

# U.S. Department of Labor

## Office of Inspector General—Office of Audit

### OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION



### **OSHA NEEDS TO EVALUATE THE IMPACT AND USE OF HUNDREDS OF MILLIONS OF DOLLARS IN PENALTY REDUCTIONS AS INCENTIVES FOR EMPLOYERS TO IMPROVE WORKPLACE SAFETY AND HEALTH**

Date Issued: September 30, 2010  
Report Number: 02-10-201-10-105

**U.S. Department of Labor  
Office of Inspector General  
Office of Audit**

## **BRIEFLY...**

Highlights of Report Number: 02-10-201-10-105, to the Assistant Secretary for Occupational Safety and Health.

### **WHY READ THE REPORT**

Occupational Safety and Health Administration's (OSHA) use of penalty assessments and the impact on workplace safety and health have been subjects of OIG and GAO reports since September 1987. As recently as August 2004, GAO reported that OSHA had not effectively evaluated its penalty assessments.

In setting penalty amounts, OSHA is required to consider the seriousness of violations, as well as employer's size, good faith, and history. While penalty reductions are not mandated, OSHA's policies are intended to (1) encompass the general character of an employer's safety and health performance and (2) use significant penalty reductions to provide incentives for employers to abate workplace violations voluntarily. In total, penalty reductions can be as much as 100 percent.

For inspections OSHA conducted between July 2007 and June 2009, 98 percent of citations received penalty reductions, with reductions totaling \$351 million. A driving factor for reducing penalties was the employer's right to contest an inspection, which could delay abatement and continue to expose employees to hazards. Officials maintained that reduced penalties would lead to quicker and more comprehensive abatement. By effectively using penalty reductions, OSHA could potentially reduce the risk of future injuries, illnesses, and fatalities.

### **WHY OIG CONDUCTED THE AUDIT**

The objective of this audit was to answer the question: Has OSHA effectively evaluated the impact of penalty reduction incentives on workplace safety and health?

The audit covered 49,192 Federal OSHA inspections of non-Federal employers initiated between July 2007 and June 2009. The inspections resulted in 142,187 citations and \$523.5 million in penalties which were reduced by \$351.2 million (67 percent).

### **READ THE FULL REPORT**

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2010/02-10-201-10-105.pdf>

**September 2010**

## **OSHA NEEDS TO EVALUATE THE IMPACT AND USE OF HUNDREDS OF MILLIONS OF DOLLARS IN PENALTY REDUCTIONS AS INCENTIVES FOR EMPLOYERS TO IMPROVE WORKPLACE SAFETY AND HEALTH**

### **WHAT OIG FOUND**

OSHA has not effectively evaluated the impact of \$351 million in penalty reductions as an incentive for employers to improve workplace safety and health. Small employers received the largest reductions (78 percent), but generally had the worst safety and health history — more inspections, more fatalities, and more high-gravity serious (likely to cause death) and repeat violations.

OSHA did not always consider an employer's overall safety and health performance when reducing penalties, in part because its information system cannot effectively track violations company-wide. We found 4,791 employers with a history of serious violations had received penalty reductions of \$86.6 million. Half of these employers received reductions of \$42.6 million on subsequent inspections where a similar standard was violated indicating the employer's hazard corrections may not have been comprehensive and company-wide.

We found as much as \$127 million (36 percent) in penalty reductions may not have been appropriately granted. Specifically, reductions granted in consideration of the employers' size resulted in what amounts to an entitlement as 98 percent of all citations were reduced at the maximum rate. OSHA can limit size reductions for small employers with the more serious violations, but its use of that policy was minimal and up to \$91.8 million of reductions may have been granted inappropriately. Another \$2.3 million of reductions exceeded limits set forth in the directives.

OSHA Area Directors did not document the justification for reductions resulting from informal settlement agreements, for an estimated 49 percent of reductions or \$31.8 million.

Finally, we found that OSHA incorrectly granted history reductions of \$1.1 million to employers with prior violations.

