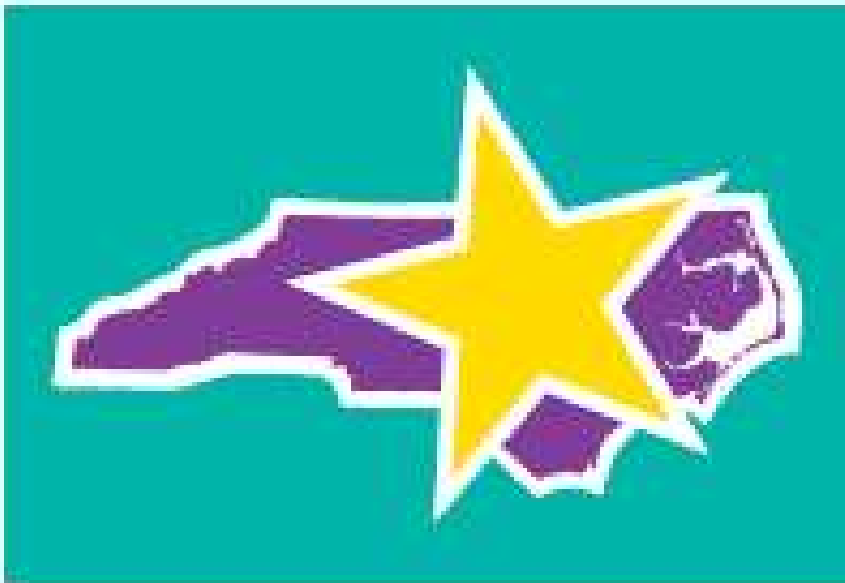
Occupational Safety
& Health Division

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OSHNC Recognition Programs

Carolina Star



Public Sector Star



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OSH Division

Alliances and Partnerships

FFY 2021—Fall

● Alliances

- *Carolinas AGC*
- *Lamar Advertising Company*
- *Mexican Consulate*
- *N.C. State – Industry Expansion Solutions*
- *Safety and Health Council of NC*
- *NUCA of the Carolinas*
- *NCALGESO*



NC STATE

Industry Expansion Solutions

OSH Division

Alliances and Partnerships

● Partnerships

- *Sanders Utility Construction Company, Inc.*
 - » Charlotte – Irwin Creek Tributaries Sanitary Sewer Improvements (2020 – 2022). **Successfully closed in December 2021.**
- *Barringer Construction*
 - » Charlotte - Foundry Building Including Ancillary Buildings (2020 – 2023)
- *Holder – Edison Foard – Leeper, A Joint Venture*
 - » Charlotte - Charlotte Douglas International Airport – Terminal Lobby Expansion (2021 – 2023)
- *Jacobs Engineering Group Inc. - Fujifilm Diosynth Biotechnologies*
 - » Holly Springs, NC
 - » Signing still pending

OSHNC Recognition Programs



Safety & Health Achievement Recognition Program

Recognizing small to mid-size businesses that establish and maintain effective safety programs.

Accreditation Benefits Include:

- ☒ Employee involvement keeps costs down, quality and productivity up
- ☒ FREE professional safety and health mentoring
- ☒ Reduced workers' compensation costs
- ☒ Reduced OSH compliance inspections
- ☒ Community recognition

Recognition Program Safety and Health Achievement and Recognition Program (SHARP)

Employers that successfully complete all the requirements of a full-service



SHARP (Construction) is one of the most prestigious safety and health recognition programs for the construction industry in North Carolina. This program is designed for construction worksites with comprehensive effective safety and health programs, making them leaders in employee protection. NCDOL and the Consultative Services Bureau continue to work with general contractors in North Carolina and have worked hard to reduce fatalities and costly injuries in the construction industry.



SHARP (Logging) is an outreach program to the logging operations associated with felling and moving trees and logs from a worksite. The Consultative Services Bureau and NCDOL's intention is to build a strong foundation within the logging industry, while recognizing SHARPLogging sites that are "a cut above the rest" in this very dangerous industry.

Application:

- ☒ Complete a consultation request form in this brochure or online.

