MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

AGENCY INSTRUCTION

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SUBJECT: Multi-Employer Work Sites

I. Purpose. This instruction provides guidelines for the Construction Safety and Health Division (CSHD) and the General Industry Safety and Health Division (GISHD) safety officer/industrial hygienist (SO/IH) to follow when conducting enforcement activities at and preparing citations for multi-employer work sites.

II. Scope. This instruction applies to enforcement activities conducted by the MIOSHA CSHD and GISHD.

III. References.

A. Michigan Occupational Safety and Health (MIOSH) Act, MCL 408.1001 et. seq., P.A. 154 of 1974, as amended.

B. MIOSHA Field Operations Manual (FOM), as amended.

IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; MIOSHA Messenger, and Internet Accessible.

V. Cancellations. All previous versions of this agency instruction.

VI. Next Review Date. This instruction will be reviewed in five years from date of issuance.

VII. History. History of previous versions include:

MIOSHA-COM-04-1R6, September 3, 2020
MIOSHA-COM-04-1R5, June 13, 2019
MIOSHA-COM-04-1R4, December 16, 2015
MIOSHA-COM-04-1R3, September 23, 2011
MIOSHA-COM-04-1R2, July 31, 2007
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X. Significant Changes.

A. Section XII. Multi-Employer Inspection Policy has been revised to change language to identify when a closing conference will be given.

B. Appendix B, Section III. Determining the Controlling Employer(s), D. Non-Implicit Responsibilities has been revised to remove Fall Protection for Specific Work Activities and (Warning lines, PFAS usage, CDZ) from the example.

XI. Multi-Employer Work Site Policy. The following is the multi-employer citation policy:

A. Multi-Employer Work Sites. On multi-employer work sites (in all industry sectors), more than one employer may be citable for a hazardous condition that violates a MIOSHA standard. A two-step process must be followed in determining whether more than one employer is to be cited. All facts considered in the two-step process shall be documented in the case file.

1. Step 1. The first step is to determine whether the employer is a creating, exposing, correcting, or controlling employer. The definitions in paragraphs (B) through (E) below explain and give examples of each. Remember that an employer may have multiple roles. Once the role of the employer is determined, go to Step 2 to decide if a citation is appropriate.

2. Step 2. If the employer falls into one of the four categories, it has obligations with respect to MIOSHA requirements. Step 2 is to determine if the employer's actions were sufficient to meet those obligations. The extent of the actions required of employers varies based on which category applies. Note that the extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This standard of care means that the controlling employer is not normally required to inspect for hazards as frequently, or to have the same level of knowledge of the applicable standards or of trade expertise, as the employer it has hired.

3. Appendices include:

a) Examples of Potential MIOSHA Enforcement on Multi-Employer Work Sites in Appendix A.

b) Guidelines for Issuing Citations to Controlling Employers on Multi-Employer Work Sites in Appendix B.

c) Determining Controlling Employers in Appendix C.

d) Controlling Contractor Worksheet in Appendix D.

B. The Creating Employer.

1. Definition: The employer that caused a hazardous condition that violates a MIOSHA standard.

2. Employers must not create violative conditions. An employer that does so is citable even if the only employees exposed are those of other employers at the site.

a) **Example 1**: Employer Host operates a factory. It contracts with Company S to service machinery. Host fails to cover drums of a chemical. This results in airborne levels of the chemical that exceed the Permissible Exposure Limit (PEL).

Analysis: Step 1: Host is a creating employer because it caused employees of S to be exposed to the air contaminant above the PEL. **Step 2**: Host failed to implement measures to prevent the accumulation of the air contaminant. It could have met its MIOSHA obligation by implementing the simple engineering control of covering the drums. Having failed to implement a feasible engineering control to meet the PEL, Host is citable for the hazard. Company S would also be obligated to remove their employees from the area or otherwise protect their employees from the hazard.

b) **Example 2**: Employer M hoists materials onto Floor 8, damaging perimeter guardrails. Employer M lacks authority to fix the guardrails itself. Employer M takes effective steps to keep all employees, including those of other employers, away from the unprotected edge and informs the controlling employer of the problem. As a result, neither Employer M's own employees nor employees of other employers are exposed to the hazard.

Analysis: Step 1: Employer M is a creating employer because it caused a hazardous condition by damaging the guardrails. **Step 2**: While it lacked the authority to fix the guardrails, it took immediate and effective steps to keep all employees away from the hazard and notified the controlling employer of the hazard. Employer M is not citable since it took effective measures to prevent employee exposure to the fall hazard.

C. The Exposing Employer.

1. Definition: An employer whose own employees are exposed to the hazard.

2. If the exposing employer created the violation, it is citable for the violation as a creating employer. If the violation was created by another employer, the exposing employer is citable if it: (1) knew of the hazardous condition or failed to exercise reasonable diligence to discover the condition, and (2) failed to take steps consistent with its authority to protect its employees. If the exposing employer has authority to correct the hazard, it must do so. If the exposing employer lacks the authority to correct the hazard, it is citable if it fails to do each of the following: (1) ask the creating and/or controlling employer to correct the hazard, (2) inform its employees of the hazard, and (3) take reasonable alternative protective measures. In extreme circumstances (e.g., imminent danger situations), the exposing employer is citable for failing to remove its employees from the job to avoid the hazard.

a) **Example 3**: Employer Sub S is responsible for inspecting and cleaning a work area in Plant P at the end of each day around a

large, permanent hole. A MIOSHA standard requires guardrails. There are no guardrails around the hole and Sub S employees do not use personal fall protection, although it would be feasible to do so. Sub S has no authority to install guardrails. However, it did ask Employer P, which operates the plant, to install them. P refused to install guardrails.