### **WHAT OIG RECOMMENDED**

The OIG made 11 recommendations to the Assistant Secretary for Occupational Safety and Health to commit the necessary resources to effectively evaluate the impact of penalty reductions, improve information systems, and revise and implement policies and procedures.

OSHA provided comments on our report expressing concerns about some audit findings and recommendations. Based on OSHA's response, we clarified two recommendations, but our overall conclusions remain unchanged.

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**U.S. Department of Labor**

Office of Inspector General  
Washington, D.C. 20210



September 30, 2010

**Assistant Inspector General's Report**

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The purpose of the Occupational Safety and Health Act of 1970 (OSH Act) is to assure as far as possible that workers have safe and healthful working conditions by encouraging employers to reduce hazards, and institute safety and health programs. When unsafe conditions are identified, inspectors from the Occupational Safety and Health Administration (OSHA) issue citations with Gravity-Based Penalties (penalties). In setting penalty amounts, OSHA is required to consider the seriousness of violations, as well as employer's size, good faith, and history. While reduction rates are not mandated, OSHA's policies are intended to use significant penalty reductions to provide incentives for employers to abate workplace violations voluntarily.

OSHA directives require assessment of its programs with the goal of improving results. OSHA's penalty assessments and the impact on improvements to workplace safety and health has been the subject of Office of Inspector General (OIG) and U.S. Government Accountability Office (GAO) reports since September 1987. As recently as August 2004, GAO reported that OSHA had not effectively evaluated its penalty assessments. (See Appendix A, Background for five related OIG and GAO reports.)

The objective of this audit was to answer the following question:

Has OSHA effectively evaluated the impact of penalty reduction incentives on workplace safety and health?

The audit covered 49,192 Federal OSHA inspections of non-Federal employers initiated during the 2-year period between July 1, 2007, and June 30, 2009. The inspections resulted in 142,187 citations and \$523.5 million in penalties, which were reduced by \$351.2 million, or 67 percent of total penalties.

For the audit period, we evaluated internal controls over penalty reductions and assessed the reliability of related inspection data. We reviewed OSHA policies and

procedures, related OIG and GAO reports, and OSHA internal monitoring reports. We traced computer generated data to source documents, identified employers with two or more inspections with serious violations, and we examined a random sample of 180 case files. Interviews were conducted with officials at OSHA National, Regional, and Area Offices, and with Regional Solicitors of Labor.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **RESULTS IN BRIEF**

OSHA has not effectively evaluated the impact of penalty reductions as an incentive for employers to improve workplace safety and health. During the 2-year audit period, 98 percent of citations for safety and health violations received reductions. Penalties of \$523.5 million were reduced by \$351.2 million, or 67 percent. Penalty reductions were used to provide an incentive for employers to correct violations and improve workplace safety and health. Another driving factor for reductions was the employer's right to contest the inspection, which could delay abatement and continue to expose employees to hazards. However, OSHA management had not committed the necessary resources or placed the appropriate emphasis to evaluate the use of penalty reductions and the impact on workplace safety and health. As a result, OSHA cannot determine if the use of \$351.2 million of penalty reductions was effective in reducing hazards and improving workplace safety and health.

OSHA reduced penalties on an inspection and per violation basis, without always considering an employer's overall safety and health performance. OSHA's Integrated Management Information System (IMIS) cannot effectively track employers with company-wide violations, which can be affected by the lack of quality data due to employer-related companies and name variations. We found 24 percent of the violations were issued to 4,791 employers (227 with fatalities) that had a history of serious violations in two or more inspections and received reductions of \$86.6 million. These reductions averaged \$18,076 per employer and ranged up to \$480,400. Half of these employers violated a similar standard on subsequent inspections, indicating that correction of workplace hazards may not have been comprehensive and company-wide.

Finally, we found that OSHA's directives for reducing penalties did not provide clear guidance, and integrate the size, good faith, and informal settlement reductions with an employer's overall character. Area Office Directors and staff did not always comply with or make full use of these directives. OSHA has not effectively used the results from its own internal reports to clarify directives and ensure compliance with its directives. As a result, up to \$127 million (36 percent) of the \$351.2 million of penalty reductions may not have been appropriately granted. This consisted of \$94.1 million of potentially

excessive size reductions, \$31.8 million of unjustified informal settlement reductions, and \$1.1 million of erroneous history reductions.

