



VOSH PROGRAM DIRECTIVE: 03-007

ISSUED: May 15, 2007

SUBJECT: Consultation Policies and Procedures, Chapter 7: Relationship to Enforcement, Hazard Correction and Verification.

I. Purpose.

This Directive provides On-site Consultation Program visit guidance for VOSH Consultants. It identifies the On-site Consultation Program's relationship with VOSH Enforcement and the intersection of On-site Consultation services and programs and enforcement activity. Furthermore, this Directive outlines hazard correction and verification requirements.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the 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.

II. Scope.

This Directive applies to VOSH Consultation-wide.

III. References and Cancellations.

- A. 29 Code of Federal Regulations (CFR) 1908, Relationship to Enforcement
- B. Consultation Policies and Procedures Manual (CPPM) [CSP 02-00-001]
- C. Safety and Health Program Management Guidelines [FR 54:3904-3916]
- D. VOSH Field Operations Manual 02-001D (22 August 2003)

No cancellations are made by this Directive.

IV. Action.

The Assistant Commissioner-Programs, and the Director and Manager of the On-site Consultation Program shall ensure that Consultation Program field personnel understand and comply with the requirements of this Directive.

V. Dates.

- A. Effective Date: *May 15, 2007*
- B. Expiration Date: Not Applicable.

VI. Background and Notable Items.

A. Background. This Directive provides On-site Consultation Program visit guidance for State Consultants and VOSH personnel. It identifies the On-site Consultation Program's relationship with VOSH Enforcement and the intersection of On-site Consultation services and programs and enforcement activity.

B. Notable Items.

Furthermore, this Directive outlines hazard correction and verification requirements.

1. Policies and procedures regarding pre-visit related requirements, scheduling and deferrals are now included in this Directive, see VIII. A-C.
2. Policies and procedures relating to *Visit in Progress* status and enforcement activities have been included, see IX. A-F.
3. A new category of inspections determined to be critical has been added to the list of enforcement inspections that will result in the termination of *in Progress* status, see IX. H(4).
4. This Directive contains policies and procedures regarding the correction of hazards, correction due dates, employee protections, and incidents that may trigger an on-site consultation referral to VOSH enforcement. See X. A-F.

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TABLE OF CONTENTS

- I. Purpose
- II. Scope
- III. References and Cancellations
- IV. Actions
- V. Dates
 - A. Effective Date
 - B. Cancellation Date
- VI. Background Notable Items
- VII. General
 - A. On-site Consultation Visit Priority
 - B. Visit *in Progress*
 - C. Enforcement Activity
- VIII. Scheduling
 - A. On-site Visit Request
 - B. On-site Visit Scheduling
 - C. Pre-Visit Deferrals
- IX. On-site Consultation Visit and Enforcement
 - A. Full Service on-site Consultation Visits
 - B. Full Service safety or Health on-site consultation visits
 - C. Limited Service on-site Consultation Visits
 - D. Enforcement Follow-up and Monitoring Inspections
 - E. On-site Consultation Follow-up and/or Training and Assistance Visits
 - F. Fatality/Catastrophe During Visit
 - G. Requirements of *in Progress* Status
 - H. Termination of *in Progress* Status
- X. Post -Visit Hazard Correction and Verification
 - A. Hazard Correction
 - B. Correction Due Dates
 - C. Extending Correction Due Dates
 - D. Interim Protection(s)
 - E. Protection Plan of Action
 - F. Verification of Hazard Correction
 - G. [RESERVED]
 - H. Referral to Enforcement
 - I. Deletions and Deferrals

Chapter 7: Relationship to Enforcement

- VII. **General.** VOSH's on-site Consultation Program is delivered by highly qualified occupational safety and health professionals to help employers: a) detect potential safety and health hazards at their worksite; and b) establish and maintain safe and healthful workplaces. The on-site Consultation Program is completely separate from VOSH's enforcement efforts and does not issue citations or propose penalties.
- A. **On-site Consultation Visit Priority.** A consultation visit *in Progress* has priority over VOSH compliance inspections pursuant to 29 CFR § 1908.7(b), except in those instances provided below at IX H. (1-4). See 29 CFR § 1908.7(b)(2) i-iv.
- B. **Visit *in Progress*.** A consultation visit shall be considered *in Progress* with regard to the working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction due dates and any extensions. See, 29 CFR part 1908.7 (b) (i).
- C. **Enforcement Activity.** VOSH may assign a lower priority for programmed enforcement activity to those worksites for which on-site consultation visits are scheduled. See VIII.C. and IX. of this Chapter for exceptions.