Analysis: Step 1: Sub S is an exposing employer because its employees are exposed to the fall hazard. **Step 2**: While Sub S has no authority to install guardrails, it is required to comply with MIOSHA requirements to the extent feasible. It must take steps to protect its employees and ask the employer that controls the hazard - Employer P - to correct it. Although Sub S asked for guardrails, since the hazard was not corrected, Sub S was responsible for taking reasonable alternative protective steps, such as providing personal fall protection. Because that was not done, Sub S is citable for the violation.

b) **Example 4**: Unprotected rebar on either side of the access ramp presents an impalement hazard. Sub E, an electrical subcontractor, does not have the authority to cover the rebar. However, several times Sub E asked the general contractor, Employer general contractor (GC), to cover the rebar. In the meantime, Sub E instructed its employees to use a different access route that avoided most of the uncovered rebar and required them to keep as far from the rebar as possible.

Analysis: Step 1: Since Sub E employees were still exposed to some unprotected rebar; Sub E is an exposing employer. **Step 2:** Sub E made a good faith effort to get the general contractor to correct the hazard and took feasible measures within its control to protect its employees. Sub E is not citable for the rebar hazard.

D. The Correcting Employer.

1. Definition: An employer who is engaged in a common undertaking, on the same work site as the exposing employer and is responsible for correcting a hazard. This usually occurs where an employer is given the responsibility of installing and/or maintaining particular safety/health equipment or devices.

2. The correcting employer must exercise reasonable care in preventing and discovering violations and meet its obligations of correcting the hazard.

Example 5: Employer C, a carpentry contractor, is hired to erect and maintain guardrails throughout a large, 15-story project. Work is proceeding on all floors. C inspects all floors in the morning and again in the afternoon each day. It also inspects areas where material is delivered to the perimeter once the material vendor is finished delivering material to

that area. Other subcontractors are required to report damaged/missing guardrails to the general contractor, who forwards those reports to C. C repairs damaged guardrails immediately after finding them and immediately after they are reported. On this project few instances of damaged guardrails have occurred other than where material has been delivered. Shortly after the afternoon inspection of Floor 6, workers moving equipment accidentally damage a guardrail in one area. No one tells C of the damage and C has not seen it. A MIOSHA inspection occurs at the beginning of the next day, prior to the morning inspection of Floor 6. None of C's own employees are exposed to the hazard, but other employees are exposed.

Analysis: Step 1: C is a correcting employer since it is responsible for erecting and maintaining fall protection equipment. **Step 2**: The steps C implemented to discover and correct damaged guardrails were reasonable in light of the amount of activity and size of the project. It exercised reasonable care in preventing and discovering violations; it is not citable for the damaged guardrail since it could not reasonably have known of the violation.

E. The Controlling Employer.

1. Definition: An employer who has general supervisory authority over the work site, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice. Descriptions and examples of different kinds of controlling employers are given below.

2. A controlling employer must exercise reasonable care to prevent and detect violations on the site. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. The controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.

3. Factors Relating to Reasonable Care Standard: Factors that affect how frequently and closely a controlling employer must inspect to meet its standard of reasonable care include:

   a) The scale of the project.

   b) The nature and pace of the work, including the frequency with which the number or types of hazards change as the work progresses.

   c) How much the controlling employer knows about both the safety history and safety practices of the employer it controls and about that employer's level of expertise.

d) More frequent inspections are normally needed if the controlling employer knows that the other employer has a history of noncompliance. Greater inspection frequency may also be needed, especially at the beginning of the project, if the controlling employer had never worked with this other employer before and does not know its compliance history.

e) Less frequent inspections may be appropriate where the controlling employer sees strong indications that the other employer has implemented effective safety and health efforts. The most important indicator of an effective safety and health effort by the other employer is a consistently high level of compliance. Other indicators include the use of an effective, graduated system of enforcement for noncompliance with safety and health requirements coupled with regular jobsite safety meetings and safety training.

4. Evaluating Reasonable Care: In evaluating whether a controlling employer has exercised reasonable care in preventing and discovering violations, consider questions such as whether the controlling employer:

a) Conducted periodic inspections of appropriate frequency; (frequency should be based on the factors listed in E.3 above.).

b) Implemented an effective system for promptly correcting hazards.

c) Enforces the other employer's compliance with safety and health requirements with an effective, graduated system of enforcement and follow-up inspections.

5. Types of Controlling Employers:

a) Control Established by Contract. In this case, the employer has a specific contract right to control safety. To be a controlling employer, the employer must itself be able to prevent or correct a violation or to require another employer to prevent or correct the violation. One source of this ability is explicit contract authority. This can take the form of a specific contract right to require another employer to adhere to safety and health requirements and to correct violations the controlling employer discovers.

(1) **Example 6**: Employer GH contracts with Employer S to do sandblasting at GH's plant. Some of the work is regularly scheduled maintenance and considered general industry work; other parts of the project involve new work and are considered construction. Respiratory protection is required. Further, the contract explicitly requires S to comply with safety and health requirements. Under the contract GH has the right to take various actions against S for failing to meet contract requirements, including the

right to have noncompliance corrected by using other workers and back-charging for that work. S is one of two employers under contract with GH at the work site, where a total of five employees work. All work is done within an existing building. The number and types of hazards involved in S's work do not significantly change as the work progresses. Further, GH has worked with S over the course of several years. S provides periodic and other safety and health training and uses a graduated system of enforcement of safety and health rules. S has consistently had a high level of compliance at its previous jobs and at this site. GH monitors S by a combination of weekly inspections, telephone discussions and a weekly review of S's own inspection reports. GH has a system of graduated enforcement that it has applied to S for the few safety and health violations that had been committed by S in the past few years. Further, due to respirator equipment problems, S violates respiratory protection requirements two days before GH's next scheduled inspection of S. The next day there is a MIOSHA inspection. There is no notation of the equipment problems in S's inspection reports to GH and S made no mention of it in its telephone discussions.

