

Oil, Chemical and Atomic Workers International Union

NOLAN W. HANCOCK, DIRECTOR
CITIZENSHIP-LEGISLATIVE
DEPARTMENT

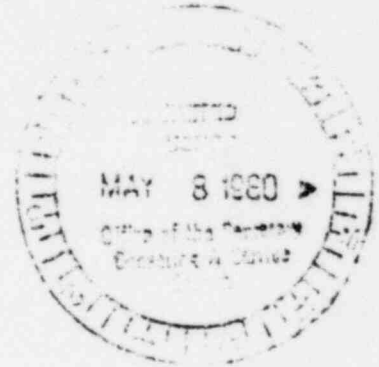
STEVEN WODKA
INTERNATIONAL REPRESENTATIVE



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ORDER NUMBER PR-19 (9)
PROPOSED RULE (45 FR 19564)

May 5, 1980



Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

Re: Proposed Rulemaking: Informal Conference During
Inspection

Dear Sir:

The Oil, Chemical and Atomic Workers International Union finds this proposed rulemaking that was published in the Federal Register on March 26, 1980 to be wholly inadequate.

When the NRC conducts an inspection of radiological working conditions in a licensed facility, the NRC must afford the authorized employee representative an opportunity to have an appropriate number of representatives accompany the NRC inspector during the opening conference, the walkaround inspection, the closing conference and in any informal conferences. The proposed rulemaking leaves it to the discretion of the NRC inspector as to whether or not a worker representative will be invited to an informal conference. This is wrong. Particularly when the NRC inspection has been prompted by a worker complaint, worker representatives have a right to be present during all phases of the inspection process. This is the only way that the NRC can insure that worker complaint has been thoroughly investigated.

For guidance on this issue, the NRC may want to review the procedures of the Labor Department's Occupational Safety and Health Administration (OSHA) on this subject. For your convenience I have enclosed a copy of OSHA Program Directive #200-92 entitled "Employee Participation in OSHA Inspections and Enforcement Proceedings". In this directive, OSHA requires that employee representatives be given an opportunity to attend an informal conference with the employer and the inspector. This provision, now in effect for nearly two years, has aided the effectiveness of OSHA inspections.

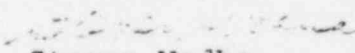
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The proposed rulemaking needs to be revised to allow worker representatives to be present during informal conferences if they so choose.

Sincerely yours,


Steven Wodka
International Representative

Enc.

cc: Nolan Hancock, Legislative Dir.
A. Mazzocchi, Health & Safety Dir.
E. Rousselle, V.P.

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



AUG 15 1978

OSHA PROGRAM DIRECTIVE #200-82

TO: REGIONAL ADMINISTRATORS/OSHA

THRU: DONALD E. MACKENZIE
Field Coordinator

A handwritten signature in dark ink, appearing to read "D. Mackenzie", written over the typed name and title.

SUBJECT: Employee Participation in OSHA Inspections and Enforcement Proceedings

1. Purpose

The purpose of this directive is to implement procedures for the participation of employee representatives in opening, closing and informal conferences.

2. Documentation Affected

a. The following Chapters of the Field Operations Manual (FOM) are affected by this directive:

Chapter V--General Inspection Procedures
Chapter VII--Construction
Chapter IX--Imminent Danger
Chapter X--Citations
Chapter XI--Penalties
Chapter XII--Field Reporting Procedures and Forms
Chapter XXII--Review Commission

b. Additionally, the following are also affected:

Regulations: 29 CFR 1903--Inspections, Citations and Proposed Penalties

Program Directives:

#200-64--Informal Conferences
#200-65--OSHA Closing Conference Guide

3. Background

The Field Operations Manual (FOM), Chapter V-- Inspection Procedures, is the internal operative guideline which provides for employee participation. The regulations, 29 CFR 1903, outline procedures for conducting inspections and issuing citations and notifications of proposed penalties. Neither the regulations nor the FOM provide sufficient guidance for establishing a uniform and consistent policy for insuring the involvement of affected employees or their representatives in opening, closing and informal conferences.

4. Explanation

- a. Employees have a critical interest in OSHA enforcement proceedings, beginning with the opening conference at an employer's worksite and through the closing of the case file. Since workplace hazards directly affect exposed employees who are often in a good position to know the nature and extent of the hazard as well as potential abatement methods, these employees must be encouraged to participate fully in the enforcement process. More specifically, employees should have the opportunity to present their views at conferences and discussions with representatives of the Occupational Safety and Health Administration concerning the enforcement process. In this fashion, OSHA will assure that the views of employee representatives are fully considered before the issuance or modification of citations.
- b. In addition, several sections of the Occupational Safety and Health Act of 1970 (i.e., SS2(b)(1), and (13) refer to cooperative efforts by labor and management to protect the health and safety of workers. Critical to such cooperative efforts is the full involvement of employees and their representatives in the enforcement process. The involvement of employees and their employers in such discussions will stimulate an employer-employee relationship which encourages joint efforts to reduce injuries and illnesses.

