

CLOSING

CONFERENCE

GUIDE

Following a VOSH Inspection

INTRODUCTION

Your workplace has just been inspected under the authority granted by Va. Code §40.1-49.8 of the *Code of Virginia*. The compliance safety and health officer who conducted the inspection has found conditions which may be in violation of Virginia labor laws. After the information about those conditions is examined by the compliance officer's supervisor(s), it may be determined that violations did exist. If so, citations will be issued explaining in detail the exact nature of these violations and setting forth any associated penalties. If conditions warrant, citations with monetary penalties may be issued.



To the Employer:

As part of our continuing efforts to assist employers in providing a safe and healthful workplace for every Virginia worker, the Virginia Occupational Safety and Health (VOSH) program has developed this document to explain what happens after a VOSH inspection. The document provides a convenient reference to the topics that may be discussed with the compliance officer in the closing conference. Generally, the rights and responsibilities delineated in this document apply to all employers. Variations exist for public sector and political subdivision employers. Where these variations exist, these employers will be directed to refer to the VOSH Administrative Regulation Manual (ARM). Thank you for your help and cooperation in our joint effort to protect the occupational health and safety of Virginia's workers.

James S. Frederick
Commissioner

➤ **This booklet contains important information regarding your responsibilities and rights.**

Please contact the nearest VOSH regional or field office (*locations are listed at the end of this document*), if you have questions concerning:

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

To minimize the exposure of your employees to possible hazardous conditions, you are strongly urged to begin your abatement efforts as soon as you can. During the closing conference, you will be informed of all hazards that may be referred to another compliance officer for examination at a later date. The following general information explains the actions you may take if you receive a citation as a result of this inspection.

1. You Have Certain Responsibilities and Courses of Action Following a VOSH Inspection.

Immediately following receipt of your citation(s), you must sign to acknowledge receipt of them and, **within 15 working days, you must:**

- a. Agree to pay the penalty and abate the hazard,
OR
- b. Complete a request for an informal conference to discuss your situation,
OR
- c. Contest the citation(s) in writing.

You should read the citation and the other materials provided carefully. If you have any questions regarding these materials, please contact the VOSH regional office.

Right of Contest.

To contest your citation(s), you must submit a written letter of contest within 15 days of your receipt of the citations, as explained below.

Informal Conference.

As explained below, please note that you are given the opportunity to request an informal conference after receiving your citation(s). Once a citation is issued, an informal conference or a request for an informal conference will not extend the 15 working day period within which you must either pay penalties or elect to contest. You are strongly urged to request this informal conference as soon as possible upon the receipt of the citation.

2. You Are Required to Post the Citation.

The citation or a copy of it must be posted at or near the place each violation occurred to let employees know about hazards to which they may be exposed. In addition, the employee representative, if there is one, must be notified upon receipt of any citation. The citation must remain posted for three (3) working days, or until the violation is corrected, whichever is longer. (Saturdays, Sundays, and state holidays are not counted as working days.) You must comply with these posting requirements even if you contest the citation.

3. You Are Required to Comply with the Citation and Penalty Notification Unless You Follow Appropriate Contest Procedures.

If you agree to the citation and penalty, you must:

- Correct the condition by the date set in the citation,
- Pay the penalty, if one is proposed.

4. You May Request an Informal Conference.

You may request an informal conference with the Regional Safety or Health Director. You are encouraged to do this within five (5) days of receiving the citation(s). An informal conference will provide the opportunity to:

- Obtain an understanding of the specific standards which apply;
- Discuss ways to correct/abate the violations;
- Discuss how the penalty is calculated;
- Discuss problems with abatement dates;
- Obtain answers to other related questions you may have.

- **If a citation is issued, an informal conference or a request for one will not extend the 15 working day period in which you must either pay penalties or elect to contest the citation(s).**

An employee representative shall be given the opportunity to participate in an informal conference requested by the employer. It is the duty of the employer to notify the employees and the employee representative as soon as the time and place of the conference have been established.

If you are only seeking a longer abatement period and you have valid reasons, you may wish to discuss this in an informal conference. An amended citation changing an abatement date prior to the expiration of the 15 working day period may be issued without your filing a contest. If you contest only the penalty, you must still correct all violations by the dates indicated on the citation.