- OSHA's use of size reductions resulted in what amounts to an entitlement, as 98 percent of all cited violations were reduced at the maximum allowable rate. Small employers generally had the worst safety and health history — the most inspections, fatalities, and high-gravity serious (likely to cause death) and repeat violations — and while OSHA has a policy where it can limit size reductions for these employers, its use of the policy was minimal, as 97 percent of more serious violations received maximum reductions. As a result, size reductions of up to \$94.1 million may have been excessive.
- Area Directors did not document the justification for reductions settled informally for an estimated 49 percent of reductions. As a result, \$31.8 million of unjustified informal settlement reductions were granted.
- Compliance officer reductions of \$1.1 million for history were not in compliance with OSHA directives.

We recommend that the Assistant Secretary for Occupational Safety and Health commit the necessary resources to effectively evaluate the impact of penalty reductions on comprehensive improvements to workplace safety and health, improve information systems, and revise and implement policies and procedures.

In response to our draft report, the Assistant Secretary for Occupational Safety and Health indicated that OSHA is statutorily required to consider various factors in assessing penalties and, in doing so, has no discretion with respect to specific reductions. However, our report maintains that while it is mandatory that OSHA consider these factors, specific adjustments to penalties can and should be evaluated on a case-by-case basis depending on numerous factors such as the employer's safety record. To ensure the clarity of our position, we clarified recommendations 5 and 10 from the draft version of this report. OSHA's response was incorporated in its entirety as Appendix E.

## RESULTS AND FINDINGS

### **Objective — Has OSHA effectively evaluated the impact of penalty reduction incentives on workplace safety and health?**

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*OSHA reduced penalties extensively, but impact not determined.*

For the 2-year period, penalties of \$523.5 million were reduced by 67 percent. However, OSHA has not effectively evaluated the impact of penalty reductions and the effect in reducing workplace hazards. In granting penalty reductions, OSHA did not always consider an employer's overall safety and health performance as employers with histories of serious violations were granted penalty reductions. Furthermore, OSHA



directives lack clear guidance, were not always complied with, and had provisions that were not fully utilized. As a result, OSHA cannot determine if \$351.2 million of penalty reductions was effective in reducing workplace hazards. Up to \$127 million of the \$351.2 million may not have been appropriately granted.

**Finding 1 — OSHA has not effectively evaluated the impact of penalty reductions as an incentive for employers to improve workplace safety and health.**

Penalties for violating safety and health standards of \$523.5 million were reduced by \$351.2 million (67 percent) for the 2-year period July 1, 2007, to June 30, 2009. The average inspection resulted in penalties of \$10,642, which were reduced by \$7,143 to a final penalty of \$3,499. OSHA directives require the assessment of its programs with the goal of improving results. However, management did not commit the necessary resources or place the appropriate emphasis to evaluate the use of penalty reductions as an incentive for employers to improve workplace safety and health. As a result, OSHA cannot determine if \$351.2 million of penalty reductions was effective in reducing workplace hazards.

OSHA penalty reductions include — reductions by OSHA Compliance Safety and Health Officers (compliance officer) at initial citation (size, history, good faith, and quick-fix), and post-citation reductions (informal settlement by OSHA Area Directors, and other reductions by the Solicitor of Labor (SOL) and judicial decisions). Total penalty reductions by type are shown below and details by employer size are in Exhibit 1.