5. Definition

For purposes of this directive, except where otherwise stated, an employee representative shall include a collective bargaining representative, any other group or body representing employees, or an individual employee.

6. Action

a. Participation.

Regional Administrators and Area Directors will assure that employee representatives are afforded the opportunity, and are encouraged, to attend and express their views in discussions relating to workplace inspections and the issuance, amendment or withdrawal of citations. Joint opening and closing conferences should be conducted when practical with all parties represented. Where it is not practical to hold a joint conference, separate conferences for employee representatives and representatives of the employers shall be held. In those instances where separate conferences are held, a written summary of each conference shall be made and the summary made available on request to employee representatives and representatives of the employer. The procedures which follow will assure full participation by employee representatives at every stage of OSHA enforcement proceedings:

(1) Opening conference.

The CSHO should conduct a joint opening conference with the employer and employee representatives. Where it is not practical to hold a joint conference, separate conferences for the employee representatives and the representatives of the employer shall be held. Where separate conferences are necessary, CSHO's shall determine if their conduct will unacceptably delay observation or evaluation of workplace safety or health hazards. In such cases the conferences shall be brief and, if appropriate, reconvened after the CSHO's inspection of the alleged hazards.

During the course of the opening conference, pursuant to 29 CFR 1903.8, employer and employee representatives shall be informed of the opportunity to accompany the CSHO during the physical inspection of any workplace. The provisions of the FOM, Chapter V, paragraph D.2 pertaining to the opening conference shall apply to conferences with employee representatives.

(2) Walkaround.

The CSHO shall conduct a walkaround inspection in accordance with the provisions of the FOM, Chapter V, paragraphs D.3. and 6. During the walkaround, pursuant to 29 CFR 1910.10, the CSHO may consult with individual employees as well as the employee representative concerning working conditions. If requested, and considered necessary by the CSHO, any additional consultation shall occur during working hours and in private, if so requested.

(3) Closing conference.

At the conclusion of an inspection, the CSHO shall conduct a joint closing conference with the employer and employee representatives. Where it is not practical to hold a joint closing conference, separate closing conferences shall be held. During the course of the closing conference both the employer and employee representatives shall be advised of their right to participate in any subsequent conferences, meetings, or discussions as described herein. All of the instructions in the FOM, Chapter V, paragraph D.7., which presently are limited to employer participation in closing conferences, shall also be covered for employee representatives. Where closing conferences are delayed pending receipt of sampling data, employee representatives shall be afforded the opportunity to participate in all such delayed conferences.

b. Availability of sampling data.

If either the employer or the employee representative requests copies of sampling data, the data shall be provided to both.

c. Citations.

Employee representatives shall receive copies of all Citation and Notification of Penalty issued pursuant to the FOM, Chapter X--Citations. Where there is a collective bargaining agent at the workplace, a copy of each Citation and Notification of Penalty shall be sent to the appropriate collective bargaining representative.

(NOTE: The collective bargaining representative will normally be the local union president for industrial unions and the business manager for building trades and crafts unions). If the workplace inspected does not have a collective bargaining representative, a copy of the Citation and Notification of Penalty shall be forwarded to the employee participating in the walkaround inspection. In those instances where the workplace inspected does not have a collective bargaining representative, and there was no employee participating in the walkaround inspection, the posting of the "Citation and Notification of Penalty" shall be construed as compliance with this paragraph.

d. Informal conference.

Pursuant to 29 CFR 1903.19, either the representative of the employer or employee representative may request an informal conference. Whenever an informal conference is requested by the employer, the employee representative will be afforded the opportunity and encouraged to participate fully. To the extent that informal conferences can be held with the employee representative in attendance, they should be arranged. During the conduct of the informal conference, if matters of a delicate nature are brought up by either representative, separate or private discussions shall be permitted.

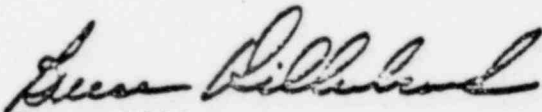
In any event, the Regional Administrator or Area Director shall not amend or withdraw a citation or penalty without first obtaining the views of the employee representative. When the employee representative disagrees with the proposed amendment or withdrawal of a citation, the proposed disposition may be appealed to the Regional Administrator. However, as the 15-working-day period for filing a notice of contest may affect discussions regarding an amendment or withdrawal of a citation, telephonic communication shall be utilized in order to expedite the resolution of the matter under consideration.

e. Implementation.

Regional Administrators, Area Directors and members of their respective staffs shall assure the implementation of these procedures for ensuring greater employee participation. Failure to comply with the procedures set forth within this directive shall not affect the validity of the issuance, or amendment, of any citation.

7. Effective Date

This directive is effective immediately and will remain in effect until canceled or superseded.



Bruce Hillenbrand
Acting Director, Federal Compliance
and State Programs

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