5. You May Contest Any Portion of the Citation, Notification of Penalty, or Abatement Date.

If you do not agree with the citation or any part of it, you have 15 working days from the date you receive the citation and notification of penalty in which to contest.

- **To contest, you must notify the Regional Safety or Health Director in writing within 15 working days after receipt of citation and penalty.**

Working days are Monday through Friday, excluding state holidays. This written notification, called a Notice of Contest, must clearly state what is being contested: the citation, penalty, abatement date, or any combination thereof. Please read the documents accompanying the citation for details.

If your Notice of Contest is properly filed and the matter is not settled, VOSH will initiate judicial proceedings by filing a complaint with the Clerk of the Circuit Court of the jurisdiction where the violation occurred and referring the contested issues to the appropriate Commonwealth's Attorney. The Clerk will issue a subpoena requiring you to appear in Circuit Court for a judicial hearing. Should you fail to answer the complaint, judgment may be entered against you by default.

Public sector/political subdivision employers may contest citations, penalties, or abatement orders by so notifying the Regional Safety or Health Director in writing within 15 working days from receipt of citation. Contest procedures to be followed by public sector employers are described in the VOSH ARM §16VAC25-60-280 through §16VAC25-60-300.

NOTE: *Your employees may also contest abatement dates. Employees or their authorized representative may contest any or all the abatement dates set for violations if they believe the abatement dates to be unreasonable.*

6. Penalties

Penalties must be paid within 15 working days after your receipt of the citation and notification of penalty. If, however, you contest the citation or penalty in good faith, you need not pay for those items contested until a final decision is rendered in your contested case. In paying a penalty, your check or money order should be made payable to: "Treasurer of Virginia".

7. Interest and Collection Costs

Under §40.1-49.4.A.4(a) of the *Code of Virginia*, the Commissioner of the Department of Labor and Industry has authority to assess interest on all past-due penalties and administrative costs incurred in the collection of penalties for violations of the Virginia Occupational Safety and Health (VOSH) laws and standards. Interest charges are assessed at an annual rate in accordance with §2.2-4805 of the *Code of Virginia*.

If the debt remains unpaid for more than 90 calendar days, it will be deemed delinquent, referred to the Office of the Attorney General or other appropriate collection agency for collection, and the interest and administrative costs incurred will be assessed to you.

8. You Must Advise the Regional Safety or Health Director of Any Corrective Action Taken.

For violations you do not contest, you must promptly notify VOSH by returning the completed report on corrections and violations indicating that you have corrected the cited conditions by the abatement date set in the citation. Your abatement letter must explain the specific action taken with regard to each violation and the approximate date the corrective action was completed. Photographs, work orders, receipts, training signature sheets or any other form of documentation must also be included. 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. You also should send periodic progress reports on your actions to correct these violations.

9. You May Seek an Extension of Abatement Time.

Abatement dates are established on the basis of the information available at the time the citation is issued. When uncontrollable events or other circumstances prevent your meeting an abatement date and the 15 working day contest period has expired, you may submit a written request for an extension of the abatement time. Further information on requests for extensions of abatement dates is included in the document accompanying any citation you may receive. Details also may be obtained from the VOSH Regional Safety or Health Director.

10. Follow-up Inspection May Be Conducted.

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 adequately protected employees during multi-step or lengthy abatement periods. You also have a continuing responsibility to comply with the law. Any new violations discovered during a follow-up inspection will be cited.

11. Your Failure to Correct a Violation by the Date Prescribed Will Result in a Penalty.

To achieve abatement by the date set forth in the citation, it is important that abatement efforts be promptly initiated. Under §40.1-49.4 of the *Code of Virginia*, penalties may be proposed for failure to correct violations which are not contested. A civil penalty for each day during which such violation continues will be assessed to you.

Public sector and political subdivision employers should see the VOSH *Administrative Regulations Manual (ARM)* regarding penalty assessments.