Analysis: Step 1: GH is a controlling employer because it has general supervisory authority over the work site, including contractual authority to correct safety and health violations. **Step 2**: GH has taken reasonable steps to try to make sure that S meets safety and health requirements. Its inspection frequency is appropriate in light of the low number of workers at the site, lack of significant changes in the nature of the work and types of hazards involved, GH's knowledge of S's history of compliance and its effective safety and health efforts on this job. GH has exercised reasonable care and is not citable for this condition.

(2) **Example 7**: Employer GC contracts with Employer P to do painting work. GC has the same contract authority over P as Employer GH had in Example 6. GC has never worked with P before. GC conducts inspections that are sufficiently frequent in light of the factors listed above in E.3. Further, during a number of its inspections, GC finds that P has violated fall protection requirements. It points the violations out to P during each inspection but takes no further actions.

Analysis: Step 1: GC is a controlling employer since it has general supervisory authority over the site, including a

contractual right of control over P. **Step 2**: GC took adequate steps to meet its obligation to discover violations; however, it failed to take reasonable steps to require P to correct hazards since it lacked a graduated system of enforcement. A citation to GC for the fall protection violations is appropriate.

(3) **Example 8**: Employer GC contracts with Sub E, an electrical subcontractor. GC has full contract authority over Sub E, as in Example 6. Sub E installs an electric panel box exposed to the weather and implements an assured equipment grounding conductor program, as required under the contract. It fails to connect a grounding wire inside the box to one of the outlets. This incomplete ground is not apparent from a visual inspection. Further, GC inspects the site with a frequency appropriate for the site in light of the factors discussed above in E.3. It saw the panel box but did not test the outlets to determine if they were all grounded because Sub E represents that it is doing all of the required tests on all receptacles. GC knows that Sub E has implemented an effective safety and health program. From previous experience it also knows Sub E is familiar with the applicable safety requirements and is technically competent.

Analysis: Step 1: GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over Sub E. **Step 2**: GC exercised reasonable care. It had determined that Sub E had technical expertise, safety knowledge, and had implemented safe work practices. It conducted inspections with appropriate frequency and had no reason to believe that the work was being performed unsafely. Under these circumstances GC was not obligated to test the outlets itself to determine if they were all grounded. It is not citable for the grounding violation.

b) Control Established by a Combination of Other Contract Rights. Where there is no explicit contract provision granting the right to control safety, or where the contract says the employer does not have such a right, an employer may still be a controlling employer. The ability of an employer to control safety in this circumstance can result from a combination of contractual rights that, together, give it broad responsibility at the site involving almost all aspects of the job. Its responsibility is broad enough so that its contractual authority necessarily involves safety. The authority to resolve disputes between subcontractors, set schedules, and determine

construction sequencing is particularly significant because they are likely to affect safety.

(1) **Example 9**: Construction Manager M is contractually obligated to set schedules and construction sequencing, require subcontractors to meet contract specifications, negotiate with trades, resolve disputes between subcontractors, direct work, and make purchasing decisions which affect safety. However, the contract states that M does not have a right to require compliance with safety and health requirements. Further, Subcontractor S asks M to alter the schedule so that S would not have to start work until Subcontractor G has completed installing guardrails. M is contractually responsible for deciding whether to approve S's request.

Analysis: Step 1: Even though its contract states that M does not have authority over safety, the combination of rights actually given in the contract provides broad responsibility over the site and results in the ability of M to direct actions that necessarily affect safety. For example, M's contractual obligation to determine whether to approve S's request to alter the schedule has direct safety implications. M's decision relates directly to whether S's employees will be protected from a fall hazard. M is a controlling employer. **Step 2**: In this example, if M refused to alter the schedule, it would be citable for the fall hazard violation.

(2) **Example 10**: Employer ML's contractual authority is limited to reporting on subcontractors' contract compliance to Owner/Developer O and making contract payments. Although it reports on the extent to which the subcontractors are complying with safety and health infractions to O, ML does not exercise any control over safety at the site.

Analysis: Step 1: ML is not a controlling employer because these contractual rights are insufficient to confer control over the subcontractors, and ML did not exercise control over safety. Reporting safety and health infractions to another entity does not, by itself (or in combination with these very limited contract rights), constitute an exercise of control over safety. **Step 2**: Since it is not a controlling employer it had no duty under the MIOSH Act to exercise reasonable care with respect to enforcing the

subcontractors' compliance with safety; therefore, there is no need to go to Step 2.

c) Architects and Engineers: Architects, engineers, and other entities are controlling employers only if the breadth of their involvement in a construction project is sufficient to bring them within the parameters discussed above.

(1) **Example 11**: Architect A contracts with Owner O to prepare contract drawings and specifications, inspect the work, report to O on contract compliance, and to certify completion of work. A has no authority or means to enforce compliance, no authority to approve/reject work and does not exercise any other authority at the site, although it does call the general contractor's attention to observed hazards noted during its inspections.

Analysis: Step 1: A's responsibilities are very limited in light of the numerous other administrative responsibilities necessary to complete the project. It is little more than a supplier of architectural services and conduit of information to O. A's responsibilities are insufficient to confer control over the subcontractors and it does not exercise control over safety. The responsibilities it does have are insufficient to make it a controlling employer. Merely pointing out safety violations did not make it a controlling employer. NOTE: In a circumstance such as this, it is likely that broad control over the project rests with another entity. **Step 2**: Since A is not a controlling employer it had no duty under the MIOSH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; therefore, there is no need to go to Step 2.

(2) **Example 12**: Engineering Firm E has the same contract authority and functions as in Example 9.