Type of Reduction	Amount
<b>Compliance Officer Reductions</b>	
Size	\$224.0 million
History	34.2 million
Good Faith	11.7 million
Quick-Fix	0.2 million
<b>Subtotal Compliance Officer</b>	<b>\$270.1 million</b>
<b>Post-Citation Reductions</b>	
Informal Settlements - OSHA Area Directors	\$68.3 million
Other reductions - SOL and Judicial Decisions	12.8 million
<b>Subtotal Post Citation</b>	<b>\$81.1 million</b>
<b>Total Reductions</b>	<b>\$351.2 million</b>

OSHA's Management Accountability Program (MAP) requires OSHA, "... to assess the efficiency and effectiveness of field activities in relation to established policies and procedures, and identify best practices and deficiencies in performance with the goal of improving program results." The OSH Act intended to assure so far as possible safe and healthful working conditions by encouraging employers to reduce hazards, and to create/improve safety and health programs. Employers are required to furnish workplaces free from recognized hazards that are likely to cause death or serious physical harm, and comply with occupational safety and health standards. OSHA directives state that penalty reductions were designed primarily to provide an incentive

toward correcting violations voluntarily. Furthermore, reductions were to be based on the general character of a business and its safety and health performance.

However, OSHA has not effectively evaluated the use of penalty reductions for size, history, good faith, and informal settlements, and the impact on comprehensive corrections of workplace hazards. Weaknesses in OSHA's penalty system were reported by OIG in September 1987, and also by GAO in April 1992 and August 2004. For example, GAO reported in 1992 that OSHA believed penalty reductions would result in comprehensive abatement, but GAO concluded that a causal link between penalty reductions and more comprehensive abatement could not be established. Without an effective evaluation, OSHA cannot determine if \$351.2 million of penalty reductions granted to employers was an effective incentive in reducing workplace hazards.

**Finding 2 — OSHA reduced penalties on an inspection and per violation basis, without always considering an employer's overall safety and health performance.**

For inspections in the audit period, 34,457 of 142,187 citations (24 percent) were issued to 4,791 employers that had a history of serious violations in 2 or more inspections. Half of these employers violated a similar standard on subsequent inspections indicating that correction of workplace hazards may not have been comprehensive and company-wide. Reductions were granted without always considering employer's overall safety and health performance partly due to the inability of OSHA's Integrated Management Information System (IMIS) to effectively track employers with company-wide violations. As a result, \$86.6 million of reductions was granted to employers with serious violations in 2 or more inspections. This consisted of \$25.2 million for the first inspection and \$61.4 million for subsequent inspections.

OSHA Field Operations Manual Chapter 6, states, "The penalty structure in Section 17 of the OSH Act is designed primarily to provide an incentive for preventing or correcting violations voluntarily ... these reduction factors are based on the general character of an employer's safety and health performance ..."

The 4,791 employers with a history of serious violations in 2 or more inspections received reductions of \$86.6 million, which averaged \$18,076 per employer and ranged up to \$480,400. Half of these employers received reductions of \$42.6 million on subsequent inspections where a similar standard was violated; indicating that correction of workplace hazards may not have been comprehensive and company-wide. See table below for reductions granted to the 4,791 employers with a history of serious violations:

<b>Reduction Type</b>	<b>Amount</b>
Size	\$52.4 million
History	5.3 million
Good Faith	2.5 million
Post Citation	26.4 million
<b>Total Reductions</b>	<b>\$86.6 million</b>

Of the 4,791 employers with a history of serious violations, 227 employers had fatalities and received reductions of \$4.6 million. Average reductions ranged from 65 percent for small employers to 33 percent for very large employers. See Exhibit 2 for details.<sup>1</sup>

IMIS cannot effectively track inspection information company-wide. Staff lacked IMIS access to inspection information on the amount and type of reduction applied by other Area Offices, and OSHA's website is not fully transparent as it does not display the amount of gravity-based penalty and reductions by type. Furthermore, history determination is a manual search process, which can be affected by the lack of quality data for searches due to employer-related companies and name variations. This is a repeat finding from a prior OIG audit report, *Employers With Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program*, (Report No. 02-09-203-10-105, Issued March 31, 2009) which reported:

OSHA officials indicated that history searches are subject to errors due to the lack of quality information on the employer in IMIS. Employers could have several different names in IMIS due to spelling errors; abbreviations; punctuation; name variations; and different divisions, operating units or physical locale. History searches may also omit events of related companies such as parent and subsidiary, because the names are not linked in IMIS.