12. It Is Illegal to Provide False Information.

Providing false information on your efforts to abate cited conditions or in records required to be maintained is punishable under §40.1-51.4:2 of the *Code of Virginia*. Punishment upon conviction shall include a fine of not more than \$10,000, or imprisonment for not more than six (6) months, or both.

13. It Is Unlawful to Discriminate Against Employees.

Section 40.1-51.2:1 of the *Code of Virginia* prohibits employers from discharging, or discriminating against, an employee who has exercised any right under this law, including the right to make safety or health complaints or to request a VOSH inspection. Complaints from employees who believe they have been discriminated against by their employer will be investigated by VOSH. If the investigation discloses a probable violation of employee rights, court action may be taken.

14. Fatality and Injury or Illness Notice Requirements.

All employers, regardless of the number of their employees, shall report to the Department of Labor and Industry (VOSH):

- **within eight (8) hours** any work-related incident resulting in a **fatality**; or
- **within 24 hours** any work-related incident which results in:
 - (i) the **loss of an eye**;
 - (ii) an **amputation**; or
 - (iii) the **inpatient hospitalization** of one (1) or more persons.

Failure to notify VOSH within the specified timeframes of a fatality or any of the above listed work related incidents **will result in a substantial penalty**. Consult the VOSH ARM for complete notification requirements.

15. You May Seek a Variance from a Standard.

The law permits you to apply to VOSH for a temporary variance from a new standard if you are unable to comply by its effective date. You may also apply for a permanent variance from a standard if you can prove that your facilities or methods of operation are at least as safe and healthful as would be ensured by the VOSH standard.

More complete information on variances may be obtained from your Regional or Field Office of the Department of Labor and Industry. Regulations governing variances are in §16VAC25-60-190 of the VOSH ARM.

16. Referral Inspection.

Apparent serious violations which have been observed during the inspection but are not within the scope of the compliance officer's expertise will be subject to a referral to VOSH management. As a result of such observations, additional inspections may be scheduled at a later date.

17. Trade Secrets.

The compliance officer will allow the employer to review information gathered from trade secret areas and identify that information which contains, or may reveal, a trade secret.

The employer will be asked to explain the reasons for identifying information as a trade secret. This information shall be treated as such by the compliance officer and VOSH is required to keep confidential all related material or information.

18. Consultative Assistance.

Should you need free consultative assistance in correcting the violations or help in improving your safety program, contact the Division of Cooperative Programs at consultation@doli.virginia.gov. This service is provided without charge.

An on-site consultation visit shall not take place subsequent to a VOSH enforcement inspection until the employer has been notified that no citations will be issued. If a citation is issued, on-site consultation may only take place with regard to those citation items which have become final orders. Citations become final orders if not contested in writing within 15 working days from receipt.

Note: *This document is not a statutory or regulatory rule and is intended to provide instructions and guidance regarding operation of the Virginia Occupational Safety and Health (VOSH) Program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law. It confers no additional rights or responsibilities to employers or the VOSH Program beyond current statutes or regulations.*

For further information, contact the appropriate Regional or Field Office of the Department of Labor and Industry listed below or visit our website at: www.doli.virginia.gov.

THE DEPARTMENT OF LABOR & INDUSTRY - HEADQUARTERS

Brookfield Place
W. Broad Street, Suite 500
Richmond, VA 23230
804.371.2327

REGIONAL OFFICES

Northern Regional Office

9400 Innovation Drive, Suite 120
Manassas, Virginia 20110
703.392.0900

Southwest Regional Office

Brammer Village
3013 Peters Creek Road
Roanoke, Virginia 24019
540.562.3580

Tidewater Regional Office

Interstate Corporate Center
Bldg. 6, Suite 101
6363 Center Dr.
Norfolk, Virginia 23502
757.455.0891

Central Regional Office

North Run Business Park
1570 East Parham Road
Richmond, Virginia 23228
804.371.3104

FIELD OFFICES

Abingdon Field Office

The Johnson Center
468 East Main St., Suite 114
Abingdon, Virginia 24210
276.676.5465

Lynchburg Field Office

3704 Old Forest Rd., Suite B
Lynchburg, Virginia 24501
434.385.0806

Harrisonburg Field Office

3900 Early Road
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