Analysis: Step 1: Under the facts in Example 9, E would be considered a controlling employer. **Step 2**: The same type of analysis described in Example 9 for Step 2 would apply here to determine if E should be cited.

d) Control Without Explicit Contractual Authority: Even where an employer has no explicit contract rights with respect to safety, an employer can still be a controlling employer if, in actual practice, it exercises broad control over subcontractors at the site (see Example 9).

(1) **Example 13**: Construction Manager MM does not have explicit contractual authority to require subcontractors to comply with safety requirements, nor does it explicitly have broad contractual authority at the site. However, it exercises control over most aspects of the subcontractors' work anyway, including aspects that relate to safety.

Analysis: Step 1: MM would be considered a controlling employer since it exercises control over most aspects of the subcontractor's work, including safety aspects. **Step 2**: The same type of analysis on reasonable care described in the examples in E.5.a above would apply to determine if a citation should be issued to this type of controlling employer.

F. Multiple Roles.

1. A creating, correcting, or controlling employer may be an exposing employer. Consider whether the employer is an exposing employer before evaluating its status with respect to these other roles.

2. Exposing, creating, and controlling employers may be correcting employers if they are authorized to correct the hazard.

XII. Multi-Employer Inspection Policy. On multi-employer work sites (in all industry sectors), more than one employer may be subject to an inspection under this instruction. When performing an inspection on a multi-employer work site the SO/IH using their professional judgment and in discussions with the GC or host employer (HE), should elect one of the options below. If the SO/IH believes that neither option would be appropriate for the work site, they are to call and discuss other options with their supervisor.

A. Option 1. Hold an opening conference with all employers.

1. At the opening conference the SO/IH will state (except for the GC or host employer (HE)) if no inspection has occurred of the employer, they will not hear/receive anything more from MIOSHA regarding this inspection.

2. The SO/IH will hold a closing conference with the GC or HE and all employers receiving an inspection.

B. Option 2. Hold an opening conference with the GC or HE.

1. While performing the inspection, if the SO/IH observes a violation that is attributable to an employer other than the GC or HE, the SO/IH will hold an opening conference with that employer and then continue the inspection.

2. The SO/IH will repeat step one above as needed until the inspection is completed.

3. The SO/IH will close with the GC or HE and all employers that received an opening conference.

Appendix A

Examples of Potential MIOSHA Enforcement On Multi-Employer Work Sites

Multi- Employer Work Sites. On multi-employer work sites, more than one employer may be citable for the same condition. The following employers are potentially citable:

(1) ***The Exposing Employer.*** An employer whose own employees are exposed to the hazard.

(a) The exposing employer must protect its employees from the hazard. If the employer has the authority to correct the hazard, it is citable if it failed to exercise reasonable care to correct it. The reasonable care standard for the exposing employer is very high; it must frequently and carefully inspect to prevent hazards and must promptly correct hazards that are found.

(b) If the exposing employer lacks the authority to correct the hazard, it is citable if it fails to take all feasible measures to minimize the hazard, minimize its employees' exposure to the hazard, and ask the controlling employer to get the hazard corrected. In extreme circumstances (e.g., imminent danger situations), the exposing employer is citable for failing to remove its employees from the job to avoid the hazard.

(2) ***The Creating Employer.*** The employer who created the hazard.

(a) ***Example 1:*** A contractor hoisting materials onto a floor damages perimeter guardrails. None of its own employees are exposed to the hazard, but employees of other contractors are exposed.

Analysis: This creating employer is citable if it failed to take immediate steps to keep all employees, including those of other employers, away from the hazard and to notify the controlling contractor of the hazard. If it had the authority to repair the guardrails, it is also citable if it failed to promptly correct the hazard.

(b) ***Example 2:*** An excavating contractor digs a trench with a backhoe, never entering the trench. It fails to install cave-in protection, as it was required by contract to do, and leaves the site. The next day employees of a plumbing contractor enter the unprotected trench.

Analysis: The excavating contractor is citable because it created the hazard even though none of its employees were exposed to the hazard. The plumbing contractor is citable as an exposing employer.

(3) ***The Correcting Employer.*** An employer who is responsible for correcting a hazard.

(a) ***Example 3:*** A carpentry contractor is hired to erect and maintain guardrails throughout a project. None of its own employees are exposed to the hazard, but other employees are exposed where the guardrails are missing or damaged.

Analysis: This correcting employer is citable if it failed to exercise reasonable care in its efforts to install and repair guardrails and to discover missing or damaged guardrails.

Note: Exposing, creating and controlling employers can also be correcting employers if they are authorized to correct the hazard.

(4) ***The Controlling Employer.*** An employer who has control over the exposing, creating and/or correcting employer. To be citable as a controlling employer, the employer must have sufficient control and must have failed to exercise reasonable care in preventing, discovering, or correcting the hazard.

(a) Sufficient Contractual Control.

(1) By a Specific Contract Right to Control Safety: To be a controlling contractor, the employer must be able to require a subcontractor to prevent or correct a violation. One source of this ability is contract authority. This ability can take the form of a specific contract right to require a subcontractor to adhere to safety and health requirements.

(2) By a Combination of other Contract Rights: Where there is no specific contract provisions granting the right to control safety or where the contract says the employer does not have such a right, an employer may still be a controlling employer. The ability of an employer to control safety in this circumstance can result from a combination of contractual rights that together, give it broad responsibility at the site involving almost all aspects of the job, including aspects that affect safety.

(3) Contractual Rights that Typically Combine to Result in this Authority: The right to set schedules and construction sequencing, require contract specifications to be met, negotiate with trades, resolve disputes between subcontractors, and direct work or make purchasing decisions that affect safety. Where the combination of rights results in the ability of the employer to direct actions relating to safety, the employer is considered a controlling employer.

(b) Sufficient control without contractual authority.

