

CHAPTER IX CASEFILE PREPARATION AND DOCUMENTATION

- I) **Inspection Records.** Inspection records are any record made or obtained by a CSHO that concern, relate to, or are part of any inspection. In addition, inspection records are any records made by a CSHO that concern, relate to, or are part of the performance of any official duty. Such original material and all copies must be included in the casefile. These records are the property of the Education and Labor Cabinet and a part of the casefile. Inspection records are not the property of the CSHO and under no circumstances are they to be retained or used for any private purpose. All documents, notes, or other recorded information must be retained in the casefile.
- II) **Inspection Documents.** All casefiles must include the following.
- A) **Inspection Report (OSH-1).**
- B) **Narrative (OSHA-1AC).** The Narrative includes the following.
- i) Establishment name.
 - ii) Inspection number.
 - iii) Report number.
 - iv) Basis for Penalty Credits.
 - (a) *History.* Documentation supporting the history reduction factor must be included in an appendix to the casefile. Such documentation may include a copy of the citation, completed abatement form, settlement agreement, etc.
 - (b) *Good Faith.* Evaluation of the employer's overall safety and health program.
 - (c) *Size.* Number of current employees nationwide.
 - v) Purpose and Scope of the Inspection
 - vi) Description of Process. Accurate and concise narrative about the employer and the worksite including the processes, equipment, and chemicals used.
 - vii) Principal Product(s).
 - viii) Opening Conference Notes.
 - (a) Date(s);
 - (b) Union involvement;
 - (c) Trade secret information;
 - (d) Name(s) and title(s) of all attendees; and

- (e) Description of any unusual circumstances.
- ix) Walkaround Inspection Notes. A detailed description of the inspection process.
- x) Closing Conference Notes.
 - (a) Date(s);
 - (b) Union involvement;
 - (c) Name(s) and title(s) of all attendees; and
 - (d) Description of any unusual circumstances.
- xi) Summary of Complaint, Referral, Accident or Followup Findings. Discussion clearly addressing all items on any applicable complaint, referral, accident or follow-up findings.
- xii) Inspection Contacts.
 - (a) Names, addresses and phone numbers of authorized representatives of employees;
 - (b) Names, of employer representatives contacted and the extent of their participation in the inspection;
 - (c) Any other witness or individuals contacted during the course of the inspection;
- xiii) Union Information.
 - (a) Names and addresses of all organized employee groups;
- xiv) Additional Mailing Information.
- xv) Additional Information. Any other information the CSHO believes may be helpful, based on his/her professional judgment.

III) Inspections with Citations.

A) **Violation Worksheet.**

- i) Classification of the violation;
- ii) Citation and item numbers;
- iii) Standard violated;
- iv) Abatement period or date the CSHO observed the hazardous condition abated. The abatement period must be the shortest interval the employer can correct the violation. The reason for any abatement over 30 days must be documented in the OSHA-1B;

v) Names, addresses, phone numbers, and job titles of exposed employees.

B) OSHA-1B.

i) The CSHO completes a separate OSHA-1B for each alleged violation.

ii) The following information must be documented in the OSHA-1B:

(a) *Standard violated;*

(b) *Citation and item numbers;*

(c) *SAVE.* See Chapter 7 – Violations and Citations;

(d) *AVD.* See Chapter 7 – Violations and Citations; and

(e) *Description of the hazard.* An explanation of the hazard(s), hazardous workplace condition(s) or practice(s);

NOTE. The hazard is not the injury.

EXAMPLE: The hazard for employees working on an elevated surface without fall protection is a fall, not broken bones or death.

EXAMPLE: The hazard for employees working near exposed live parts is contact with an energized part, not electric shock or electrocution.

EXAMPLE: The hazard for employees filling batteries with water is being sprayed with an acid mixture, not burns or blindness.

(f) *Evidence of Violations.* How the requirements of the standard were violated including:

(1) Identification of the machinery or equipment including manufacturer, type of machine, model number, serial number, etc.;

(2) Specific location of the hazard;

(3) Specific elements of the standard violated; and

(4) Injury or illness likely to result from exposure to the hazard.

(g) *Evidence of Employee Exposure.*

(1) Employee proximity to the hazard and measurements taken. Describe how the CSHO took measurements, identify the measuring techniques and equipment used, identify anyone present and observing the measurements taken, include calibration dates of equipment used, etc.

(2) For contaminants and physical agents, additional facts clarifying the nature of

employee exposure. A representative number of Safety Data Sheets (SDSs) should be collected for hazardous chemicals to which employees may potentially be exposed.

(3) Approximate duration of time the hazard has existed.

(4) Frequency of exposure to the hazard.