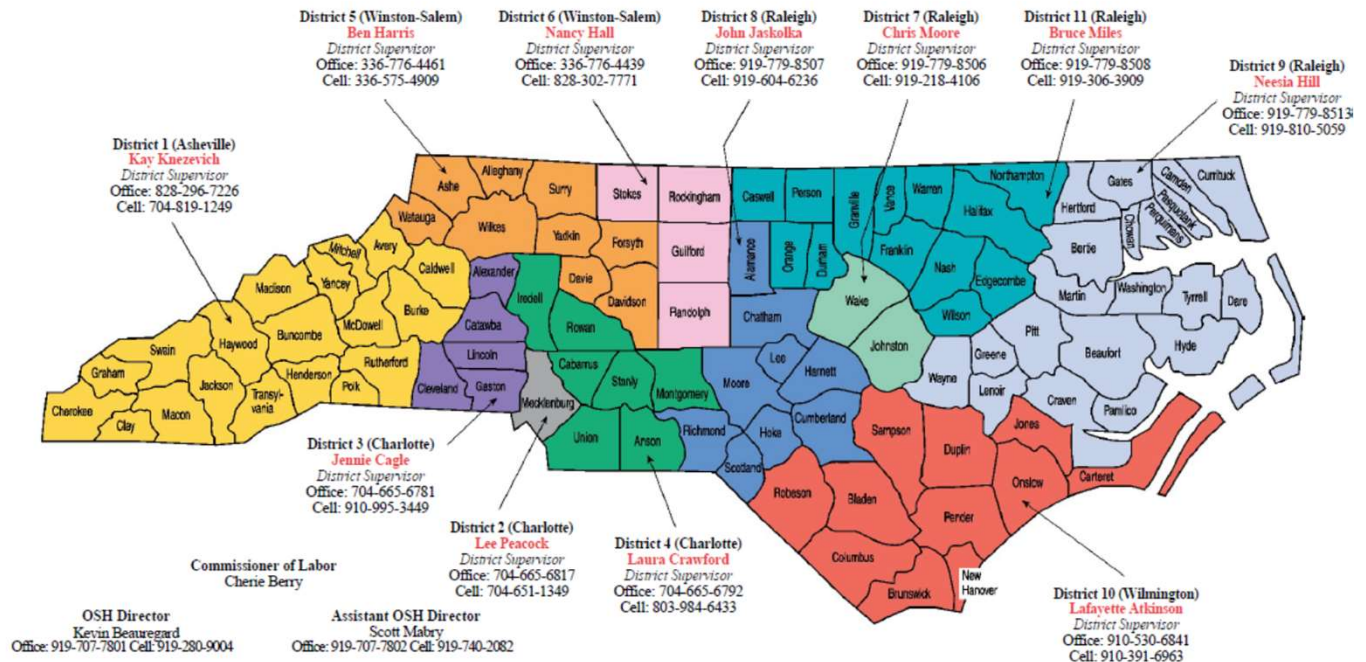
Consultation Request Forms:

www.nclabor.com/osha/consult/request_consultation.pdf

Consultation Safety Programs:

OSHNC Compliance (18b State Plan)

- East & West Bureaus
 - 100 OSHA inspectors (safety and health)
 - 11 district supervisors
 - 2 bureau chiefs and 1 assistant director
 - Approximately 15 support staff (complaint desk, admin)
 - Offices in Raleigh, Charlotte, Winston-Salem, Asheville, and Wilmington
- Agriculture Safety & Health (ASH) – one bureau chief and a staff of eight.



OSHNC Compliance

- The goal for Compliance is to identify hazards that violate OSHA standards, issue citations, and then, most importantly, confirm abatement.
- Penalties are calculated in accordance with established procedures.

OSHNC Special Emphasis Programs

§ 95-136.1. Special emphasis inspection program.

(a) As used in this section, a "special emphasis inspection" is an inspection by the Department's occupational safety and health division that is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

Field Information System

Operational Procedure Notice 123V

Subject: Special Emphasis Program for Construction Activities.

A. **Purpose.**

This Operational Procedure Notice (OPN) establishes a North Carolina Occupational Safety and Health (OSH) Division Special Emphasis Program (SEP) to decrease fatalities related to the construction industry, specifically North American Industry Classification System (NAICS) sectors 236 - 238. This SEP will also focus on hazards associated with operations that involve tower and mobile cranes.