(1) Even where an employer has no contract rights with respect to safety, the employer can still be a controlling employer if, in actual practice, it exercises broad control over subcontractors at the site.

(2) A construction manager does not have specific contractual authority to require subcontractors to comply with safety requirements. However, it exercises control over most aspects of the subcontractors' work anyway, including aspects that relate to safety. This construction manager would be considered a controlling employer and would be citable if it failed to exercise reasonable care in overseeing safety.

(c) Reasonable care.

(1) A controlling employer normally shall be cited if it failed to exercise reasonable care in preventing or correcting a violation.

(2) The reasonable care standard for a controlling employer is not as high as it is for an exposing, creating, or correcting employer.

(i) This standard of care means that the controlling employer is not normally required to inspect as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the subcontractor.

(ii) Factors that affect how frequently and closely a controlling contractor must inspect to meet its standard of reasonable care include the scale of the project, the nature of the work, how much the general contractor knows about both the safety history and safety practices of the subcontractor, and about the subcontractor's level of expertise.

(3) ***Example 4:*** A general contractor hires an electrical subcontractor. The electrical subcontractor installs an electrical panel box exposed to the weather and implements an assured equipment grounding conductor program, as required under the contract. It fails to connect the grounding wire inside the box to one of the outlets. This incomplete ground is not apparent from a visual inspection. The general contractor inspects the site twice a week. It saw the panel box but did not test the outlets to determine if they were grounded because the electrical contractor represents that it is doing all of the required tests on all receptacles. The general contractor knows that the subcontractor has a good safety program. From previous experience it also knows that the subcontractor is familiar with the applicable safety requirements and is technically

competent. It had asked the subcontractor if the electrical equipment is acceptable for use and was assured that it is.

Analysis: The general contractor exercised reasonable care. It had determined that the subcontractor had technical expertise, safety knowledge and used safe work practices. It also made some basic inquiries into the safety of the electrical equipment. Under these circumstances it was not obligated to test the outlets itself to determine if they were all grounded. It would not be citable for the grounding violation.

Appendix B

Guidelines for Issuing Citations to Controlling Employers on Multi-Employer Work Sites

I. Purpose. The purpose of Appendix B is to provide guidelines and establish the necessary supporting documentation when alleging citations to the controlling employer on a multi-employer work site.

II. Background. The Multi-Employer Work Sites instruction and the Field Operations Manual (FOM) use language such as “reasonable care” and “due diligence” for determining the application of controlling employer responsibilities in relation to multi-employer work sites. As a result, there have been inconsistencies when applying the instruction when alleging a violation for controlling employer issues.

MIOSHA’s mission is to protect the workers of the State of Michigan. The Multi-Employer Work Site instruction provides guidance for determining which of the four criteria to use when alleging a violation on a multi-employer work site or involving multi-employer issues. The four criteria being:

A. Exposing Employer
B. Creating Employer
C. Correcting Employer
D. Controlling Employer

The Multi-Employer Work Site instruction does not place "primary” responsibility for the safety of subcontractors’ employees on the controlling contractor. To the contrary, the instruction makes clear that the primary responsibility rests with an employee’s employer. The instruction specifically states:

> “The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This standard of care means that the controlling employer is not normally required to inspect for hazards as frequently, or to have the same level of knowledge of the applicable standards, or of trade expertise as the employer it has hired.”

III. Determining the Controlling Employer(s). The safety officer (SO) or industrial hygienist (IH) must first evaluate where the employer is a controlling employer either through contracts, exercising control, or through implicit responsibility.

A. Contract to Control. When controlling employer issues are indicated, the SO/IH shall review the controlling employer language in the contract and include this portion of the contract and any other supporting documentation in the case file.

1. Site Specific Contract. Owner hires an individual or another employer/contractor to oversee the project and subcontractors. The owner would not likely be the controlling employer unless exercising control.

2. Generic Safety and Health Responsibility Language is in the Contract. Employer/owner requires all subcontractors to adhere to MIOSHA Rules and Regulations or have language in the contract that gives them the authority to remove an employer from the site for safety issues.
3. Written or Verbal Owner/Employer Controlling Contracts. The owner/employer has separate contracts for each subcontractor. He/She coordinates and/or oversees the work progress.
4. No Written or Verbal Contract.

B. Exercising Control, With or Without a Contract. SO/IH must explain and document how this employer is exercising control.

1. Is this employer supervising other sub-contractors' employees?
2. Does this employer tell subcontractor employees how, when, or where to perform their job?
3. Has this employer removed another subcontractor employee from the site?
4. Did this employer schedule or coordinate work activities of sub-contractors?
5. Does this employer inspect the work operations of other subcontractors for safety or health hazards?

C. Implicit Responsibility. When a work operation is not specific to the subcontractor, but has broad application that may affect other employers at the work site, then the controlling employer is responsible for the general safety conditions on the site. The controlling employer is in the best position to correct the hazard.

Examples:

General Fire Extinguishers
General Housekeeping
General Guarding of Walking Surfaces
Handrails and Stair Rails
Toilet/Washing Facilities
Illumination
Carbon Monoxide
Noise Ambient
Fire Protection Plans
Presence of Lead

D. Non-Implicit Responsibility. Typically, the controlling employer will not be cited when the work activity is specific to the subcontractors' work operation.

Examples:

Aerial Lift Permits
Missing Saw Guards
Non-Safety Gasoline Containers
Worn Extension Cords
Respirators
Eye Protection
No Showers (lead)
Hard Hats

The exception for non-implicit responsibility would be for imminent danger conditions. In imminent danger conditions, the controlling employer must take immediate corrective actions.

E. Knowledge of the Activity – Is there a Hazard?

1. Direct knowledge:

   a) Did the controlling employer see the activity?
   b) Was the controlling employer informed of the activity?
   c) Did the controlling employer direct the activity?