(h) *Employer Knowledge.*

(1) Facts that establish the employer actually knew of the hazardous condition, or what reasonable steps the employer failed to take, including regular inspections of the worksite, that could have revealed the presence of the hazardous condition.

(2) The mere presence of the employer at or in the workplace is not sufficient evidence of knowledge.

(3) There must be evidence that demonstrates how the employer reasonably could have recognized the presence of the hazardous condition.

(i) *Photo Supporting Violation.* An index of photos and videos with brief descriptions. The CSHO must identify photos and videos containing alleged trade secret information.

(j) *Severity and Probability Assessments.*

(1) Severity. The most reasonably predictable injury or illness resulting from an employee's exposure to a hazard.

(2) Probability. The likelihood that an injury may, or may not, result from an employee's exposure to a hazard.

(3) Probability factors include:

a. Number of workers exposed to the hazardous conditions, at the same time and/or sequentially;

b. Frequency and duration of employee exposure to the hazardous condition, including overexposures to contaminants;

c. Employee proximity to the hazardous conditions;

d. Use of appropriate personal protective equipment, work practices, or engineering controls;

e. Employee training; and

f. Other factors such as, but not limited to, a comprehensive safety and health program, evidence of corrections underway, warning signs, PPE, lighting, speed, temperature, labels or special procedures, administrative controls, weather, noise, etc.

(k) *Evidence Supporting Penalty Multiplier.*

(1) Willful Violations.

- a. To establish a willful violation, the CSHO must document facts that demonstrate the employer knew of an applicable legal requirement and intentionally violated it or the employer showed plain indifference to employee safety or health.

EXAMPLE: The employer knew the legal requirement existed and was required to take additional steps to abate the hazard. Such evidence may include prior citations, prior abatements, previous notice from a CSHO, insurance company or city/state inspector reports, the employer's familiarity with the standard(s), contract specifications requiring compliance with applicable standards, or warnings by employees or employee safety representatives of the presence of a hazardous condition or practice and the protections required by KY OSH standards.

NOTE. Willful knowledge is separate from the requirement the CSHO must prove the employer knew, or could have known, of the existence of the hazardous condition.

- b. Include facts documenting that even if the employer was not consciously or intentionally violating the law, the employer acted with such plain indifference for employee safety or health that had the employer known of the standard, it probably would not have complied anyway. This type of evidence would include instances where an employer was aware of employee exposure to an obviously hazardous condition(s) or practice(s) and made no reasonable effort to eliminate it.
- c. Any relevant comments made by the employer or an employee during the inspection, including any employer comments regarding why it violated the standard, which may be characterized as admissions of the specific violations described; and
- d. Any other facts assisting the CSHO to evaluate the situation or reconstruct the total inspection picture in preparation for legal action.

(2) Repeat Violations.

To establish a repeated violation, the CSHO must document a prior violation for a substantially similar condition or hazard has become a final order to include:

- a. The hazard or condition;
- b. The violation classification;
- c. The abatement date;
- d. The abatement method;

- e. Whether the violation was contested and if so, whether the underlying violation was settled or adjudicated; and
- f. The final order date.

(3) Failure to Abate. Describe the employer's prior citation to include:

- a. The abatement date;
- b. Information regarding the CSHO's determination the hazardous condition has not been abated;
- c. Whether the same condition exists and/or the same employees are exposed;
- d. Whether the violation was contested and if so, whether the underlying violation was settled or adjudicated; and
- e. The final order date.

(1) *Documents.*

- (1) Records obtained during the course of the inspection the CSHO determines are necessary to support the violation(s).
- (2) Specific identification of photos and/or videos illustrating the hazardous condition(s) and/or practice(s).
- (3) Copy of citation(s) supporting the history penalty reduction.
- (4) For violations classified as repeated or failure-to-abate, the file must include a copy of the previous citation(s) on which the repeat classification or failure-to-abate is based and documentation of the original citation final order date.

IV) **No Inspection.** The CSHO must document in the Narrative (OSHA-1AC) the reason he/she did not conduct the inspection.

V) **Affirmative Defenses.** See Chapter XI.

VI) **Communication Log.** All casefiles must contain a communication log designed to provide a record of all communications related to an inspection including, but not limited to, phone calls, emails, letters, etc. documenting important and attempted contacts. Contacts and attempted contacts must be clear, concise, legible, and dated in chronological order. Documentation must include, at a minimum, the date and time of the communication, name and title of person contacted, type of contact, and a brief description of the communication.

VII) **Diary Sheet.** All casefiles must include a diary sheet to document important events or actions related to the case, especially those not noted elsewhere.