The following inspections illustrate employers with a history of violations that received reductions where OSHA officials did not consider the general character of an employer's safety and health performance.

- Swallow Construction was cited (one willful and two repeat) for violating the same standard on 3 inspections between August 2007 and March 2008. In August 2007, an employee died in Arlington Heights, IL, from electrocution when a backhoe came into contact with live overhead power lines.<sup>2</sup> OSHA cited Swallow Construction for willful violation of protective systems requirements, related to the fatality, and designated the company for the Enhanced Enforcement Program (EEP), which defined target employers as recalcitrant and indifferent to the OSH Act. In Aurora, IL, Swallow Construction was subsequently cited for repeat violations 7 days later in August 2007 and again 7 months later in March 2008. For the 3 inspections, Swallow Construction received 9 violations with \$241,000 in penalties which were reduced \$134,500 (\$104,100 by OSHA and \$30,400 by judicial decisions) to \$106,500 of final penalty.
- KMA Manufacturing of Beaver, PA, was cited for 14 violations of similar standards in 2 of 3 inspections within a 6-month period from December 2007 to May 2008. In December 2007, OSHA designated KMA Manufacturing for EEP

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<sup>1</sup> Imperial Sugar Company penalty amounts of \$8.8 million were excluded so as not to distort results and averages for employers with fatalities and a history of serious violations.

<sup>2</sup> Source: OSH Review Commission Docket No. 08-0174, February 9, 2009.

after a six ton cylinder fell on an employee resulting in his death.<sup>3</sup> KMA Manufacturing was cited for three violations of overhead and gantry cranes standards related to the fatality. In May 2008, KMA Manufacturing was cited for violating similar overhead and gantry standards and with penalties of \$5,000 that were reduced by \$3,500 (\$2,000 by OSHA and \$1,500 by judicial decision). For the 3 inspections in the 6-month period, KMA Manufacturing had 55 violations with penalties of \$199,000 which were reduced \$134,000 (\$79,600 by OSHA and \$54,400 by judicial decisions) to \$65,000 of final penalty.

- DEC Management of Niagara Falls, NY, was cited for violating similar standards for fall protection and training in 4 inspections at the same worksite between August 2007 and January 2008. During a second inspection in October 2007, one worker was killed and another injured when a concrete panel shifted and the workers fell 25 feet to the ground.<sup>4</sup> OSHA cited violation of fall protection as related to the death and designated DEC Management for EEP. Subsequently, fall protection and training standards were cited in failure-to-abate notices in November 2007 and then as repeat violations in January 2008. For the 4 inspections, DEC Management was cited for 12 violations with penalties of \$94,000 which were reduced by \$29,950 (\$28,950 by OSHA and \$1,000 by judicial decisions) to \$64,050 of final penalty.

**Finding 3 — Up to \$127 million of reductions may not have been appropriately granted because OSHA directives lacked clear guidance and Area Office staff did not always comply with or make full use of directives.**

In setting penalty amounts, OSHA is required to give consideration to the gravity of violations, and employer's size, good faith, and history. In total, penalty reductions can be as much as 100 percent. OSHA has many directives, some of which need clarification and others need full implementation. OSHA has not effectively used the results from its own internal reports to clarify directives and ensure compliance. Furthermore, OSHA's directives did not clearly correlate the size, good faith, and informal settlement reductions with an employer's overall character. Specifically, we found:

- Size reductions were routine and became more of an entitlement, as 98 percent of all cited violations were reduced at the maximum allowable rate.
- Informal settlements lacked documented justification for 49 percent of reductions.
- History reductions were granted to employers with prior violations.
- Good faith reductions were granted without consideration of an employer's history of serious violations.

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<sup>3</sup> Source: Pittsburgh Tribune-Review, July 1, 2008.

<sup>4</sup> Source: OSHA Region 2 News Release, 08-254-NEW/BOS 2008-059, February 29, 2008.