Strategic Plan

Special Emphasis Programs (SEP)

- **Construction**
- *Logging and Arboriculture*
- *Long Term Care Facilities*
- *Health Hazards*
- *Food Manufacturing*
- *Grocery and Related Product Wholesalers*
- *Amputations*

NCDOL Photo Library



FY2021 – Construction Fatalities

- There were 18 fatalities in the construction industry in FY2021.

- 26 in FY2020
- 18 in FY2019

| **By Event: | # |
|------------------------|-----------|
| Struck By | 5 |
| Caught In/Between | 3 |
| Bite/Sting/Scratch | 0 |
| Fall (Same Level) | 0 |
| Fall (From Elevation) | 7 |
| Struck Against | 0 |
| Rubbed/Abraded | 0 |
| Inhalation | 0 |
| Ingestion | 0 |
| Absorption | 0 |
| Repeated Motion/Press. | 0 |
| Cardio/Respiratory | 0 |
| Shock | 2 |
| Other*** | 1 |
| Total | 18 |

FY2021 – Construction Struck-bys

Source: OSHNC OFIR Report FY2021

| | | |
|----|-----------|--|
| 50 | Struck by | The victim was struck by a tree, felled by a co-worker, at a customer's residence. |
| 64 | Struck by | The victim was working along a road picking up traffic cones when he was struck by a truck. |
| 79 | Struck by | The victim, an employee of a grading and landscaping contractor, had been unstrapping/unloading logs from a dump truck after hauling them to a sawmill, was found dead with visible injuries, in the vicinity of the truck and a log which appeared had fallen from the truck. |
| 37 | Struck by | The victim, an employee who was working in front of a retaining wall, appx. 100 feet wide and up to 10 feet high, was struck by the wall when it collapsed. |
| 56 | Struck by | The victim was carrying product to put into the truck when another employee in the truck started to backup and struck the victim. |

FY2021 – Construction Falls

Source: OSHNC OFIR Report FY2021

| | | |
|----|------|--|
| 49 | Fall | The victim was found on the ground after falling 25 ft. from a roof after working on gutters; the downspout in his hand touched a power line and caused him to fall. The probable cause of death was listed a multiple blunt force injuries. |
| 47 | Fall | The victim was engaged in the construction of a garage, working from a ladder and piece of 2x6 lumber, fell and struck his head on the concrete surface below. |
| 40 | Fall | The victim, was raised in a basket by a boom truck to a wall (form work concrete) being constructed; he fell to the ground while transferring from the basket to the wall. |
| 38 | Fall | The victim was on the roof replacing shingles on a house when he fell off the roof and was impaled on a stair rail. |
| 38 | Fall | The victim fell from a two-story roof on a home under construction. |
| 38 | Fall | The victim was handed a bundle of shingles to pass to a co-worker on the roof, while on a 4 ft. high scaffold. He fell from the scaffold when it broke or collapsed. |

OSH Compliance Activity - Inspections

| Activity | FY2021* | FY2020* | FY2019 | FY2018 | FY2017 |
|-------------------------------------|-------------|-------------|-------------|-------------|-------------|
| Total Compliance Inspections | 2218 | 2107 | 2928 | 2442 | 2722 |
| Construction Inspections | 1191 | 1285 | 1681 | 1198 | 1306 |
| % Construction Inspections | 53.7% | 61.0% | 57.4% | 49.1% | 48.0% |
| Fatality Inspections | 85 | 71 | 54 | 46 | 36 |
| Construction Fatality Inspections | 17 | 25 | 18 | 24 | 12 |

*Numbers affected by COVID pandemic during FY2020 between April and September 2020 and all of FY2021