2. Indirect Knowledge:

   a) Should the controlling employer have had knowledge of the activity?
   b) Does this employer know there is a hazard?
   c) Does the subcontractor have a history with MIOSHA/OSHA? (subcontractor pre-qualification)
   d) Were there previous injuries/illnesses during a similar activity?
   e) Did the violation exist as a matter of custom and practice at the work site?
   f) Had the subcontractor been warned of previous hazards?

F. Reasonable Care/Due Diligence. The SO/IH must determine whether the controlling employer exercised reasonable steps or due diligence to protect employees given the information known and available at the time of the inspection. The SO/IH must include any documentation or statements in the case file that demonstrates the employer did not take reasonable steps to protect employees from safety and health hazard.

A controlling employer's responsibility for a violation diminishes as the evidence becomes clearer that they acted reasonably to protect employees. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This duty of reasonable care means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.

1. How are hazards detected on this project?
2. How often are jobsite inspections conducted?
3. Is a system in place for correcting identified hazards?
   a) Safety Orientation
   b) Tool Box Talks
   c) Pre-task Analysis
   d) Safety Meetings
   e) Inspection
4. Why is this system inadequate?

G. Additional Responsibilities for Controlling Employers. The controlling employer must take immediate action to eliminate a hazard that is generally recognized as

imminent danger regardless of whether they are implicitly responsible. The SO/IH shall document the controlling employer's knowledge of the activity or hazard. The following conditions must be met before a hazard becomes an imminent danger:

1. There must be a reasonable likelihood that a serious accident will occur immediately or, if not immediately, then before abatement would otherwise be required.

2. The harm/threat must be death or serious physical harm. For a health hazard, exposure to the toxic substance or other health hazard must cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.

H. Documentation Required for Issuing Citations to Controlling Employer:

1. A description of the type of activity performed by the controlling employer at the work site.

2. A description of the respective roles and obligations of all the employers at the worksite, i.e., contracts and verbal agreements.

3. The specific facts that describe the controlling employer's involvement in creating or failing to correct the violation, including those facts that identify the employer as an exposing, creating, controlling, and/or correcting employer. (Who, What, When, Where, and Why)

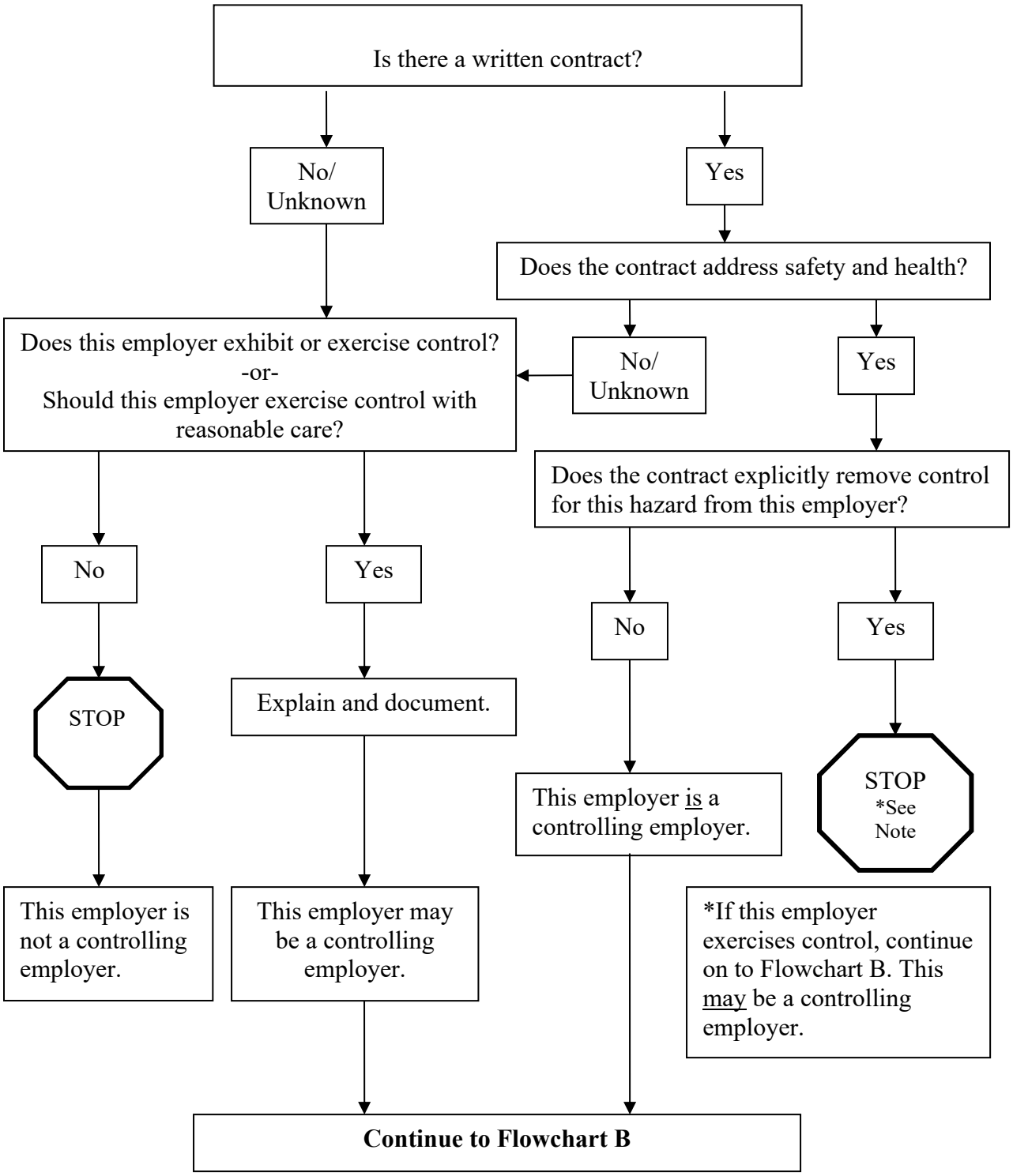
4. The specific facts that determine the degree of control exercised on the part of the controlling employer.