VIII) **Activity Journal.** Journal entries must be clear, concise, legible, and presented in chronological

order to reflect the timeline of the case development. Information provided includes, at a minimum, the date of the action or event, a brief description of the action or event and the initials of the person making the entry. Each entry must reflect the time spent on that activity.

IX) Appendices.

A) **Index.** Every casefile must contain an index of all appendices at the beginning of the worknote section. Each appendix page must contain the employer's name, inspection number, CSHO, and report number as well as identify the content. The CSHO must not mark or write on any documents in the appendices (except for the worknote section) unless it is the name and title of the individual providing the document and the date.

EXAMPLE: Appendix 1 – Hazard Communication Program, Appendix 2 – Bloodborne Pathogens Program, Appendix 3 – Permit Required Confined Space Program, Appendix 4 – Hazard Communication Training, not Appendix 1 – Programs Provided by the Employer.

B) **Special Appendices.**

i) Trade Secret Information.

- (a) KRS Chapter 338.171 states, "All information obtained by the commissioner in connection with any inspection or proceeding under this chapter which might reveal a trade secret shall be considered confidential except that such information may be disclosed to those persons concerned with carrying out this chapter or when relevant in any proceedings under this chapter. In any such proceedings, the commissioner, review commission or courts shall issue such orders as may be appropriate to protect the confidentiality of trade secrets."
- (b) KY OSH treats each photograph, video, recording, and/or document an employer alleges is trade secret, as a trade secret. The first document in a casefile containing alleged trade secrets must be a list titled **Alleged Trade Secret Information** which contains the name of the company, inspection number, CSHO, report number, the nature of the alleged trade secret (photograph, video, document, etc.), and the appendix(s).
- (c) The CSHO must identify alleged trade secrets in the casefile. The title page for each applicable appendix must contain the following language "**APPENDIX CONTAINS ALLEGED TRADE SECRET**" in bold, red font.
- (d) Photographs, videos, or other recordings may contain trade secret information or lead to the revelation of a trade secret. The CSHO must identify photographs, videos, or other recordings containing alleged trade secrets with "ATS" at the beginning of the employer's name.

EXAMPLE: SO999-001-ATS-XYZ Company

- (e) When the employer alleges that only specific photographs, videos, or other recordings are trade secret, the CSHO must identify each applicable photograph on the **Alleged Trade Secret Information** page.

ii) Medical Records.

- (a) Medical records do not go in the casefile. Medical records are stored separately from the casefile in a secured location.
- (b) An inspection containing employee medical records must contain the following language on an Appendix page, " **PAGES OF MEDICAL RECORDS LOCATED** ," indicating the number of pages and location of the medical records.

X) Documents that may be Contained in Casefiles

- A) **Alleged Trade Secret Information Page.** This document alerts readers that it contains alleged trade secret information along with the nature and location of the alleged trade secrets in the casefile.
- B) **OSH-1 MOD.** Modifies the name and/or address on the OSH-1.
- C) **Casefile Contents Checklist.** This document is used to confirm required documentation is in the casefile.
- D) **Casefile Routing Slip.** This document chronicles the casefile as it is routed through the review and issuance process.
- E) **OSH-1 Form.** This document contains pertinent information regarding the establishment. The OSH-1 number is the nine (9) digit number assigned to the inspection.
- F) **Secretary of State Page.** This document indicates the type of entity and its status as an entity.
- G) **Casefile Diary.** This document is a record and summary of all actions relating to a case.
- H) **Related Contractor ID Form.** This document identifies all contractors involved in one inspection.
- I) **Employee Complaint.** This document notifies the Division of OSH Compliance of alleged safety or health hazards in the workplace.
- J) **Referral Form (OSH-90).** This document notifies the Division of OSH Compliance of alleged safety or health hazards in the workplace. This may be any source other than a complainant.
- K) **OSH-36.** The first document regarding a fatality investigation and generally includes the employer's reporting information.
- L) **OSH-170.** CSHOs fill out this document after opening a fatality inspection and gathering the required information.
- M) **Draft Complaint Letter.** CSHOs complete this letter so the program manager can send a response to the complainant following a complaint inspection.
- N) **Search Warrant.** Judicial mandate to conduct an inspection following an employer's refusal to

allow the CSHO onto the premises to conduct an inspection.

- O) **CSHO NOK Letter.** The CSHO assigned to conduct a fatality inspection sends the first letter to the next of kin in a fatality investigation.
- P) **NOK Form.** The CSHO fills out this form to provide the name, address, phone number, and relationship of the next-of-kin to the deceased.
- Q) **OSHA-167I.** Inspection record update. The CSHOs use this form to update inspection information after the OSH-1 has been entered.