OSH Compliance Activity - Citations

| Activity | FY2021* | FY2020* | FY2019 | FY2018 |
|---|-------------|-------------|-------------|-------------|
| Total Construction Inspections | 1191 | 1285 | 1681 | 1198 |
| % of Inspections without Violations (In-Compliance) | 36.9% | 34.9% | 29.6% | 33.1% |
| % of Inspections with Serious, Willful or Repeat Violations | 59.9% | 60.5% | 64.1% | 62.7% |
| Total Violations | 2586 | 2716 | 3998 | 2819 |
| Serious Violations | 2043 | 2158 | 3163 | 2208 |
| Repeat Violations | 161 | 151 | 148 | 88 |
| Willful Violations | 6 | 6 | 11 | 2 |
| SWR Violations/Inspection | 1.86 | 1.80 | 1.98 | 1.92 |
| Total Current Penalty | \$3.33M | \$3.69M | \$4.36M | \$2.66M |
| Average Penalty per Inspection | \$2796 | \$2874 | \$2609 | \$2224 |
| % of Inspections with Citations Contested | 2.3% | 4.4% | 5.7% | 3.8% |

*Numbers affected by COVID pandemic during FY2020 between April and September 2020 and all of FY2021

Frequently Cited Construction Standards

| Standard | #Cited | Willful | Repeat | Serious | Other | #/Pen | Avg Pen\$ | Max Pen\$ | Tot Init\$ | Tot Curr\$ |
|--------------------|--------|---------|--------|---------|-------|-------|-----------|-----------|------------|------------|
| 1926.501(b)(13) | 417 | 0 | 83 | 334 | 0 | 414 | 2948.92 | 28000.00 | 1229700.00 | 1117031.00 |
| 1926.102(a)(1) | 244 | 0 | 39 | 204 | 1 | 243 | 1378.28 | 12000.00 | 336300.00 | 309235.00 |
| 1926.503(b)(1) | 175 | 0 | 4 | 122 | 49 | 15 | 88.79 | 2800.00 | 15450.00 | 13530.00 |
| 1926.1053(b)(1) | 143 | 0 | 6 | 136 | 1 | 138 | 1575.17 | 6300.00 | 225250.00 | 200455.00 |
| 1926.100(a) | 106 | 0 | 3 | 103 | 0 | 102 | 1039.52 | 4000.00 | 109150.00 | 97622.50 |
| 1926.20(b)(2) | 106 | 0 | 3 | 100 | 3 | 95 | 2000.47 | 7000.00 | 212050.00 | 176960.00 |
| 1926.503(a)(1) | 78 | 0 | 3 | 75 | 0 | 53 | 1275.00 | 5600.00 | 99450.00 | 93195.00 |
| 1926.1053(b)(13) | 56 | 0 | 0 | 53 | 3 | 34 | 511.82 | 2800.00 | 28150.00 | 26415.00 |
| 1926.1053(b)(4) | 41 | 0 | 1 | 35 | 5 | 21 | 640.00 | 4000.00 | 25600.00 | 23405.00 |
| 1926.405(g)(2)(iv) | 33 | 0 | 0 | 0 | 33 | 2 | 22.73 | 450.00 | 750.00 | 750.00 |
| 1926.1060(a) | 31 | 0 | 0 | 30 | 1 | 15 | 570.97 | 2100.00 | 17700.00 | 16065.00 |

Fall protection violations – residential >6' .501(b)(13), lack of training .503(a)(1), and failure to document training .503(b)(1)

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| 1926.1060(a) | 31 | 0 | 0 | 30 | 1 | 15 | 570.97 | 2100.00 | 17700.00 | 16065.00 |

Other PPE violations – lack of eye protection (1926.102(a)(1)) and hard hats (1926.100(a))

Frequently Cited Construction Standards

| Standard | #Cited | Willful | Repeat | Serious | Other | #/Pen | Avg Pen\$ | Max Pen\$ | Tot Init\$ | Tot Curr\$ |
|--------------------|--------|---------|--------|---------|-------|-------|-----------|-----------|------------|------------|
| 1926.501(b)(13) | 417 | 0 | 83 | 334 | 0 | 414 | 2948.92 | 28000.00 | 1229700.00 | 1117031.00 |
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| 1926.1053(b)(4) | 41 | 0 | 1 | 35 | 5 | 21 | 640.00 | 4000.00 | 25600.00 | 23405.00 |
| 1926.405(g)(2)(iv) | 33 | 0 | 0 | 0 | 33 | 2 | 22.73 | 450.00 | 750.00 | 750.00 |
| 1926.1060(a) | 31 | 0 | 0 | 30 | 1 | 15 | 570.97 | 2100.00 | 17700.00 | 16065.00 |