5. Any other evidence that supports or weighs against citing the controlling employer.

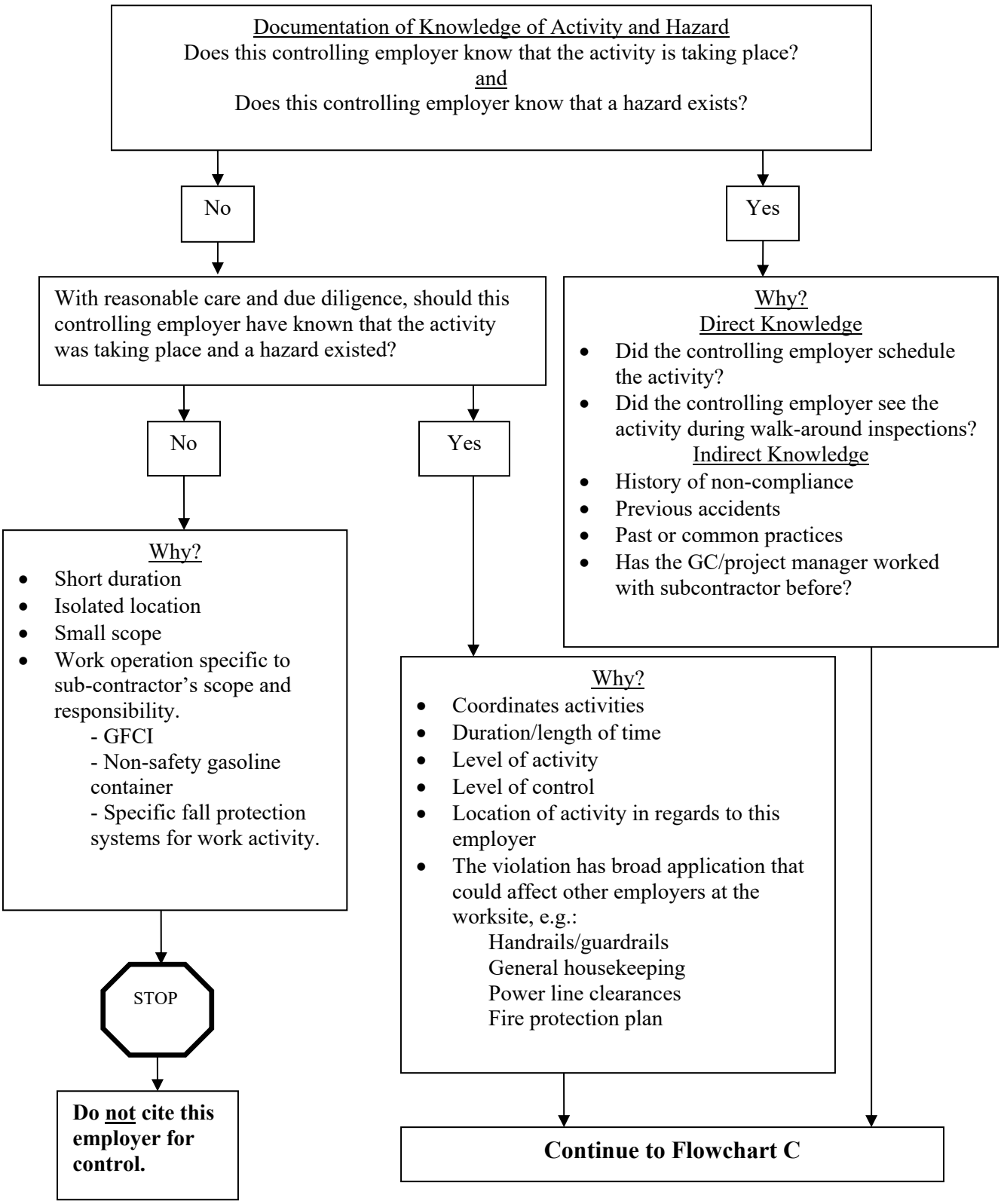
6. The use of the Controlling Contractor Worksheet (Appendix D) will assist in the documentation of the controlling contractor(s) actions/inactions regarding an alleged violation(s) at the jobsite. The SO/IH are to include this worksheet in the case file when alleging a violation against an employer(s) for control.