VIII. Scheduling

- A. **On-site Visit Request.** Employers seeking an on-site consultation visit must request and schedule a worksite visit directly with the VOSH Consultation Program Manager (CPM) for the worksite that will undergo the on-site visit.
- B. **On-site Visit Scheduling.** Once the employer has requested an on-site consultation visit, the scheduling of that visit shall be based upon the nature of the employer's request and the employer's ranking within the Program's prioritization schedule. See VOSH Program Directive 03-003, CSP 02-00-001, CPPM Chapter 3: Promoting and Managing Consultation Services.
1. Current Federal/State Inspection Activity. Consultants must ask the employer whether or not any Federal or VOSH inspection/enforcement activity is currently taking place at the worksite. If the employer answers in the affirmative, then Consultation personnel should explain to the employer that no on-site consultation can take place until the OSHA or VOSH inspection/ enforcement activity is final and/ or any cited item(s) have become final order(s).
 2. Visit Date Confirmation. If an employer's requested visit is scheduled thirty (30) days or more after the request date, Consultation personnel should contact the employer within five (5) calendar days of the scheduled visit to confirm the visit date. At the time that the employer is contacted to confirm the scheduled visit, Consultation personnel should again verify whether any Federal or VOSH inspection activity is underway.
- C. **Pre-Visit Deferrals.**

1. Program Resources. In the event that an employer requests an on-site visit which is beyond Program resources to initiate within 90 days of the date of the request, the Consultation Program Manager (CPM) will inform the employer that a visit cannot be scheduled and that the employer will not be eligible for a deferral, see VOSH Program Directive 03-003.
2. Withdrawal of the on-site Consultation Visit Request. If the employer withdraws the request for an on-site consultation visit after receiving a deferral, the CPM shall inform the Region accordingly and the deferral shall be void. The worksite may then be included in the VOSH programmed inspection list and be subject to enforcement inspection.

IX. **On-site Consultation Visits and Enforcement.** Consultants, through interaction with the CPM, shall determine the scope of the on-site consultation visit based upon the employer's request. For purposes of efficiency and expediency, an employer's worksite shall not be subject to concurrent consultation and enforcement-related visits. Enforcement may assign a lower priority to worksites receiving a consultation visit until the completion of the correction due dates and any extensions or the consultation closing conference, see 29 CFR § 1908.7(b).

- A. **Full Service on-site Consultation Visits.** While a worksite is undergoing a full service on-site consultation visit for safety and health, programmed enforcement activity may not occur until after the end of the worksite's visit *in Progress* status.
- B. **Full Service Safety or Health on-site Consultation Visits.** An on-site consultation visit *in Progress* is discipline related; whether for safety or health, programmed enforcement activity may not proceed until after the end of the worksite's visit *in Progress* status.
- C. **Limited Service on-site Consultation Visits.** If a worksite is undergoing a limited service on-site consultation visit, whether focused on a particular type of work process or a hazard, programmed enforcement activity may not proceed while the consultant is at the worksite. The re-scheduled enforcement activity must be limited only to those areas that were not addressed by the scope of the consultative visit (posted List of Hazards).
- D. **Enforcement Follow-up and Monitoring Inspections.** If an enforcement follow-up or monitoring inspection is to be conducted while a worksite is undergoing an on-site consultation visit, the inspection shall not be deferred; however, its scope shall be limited only to those areas required to be covered by the follow-up or monitoring inspection. In these instances, the consultant must interrupt the on-site visit until the enforcement inspection has been completed. In the event VOSH issues a citation as a result of the follow-up or monitoring inspection, an on-site consultation visit may not proceed regarding the newly cited item(s) until they have become final order(s).
- E. **On-site Consultation Follow-up and/or Training and Assistance Visits.** On-site consultation follow-up and/or training and assistance visits must be deferred if a VOSH enforcement inspection is to be conducted. The consultant may continue with follow-up and/or training and assistance activity only after enforcement inspection activity at the worksite is final and any cited item(s) have become final order(s).
- F. **Fatality/Catastrophe during Visit.** If a fatality or catastrophe (an incident involving the hospitalization of 3 or more employees) occurs during an on-site consultation visit, the consultant shall immediately terminate the visit. If on-site conditions permit, the consultant

should remind the employer of the obligation under §40.1-51.1(D) to notify VOSH enforcement of the incident.

G. **Requirements of *in Progress* Status.** A consultation visit shall be considered to be *in Progress* from the beginning of the opening conference to the end of the correction due dates (including extensions). In order to maintain the status of *in Progress*, the employer must meet the following conditions:

1. Posting the List of Hazards. Employers must post the List of Hazards, once received, in a location where it can be readily observed by all affected employees. Employers must post the List of Hazards for three working days or until the hazards identified on the list are corrected, whichever comes later. For the visit to remain *in Progress*, no posted hazard may remain uncorrected past its correction due date (past the original due date or the approved extended due date). See 29 CFR 1908.6(e) (8).
2. Hazard Correction. Employers must take action to eliminate exposure to hazards which, in the judgment of the consultant, present an imminent danger as well as to correct all hazards identified as serious in order to maintain *in Progress* status. The employer must also provide documentation of the action(s) taken to eliminate or control the identified hazards to the CPM by fax, letter or e-mail.