Frequent and regular jobsite inspections by a competent person

Frequently Cited Construction Standards

| Standard | #Cited | Willful | Repeat | Serious | Other | #/Pen | Avg Pen\$ | Max Pen\$ | Tot Init\$ | Tot Curr\$ |
|--------------------|--------|---------|--------|---------|-------|-------|-----------|-----------|------------|------------|
| 1926.501(b)(13) | 417 | 0 | 83 | 334 | 0 | 414 | 2948.92 | 28000.00 | 1229700.00 | 1117031.00 |
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| 1926.1053(b)(4) | 41 | 0 | 1 | 35 | 5 | 21 | 640.00 | 4000.00 | 25600.00 | 23405.00 |
| 1926.405(g)(2)(iv) | 33 | 0 | 0 | 0 | 33 | 2 | 22.73 | 450.00 | 750.00 | 750.00 |
| 1926.1060(a) | 31 | 0 | 0 | 30 | 1 | 15 | 570.97 | 2100.00 | 17700.00 | 16065.00 |

Ladder violations – not extending 3' above upper landing surface (b)(1), using the top step of a stepladder (b)(13), not using it for the purpose designed (b)(4), and lack of training (.1060(a))

Willful Violations

- It is not uncommon for protective system citations to be classified as willful serious, especially when no steps at all are taken to protect employees in the trench.

Citation 01 Item 001

Type of Violation: **Willful Serious**

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(b) or (c):

a) Construction Site, 159 Carl Eller Rd, Mars Hill, NC – where, on or about October 20, 2020, an employee was working in a 9-foot deep trench without the use of an adequate protective system. The employee suffered serious injuries when the trench collapsed while he was installing sections of 8' long and 15" diameter concrete storm water drainage pipe.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Immediately Upon Receipt
\$28,000.00

Construction SEP – Residential



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Construction SEP – Trenches



Elements to Prove a Citation

- Hazard
- Violation of an OSHA standard or the General Duty Clause of the OSH Act
- Employee Exposure
- Employer Knowledge
 - Actual or constructive knowledge

Multi-Employer Citation Policy



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 2-00.124

EFFECTIVE DATE: December 10, 1999

SUBJECT: Multi-Employer Citation Policy

ABSTRACT

Purpose: To Clarify the Agency's multi-employer citation policy.

Scope: OSHA-Wide

References: OSHA Instruction CPL 2.103 (the FIRM)

On multi-employer worksites (in all industry sectors), more than one employer may be citable for a hazardous condition that violates an OSHA standard.