Appendix C
Determining Controlling Employers

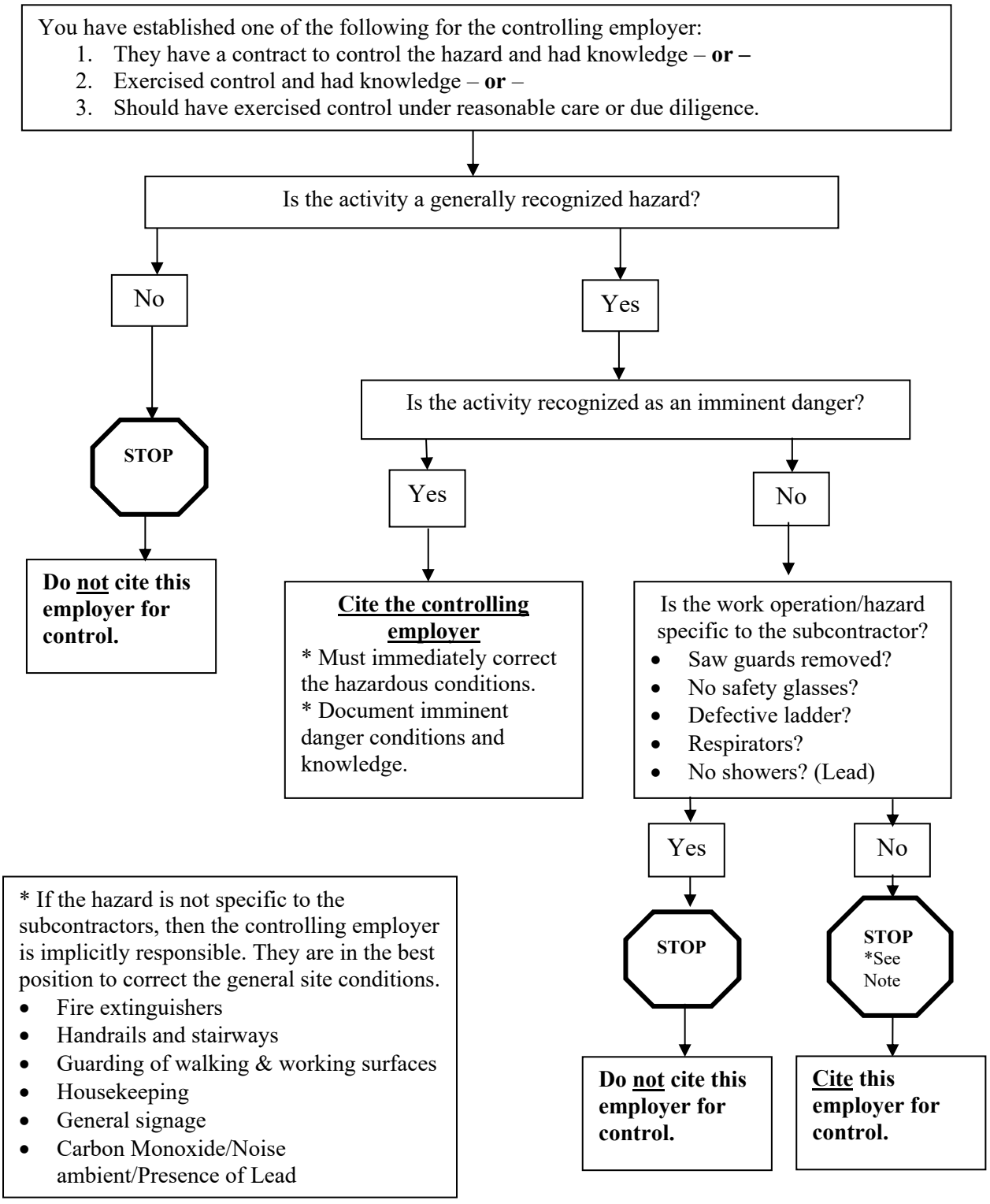
Flowchart A



Flowchart B


Documentation of Knowledge of Activity and Hazard
Does this controlling employer know that the activity is taking place?
and
Does this controlling employer know that a hazard exists?
No
Yes
With reasonable care and due diligence, should this controlling employer have known that the activity was taking place and a hazard existed?
Why?
Direct Knowledge
Did the controlling employer schedule the activity?
Did the controlling employer see the activity during walk-around inspections?
Indirect Knowledge
History of non-compliance
Previous accidents
Past or common practices
Has the GC/project manager worked with subcontractor before?
No
Yes
Why?
Short duration
Isolated location
Small scope
Work operation specific to sub-contractor's scope and responsibility.
- GFCI
- Non-safety gasoline container
- Specific fall protection systems for work activity.
Why?
Coordinates activities
Duration/length of time
Level of activity
Level of control
Location of activity in regards to this employer
The violation has broad application that could affect other employers at the worksite, e.g.:
Handrails/guardrails
General housekeeping
Power line clearances
Fire protection plan
STOP
Do not cite this employer for control.
Continue to Flowchart C

Flowchart C


You have established one of the following for the controlling employer:
1. They have a contract to control the hazard and had knowledge – or –
2. Exercised control and had knowledge – or –
3. Should have exercised control under reasonable care or due diligence.
Is the activity a generally recognized hazard?
No
Yes
STOP
Do not cite this employer for control.
Is the activity recognized as an imminent danger?
Yes
No
Cite the controlling employer
* Must immediately correct the hazardous conditions.
* Document imminent danger conditions and knowledge.
Is the work operation/hazard specific to the subcontractor?
• Saw guards removed?
• No safety glasses?
• Defective ladder?
• Respirators?
• No showers? (Lead)
Yes
No
STOP
Do not cite this employer for control.
STOP
*See Note
Cite this employer for control.
* If the hazard is not specific to the subcontractors, then the controlling employer is implicitly responsible. They are in the best position to correct the general site conditions.
• Fire extinguishers
• Handrails and stairways
• Guarding of walking & working surfaces
• Housekeeping
• General signage
• Carbon Monoxide/Noise ambient/Presence of Lead

Appendix D
Controlling Contractor Worksheet

Est. Name:	Inspection #:	SO/IH:

1. Is there a written contract? (Explain how the contract addresses safety and list the responsibilities)

2. Does the contract explicitly remove control for this hazard from this employer?

   a. If no contract, explain how controlling employer is exercising control.

3. Does the controlling employer know that this activity is taking place? (Explain)

   a. With reasonable care and due diligence, should the controlling employer have known that the activity was taking place and a hazard existed?

   b. If no, why? (Explain)

   c. If yes, why? (Explain)

4. Is the activity generally recognized as imminent danger or a generally recognized hazard? If yes, document imminent danger conditions and knowledge and cite the controlling employer.

5. Is the work operation/hazard specific to the subcontractor?

6. If not specific to sub-contractor, explain why controlling employer is responsible for this violation.