H. **Termination of *in Progress* Status.** A visit *in Progress* is terminated when VOSH enforcement initiates any of the following at the site of the Consultation visit:

1. Imminent danger investigation;
2. Fatality/catastrophe investigation;
3. Complaint or Referral investigation; or
4. Other critical inspections as determined by the Commissioner of Labor and Industry or his designee.

X. **Post-Visit Hazard Correction and Verification**

A. **Hazard Correction.** Consultants must inform the employer that all hazards must be corrected in accordance with mutually agreed-upon correction due dates and that they must provide to the CPM documentation of the action(s) taken to eliminate or control the hazards identified on the List of Hazards. Consultants also must inform employers that they may be cited for any serious or other-than-serious hazards, identified during a VOSH enforcement inspection.

B. **Correction Due Dates.** Correction due dates are to be established by Consultation personnel. Correction due dates will be the shortest interval within which an employer can **reasonably** be expected to correct the hazard. Factors such as an employer's economic and work capability may be considered in devising correction due dates.

C. **Extending Correction Due Dates.** An employer may request, and the CPM may grant once, an extension of the time frame established for the correction of hazards identified on the List of Hazards. This extension will be limited to 30 calendar days unless approved by the Director of Cooperative Programs or the Assistant Commissioner of Programs. This extension may be granted when the employer has: 1) demonstrated that a good faith effort has been made to correct the hazard within the established time frame; 2) shown evidence that correction has not been completed because of factors beyond the employer's reasonable control; and 3) shown evidence that the employer is taking all available interim steps to safeguard affected employees against the hazard during the correction period. Extensions to correction due date(s) will be approved for the shortest reasonable period of time.

1. Requests for extensions must:
 - a. Be a written request received either via fax, postal or electronic mail;
 - b. Contain all steps taken by the employer, and the related dates such actions were taken, in an effort to achieve compliance during the prescribed abatement period;
 - c. Contain the reason(s) that the hazard has not been corrected;
 - d. Contain the number of days needed for the extension; and
 - e. Describe the interim protection provided to affected employees to protect them from the specific hazard(s).
2. Whenever an extension to a correction due date(s) is granted, a revised List of Hazards must be prepared by the CPM indicating the hazards requiring an extension and the amended date(s) of correction. The employer must then post the new List of Hazards for the required period.
3. If the initial or extended correction due date is more than 90 days, whether initial or extension, the CPM may require the employer to submit a Protection Plan of Action for each uncorrected serious hazard.

D. **Interim Protection(s).** Where a serious hazard(s) is identified and is not immediately corrected in the presence of the consultant, employers must provide interim protections for affected employees at the worksite while the identified hazard(s) are being corrected. Interim protections include but are not limited to the following:

1. Engineering Controls. Engineering controls consist of, but are not limited to, substitution, isolation, ventilation and equipment modification.
2. Administrative Controls. Any procedure that significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.
3. Work Practice Controls. Work practice controls are one type of administrative control in which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work procedures, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
4. Personal Protective Equipment and/or Clothing. Providing the proper personal protective equipment (PPE) to all affected employees and training affected employees in the proper selection, use and maintenance of the PPE.

E. If the CPM determines that an identified serious hazard(s) requires a complex correction solution(s) that may take more than 90 days to institute, the employer is required to submit a Plan. Circumstances that may require such a Plan may include but are not limited to: a. extensive redesign requirements (such as the installation of a ventilation system) and/or b. factors delaying correction that are beyond the employer's control.

1. The date for submitting the Plan will be established by on-site Consultation personnel. A separate Plan must be submitted for each identified hazard.
2. The Plan must:
 - a. Identify the hazard and steps to be taken to correct it;
 - b. Outline the anticipated long-term hazard correction procedures;
 - c. Include milestones (or a schedule) for correcting the hazard; and

- d. Include information regarding how affected employees will be protected from the hazard or hazardous condition in the interim until hazard correction is completed.
3. The employer will provide periodic progress reports on the status of the hazard correction process (the frequency of the reports is to be determined by the CPM).