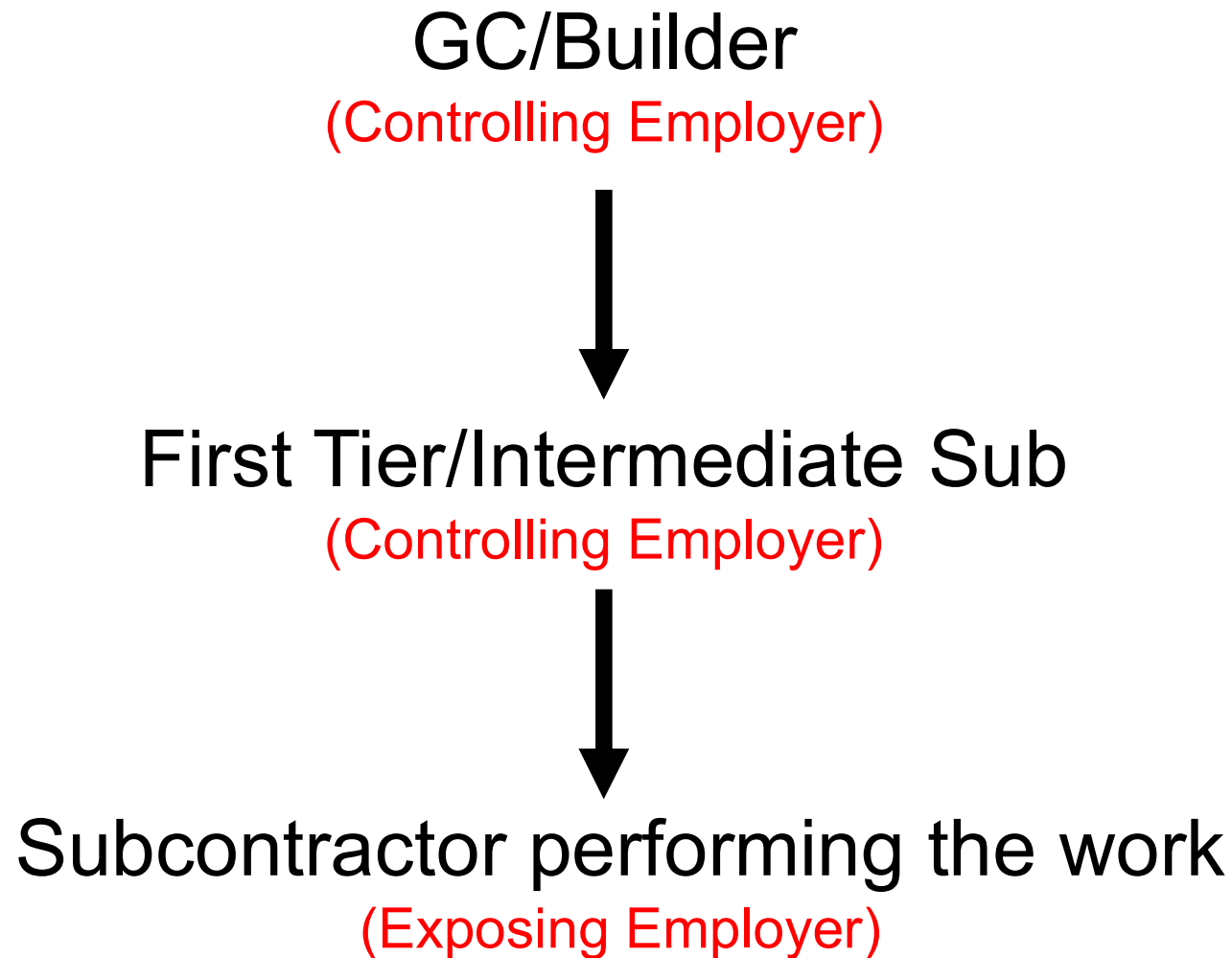


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Typical Construction Scenario



Multi-Employer Citation Policy

- North Carolina has adopted the multi-employer doctrine for analyzing employer liability on construction worksites like Mill bridge. *Commissioner of Labor v. Weekley Homes*, 169 N.C.App. 17, 28 (2005). Under that doctrine, a controlling employer is liable for violations created by a subcontractor if the controlling employer had actual or constructive knowledge of the violation. **Constructive knowledge may be shown by evidence that the violative conditions were open and obvious or that the employer failed to exercise reasonable diligence in preventing or detecting the violative conditions.**

OSHNC Compliance Challenges

- Exposing subcontractors are frequently small employers.
 - False names or incorrect ER information
 - Incorrect addresses
 - Difficulty in serving citations
 - Penalty often is not paid
 - Most importantly, abatements are not received
- First tier subcontractors are rarely on site, which makes establishing ER knowledge of a physical violation difficult.

OSHNC Compliance Challenges

- While GC superintendents or other representatives are onsite more often the first-tier subs, it is still difficult to establish knowledge of physical/site violations, especially ones that have a short duration.
- Safety and health program violations (e.g., frequent/regular inspections, training, etc.) can also be difficult to prove, particularly if the ER has put forth some effort, even if it is minimal.

