

# Multi-employer Workplace Citation Guidelines

Effective January 1, 2003

(Reviewed March 8, 2004)

## I. SCOPE

These guidelines constitute directions to compliance officers on how to issue citations at multi-employer worksites. They do not preclude inspections to determine whether or how to issue appropriate citations. They do not constitute rules, policies, or statements of rights. The guidelines have general application to owners, general contractors, and sub-contractors on any multi-employer worksite that have a direct (e.g., general contractor to subcontractor) or indirect (e.g., subcontractor to subcontractor, owner to subcontractor, etc.) contractual relationship to one another. These guidelines shall not supersede responsibilities set out elsewhere such as those in the Hazard Communication Standard, etc.

## II. DEFINITIONS:

1. "Control:" An employer will be determined to have sufficient control to abate hazardous conditions on a multi-employer worksite when it either: (1) has a direct employment relationship with an employee exposed to the hazard; or (2) has the authority to direct, or actually directs, how other employers and/or their direct employees are to safely accomplish their specific job tasks.

Exceptions:

(i) An employer does not have control, as defined herein, if it did not create the hazardous condition that violates OR-OSHA regulations unique to another employer's specialty occupation, unless it had knowledge of the hazardous condition for a reasonable period.

(ii) "Control" sufficient to abate a violation cannot be based solely on an employer's right to terminate or suspend work to correct unsafe working conditions, nor on an employer's authority to remove another employer's employee from the site for nonconformance with OR-OSHA regulations or other safety plans or obligations.

2. "Knowledge:" An employer on a multi-employer worksite will be determined to have knowledge of the existence of a hazardous condition if the employer had actual knowledge or with the exercise of reasonable diligence could have known for a reasonable period of a condition or practice at the worksite that constituted a safety or health hazard.

Exception: Under no circumstances will an employer be determined to have knowledge of hazards related to violations unique to another employer's specialty occupation unless the first employer had knowledge of the hazardous condition for a reasonable period.

3. "Reasonable period:" A brief period of time that, with the exercise of due diligence, would allow the employer to take appropriate steps to have the safety or health hazard abated or exposure to the hazard eliminated.

### III. APPLICATION:

#### 1. OR-OSHA Actions:

- A) OR-OSHA will identify which employers on multi-employer worksites are responsible for hazardous conditions. The identified employers that have "knowledge" of the hazardous conditions and exercise, or have the right to exercise, direct control over the work practices of employees who could reasonably have been exposed to such conditions may be cited. It is OR-OSHA's intent to cite only those employers responsible for violations of the Oregon Safe Employment Act.
- B) OR-OSHA may issue an "Order to Correct" pursuant to ORS 654.071(1) requiring an employer that was not cited pursuant to No. 2 as set out below to take reasonable steps to abate an existing hazard and/or avoid the reoccurrence of a hazard. Failure to comply with such an order will subject the employer to being cited pursuant to ORS 654.071(4).

#### 2. Citation Guidelines:

- A) "Worksite Inspections:" Any employer involved in a multi-employer workplace may be cited pursuant to OAR 437-001-0760(1)(a), OAR 437-003, subdivision C, 29 CFR 1926.20(b), and OAR 437-001-0760(7)(a), for failing to take reasonable steps to provide for frequent and regular inspections of the jobsite to be made on the employer's behalf by its employees or agents as often as the type of operation requires.
- B) "Exposing employer:" Any employer in a multi-employer workplace may be cited if it exposes employees over whose work practices it has direct control, or the right to exercise direct control, to hazards of which it has "knowledge."
- C) "Controlling employer:" Any employer that has sufficient "control" over a multi-employer workplace to cause hazardous conditions to be abated may be cited for failing to do so if that employer had "knowledge" of the

hazard and there is a reasonable likelihood that employees over whose work practices it exercised direct control, or had the right to exercise direct control, could have been exposed to the hazardous conditions.

- D) “Creating employer:” Any employer in a multi-employer worksite that causes a hazardous condition to be created may be cited if it has “knowledge” of the hazard and there is a reasonable likelihood that employees over whose work practices it has direct control, or the right to exercise direct control, could have been exposed to the hazardous condition.<sup>1</sup>

3. Closing Conference:

- A) Prior to issuing a citation relating to an inspection of a multi-employer workplace, the Compliance Officer will conduct a closing conference in accordance with OAR 437-001-0099.
- B) At the employer’s request, a second conference will be held, either in person or by phone, within a reasonable time, so long as this conference does not impact the timeliness of a citation.
- C) A designated manager, knowledgeable in the application of OR-OSHA’s multi-employer workplace citation guidelines, will conduct the second conference.
- D) Participants in the second conference will include the Compliance Officer who conducted the inspection, the Compliance Officer’s manager (if requested by any of the parties), an employer representative, and an employee representative (if reasonably available).

- IV. These guidelines will be reviewed annually by OR-OSHA and the Multi-Employer Task Force for their effectiveness and OR-OSHA may modify or withdraw them, in whole or in part, as may be necessary to advance and improve occupational safety and health.

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<sup>1</sup> The category of “correcting employers” as previously set out in OR-OSHA guidelines is not included herein because such employers are covered under the existing employer categories set out in paragraphs 2(B), (C) & (D) above. To the extent that circumstances arise involving specialized subcontractors that are hired specifically to correct hazardous conditions, it is noted that such subcontractors are obligated to assure that their employees work in a safe manner while also effectively abating hazards to which employees of other employers may be exposed.