F. **Verification of Hazard Correction.**

1. Imminent Danger. Consultants shall ensure that all hazards that present an imminent danger to employees are corrected immediately.
2. Serious Hazards. The CPM shall verify that all hazards identified as serious are corrected within a reasonable time frame.
 - a. The CPM will employ a tracking system to assure the timely verification of serious hazard corrections.
 - b. Serious hazards must be verified as having been corrected or eliminated within the correction due dates identified in the written report to the employer and the List of Hazards, or as outlined in the Plan. The following are the recognized verification methods:
 - i. On-site Verification. When a hazard correction has been witnessed by a consultant during the visit, the hazard will be considered corrected and then noted accordingly in the written report to the employer.
 - ii. Consultants are required to provide a narrative and/or picture(s) to support the verification of the hazard correction.
 - iii. Off-site Verification. When a consultant is unable to verify the correction of a serious hazard before the conclusion of the visit, the consultant must inform the employer of the necessity to provide written confirmation of the corrected hazard(s) to the CPM. Written verification may be faxed or sent via postal or electronic mail to the CPM. Written verification must include:
 1. The date that the hazard(s) was corrected or eliminated; and
 2. A description of the abatement action and pictures(s) of the corrective method employed or other documents such as receipts for purchase of materials, services or equipment, work orders, training attendance sheets or any other proof of hazard correction.
 - iv. Follow-up Visit. In addition to the above methods, the CPM may at his/her discretion assign a follow-up visit to the worksite to verify the correction of those hazards identified on the List of Hazards.
3. Other than Serious (OTS) Hazards. The CPM shall verify that all hazards identified as Other than Serious (OTS) are corrected within a reasonable time frame.
 - a. The Consultation Program Manager will employ a tracking system to assure the timely verification of Other than Serious (OTS) hazard corrections.
 - b. Other than Serious (OTS) hazards must be verified as having been corrected or eliminated within the correction due dates identified in the written report to the employer and the List of Hazards, or as outlined in the Plan. The following are the recognized verification methods:
 - i. On-site Verification. When a hazard correction has been witnessed by a consultant during the visit, the hazard will be considered corrected and then noted accordingly in the written report to the employer.
 - ii. Consultants are required to provide a narrative or picture(s) to support the verification of the hazard correction.
 - iii. Off-site Verification. When a consultant is unable to verify the correction of an OTS hazard before the conclusion of the visit, the

consultant must inform the employer of the necessity to provide written confirmation of the corrected hazard(s) to the CPM. Written verification may be faxed or sent via postal or electronic mail to the CPM. Written verification must include: The date that the hazard(s) was corrected or eliminated; and a description of the abatement action. Supplemental photographs, receipts, invoices, work orders, etc. can be provided at the employer's option but are not required for OTS.

G. [RESERVED]:

H. **Referral to Enforcement.** An employer's refusal or failure to correct an imminent danger situation and/or an identified serious hazard may result in a referral to VOSH enforcement.

1. Grounds for referral to VOSH Enforcement include:

- a. **Imminent Danger.** If, during the course of conducting an on-site consultation visit the consultant observes an imminent danger situation, the Consultant must immediately inform the employer. If the employer refuses to correct or eliminate the hazard immediately, the consultant will terminate the visit immediately and then make a referral to VOSH enforcement.
- b. **Serious Hazard(s) Not Corrected.** When it is determined that an employer is no longer acting in good faith and/or is refusing to correct or eliminate a serious hazard within the established due date, including any extensions, a referral to enforcement must be made at that time.

2. Process for referral to VOSH Enforcement:

- a. **Consultant.** The consultant conducting the visit shall notify the CPM immediately upon an employer's:
 - i. Refusal to correct or eliminate an imminent danger, or
 - ii. Refusal to correct or eliminate a serious hazard.
- b. **Consultation Program Manager.** Upon determining that an employer is no longer acting in good faith and/or is refusing to correct identified hazards, the CPM will immediately notify the Director of Cooperative Programs (DCP).
- c. **Director of Cooperative Programs.** The Director of Cooperative Programs will determine whether the employer is to be referred for enforcement action within five (5) days of the notification of hazard violation or within one (1) day if there is an imminent danger situation. To assist the Director of Cooperative Programs in making a determination, Consultants shall forward information regarding the worksite's identified hazards and the circumstances of the employer's refusal.

I. **Deletions and Deferrals**

1. [RESERVED]

2. Pre-SHARP. If a worksite is in pre-SHARP status, that is, is in the process of meeting the criteria for SHARP, VOSH programmed inspections at the site may be deferred for up to 18 months while the employer is working to achieve recognition and exemption status. *See* 29 CFR §1908.7(b) (4) (i) (A).

3. SHARP. If a worksite achieves SHARP status, it is to be deleted from VOSH's programmed inspection schedule for a period established by the CPM and approved by the Director of Consultation Programs. *See* 29 CFR §1908.7(b) (4) (i) (B).