OSHNC Compliance Challenges

- Must overcome affirmative defenses by the ER
 - Isolated employee misconduct
 - » Work rule must be established and communicated to employees.
 - » Methods must be established to identify violations
 - » History of disciplinary action
 - Abatement creates a greater hazard
 - Infeasible abatement

Construction #'s by SIC Code

- For FY2019 – FY2021
 - SIC Codes 1700-1799 (Specialty Trade Contractors)
 - » IC rate: **18.0%**
 - » Inspections with SWR violations: **78.0%**
 - » Contestment: **3.6%**
 - » Percentage of penalty paid: **43.6%**
 - SIC Codes 1600-1699 (Heavy Construction)
 - » IC rate: **44.2%**
 - » Inspections with SWR violations: **49.2%**
 - » Contestment: **12.6%**
 - » Percentage of penalty paid: **62.6%**
 - SIC Codes 1500-1599 (General Contractors)
 - » IC rate: **62.3%**
 - » Inspections with SWR violations: **31.4%**
 - » Contestment: **4.5%**
 - » Percentage of penalty paid: **59.0%**

OSHRC Hearing Orders (ALJ)

- While Complainant presented a clear, cogent case for the imposition of the citations and penalties in this case, **the evidence supporting the moonlighting defense offered by the Respondent was slightly stronger than the evidence from the Complainant as to who committed the violations.** Both sides might have benefitted from additional witnesses, and it is impossible to know what impact additional evidence would have had on the outcome. The regrettable conclusion is that Bailey has escaped responsibility for violating safety regulations.
- Based on the foregoing Findings of Fact and Conclusions of Law and considering the Discussion, IT IS ORDERED that the violations imposed on Respondent are DISMISSED.

Source: NC OSHRC website, Docket # 2019-6180

OSHRC Hearing Orders (ALJ)

- The undersigned does not believe that respondent was a "controlling employer" under OSHA's Multi-Employer Workplace Policy, because the only part of this situation which arguably would make respondent a "controlling employer" is the language of the contract with (the GC). The respondent's duties under the Act do not arise strictly from the contract language, but rather from the circumstances on the project. **Neither (the GC), Eastern nor respondent seemed to consider respondent a "controlling employer" with respect to the steel erection, because it was not expected to be on the project during the steel erection and it was understood by all such parties that it did not have the training and expertise to supervise or inspect the steel erection.** The evidence suggests that (the GC) performed such activities with the respect to the steel erection. There is nothing respondent could have realistically done to prevent the accident to Eastern's employees.

Source: NC OSHRC website, Docket # 2018-6033

OSHRC Hearing Orders (Full RC)

- In this case, Meritage was the controlling employer of the worksite and the employee exposed was the employee of a second-tier subcontractor. It is undisputed that a Meritage supervisor was present while the violation was occurring. However, there is conflicting evidence as to whether that supervisor had actual knowledge of the violation. The Hearing Examiner chose not to resolve this dispute. On appeal, we also find it unnecessary to resolve this dispute because the evidence of Meritage's constructive knowledge is overwhelming.
- The violative condition in question was an employee standing on a roof more than six feet above the ground without fall protection. The violation was easily visible. Photographs introduced into evidence show the employee standing on a front porch roof, several yards from the street. The Compliance Officer originally stopped at the worksite because he saw the employee on the roof without fall protection from the road as he was passing by in his vehicle. **Moreover, a Meritage Supervisor was in a position to see the violative condition, as he was standing in the street in front of the house. The supervisor may not have seen the worker's lack of fall protection. But in the exercise of reasonable diligence, he plainly should have, and therefore, he should have taken steps to abate the risk. That is all that is required to hold Meritage accountable under the multi-employer doctrine.**

OSHRC Hearing Orders (Full RC)

- In this case, Lennar was the controlling employer of the worksite and the employees exposed were the employees of second-tier subcontractors. During their inspection, Compliance Officers identified seven violations, involving employees from three different subcontractors, at three different home sites. The violations included failures to use fall protection and the improper use of ladders. All were visible from the public right of way. It is undisputed that a Lennar supervisor, Construction Manager (Mr. R), was on the jobsite while the violations were occurring. Mr. R was photographed walking down the street fronting the three homesites within minutes of the moment the violations were observed and photographed by the Compliance Officers.
- **Mr. R may or may not have seen the violations. But given his presence at the workplace, his proximity to the hazards, and the number of open and obvious violations at issue, in the exercise of reasonable diligence, he plainly should have. That is all that is required to hold Lennar accountable under the multi-employer doctrine.**

Source: NC OSHRC website, Docket # 2018-6039 (on appeal to Superior Court)

Thank You For Attending!

Questions?

1-800-NC-LABOR

(1-800-625-2267)

www.labor.nc.gov