As a result, up to \$127 million of penalty reductions may not have been appropriately granted. This consisted of \$94.1 million of potentially excessive size reductions, \$31.8 million of unjustified informal settlement reductions, and \$1.1 million of history reduction errors. Furthermore, OSHA has not effectively used available tools such as Corporate-wide Settlement Agreements (CSA) and the nationwide quick-fix program to secure comprehensive corrections of workplace hazards.

### **Size Reductions generally were routine**

The OSH Act allows due consideration to the appropriateness of the penalty with respect to the size of the employer. Reductions rates range from zero for very large employers to 80 percent for willful violations of small employers. (See Appendix D, Glossary of Terms for detail rate structure.) Reductions for size totaled \$224 million. OSHA officials stated they believed that reductions for employer size would be used by employers to make improvements in workplace safety and health. However, OSHA's use of size reductions changed the nature of those reductions from an "incentive based on the character of the business" to an entitlement, as 98 percent of all cited violations were reduced at the maximum allowable rate. Moreover, OSHA did not always take into account company-wide size variances within a 12-month period. As a result, size reductions up to \$91.8 million may have been inappropriately granted to employers with serious violations, and an additional \$2.3 million exceeded limits set forth in directives.

Small employers received size reductions of \$173.1 million. The average inspection had penalties of \$10,049 that were reduced by 60 percent or \$5,992. However, small employers generally had the worst safety and health history — the most inspections, fatalities, and high-gravity serious (likely to cause death) and repeat violations.

OSHA has a policy in which it could limit penalty reductions based on size for small employers that demonstrated a lack of concern for safety and health (i.e., one or more serious violations of high gravity or a number of serious violations of moderate gravity). The use of this policy was minimal, as 97 percent of the 25,457 more serious violations received the maximum reduction allowable for size totaling \$91.8 million. Furthermore, we identified penalty reductions totaling \$2.3 million, which were not in accordance with directives for employer size and established reduction rates.

Some of the more serious fatality inspections illustrate (1) OSHA's failure to limit penalty reductions based on size for small employers that demonstrated a lack of concern for employee safety and health, and (2) excess size reductions granted which were not consistent with reductions based on company-wide employer size. For example,

- Buzzell Tree Service willfully violated standards for proper logging equipment, which resulted in the death of an employee in Kingston, NH. OSHA cited Buzzell Tree Service for 6 violations with \$152,500 in penalties, which were reduced \$140,375 to final penalty of \$12,125. Of the penalty reductions, \$112,000 was granted for the maximum size reduction of 80 percent<sup>5</sup> on 2 willful violations with

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<sup>5</sup> 80 percent is allowable maximum for small employers with willful violations.

penalties of \$140,000. OSHA also identified the employer as an EEP. The employee was trying to secure an 82-foot pine tree when it fell on him. Prosecutors alleged Buzzell Tree Service required employees to stand in front of trees that were being felled, holding onto rope and pulling the tree directly toward them. Workers allegedly were required to maintain position under the tree until it began to fall. A judge sentenced Maurice Buzzell (owner of Buzzell Tree Service) to a suspended jail term for causing the death of his employee.<sup>6</sup>

- Dakota Pump & Control of Aberdeen, SD, was cited for a serious violation of a confined space standard related to two deaths, but received the maximum size reduction of 60 percent, totaling \$3,000. Two men were repairing a pipe at a sewer lift station when they were overcome by hydrogen sulfide fumes and died. Neither one had safety gear with them at the time.<sup>7</sup> Three months later, the company was cited again at the same worksite for a confined space violation, and received the maximum reduction of 60 percent for size totaling \$3,000. For the 2 inspections, Dakota Pump & Control was cited for 4 serious violations with penalties of \$20,000, which were reduced by \$15,625 to final penalties of \$4,375.
- 5M Construction of Guam was cited for 13 serious violations during 6 inspections from January 2008 to February 2009. Total penalties of \$58,200 were reduced by \$39,859 to final penalties of \$18,341. In 5 inspections, OSHA granted 5M Construction excess size reductions of \$17,100 based on erroneous rates for the company size in the prior 12 months. The chart below further illustrates the excess size reductions.

Inspection Open Date	Company Size Per Inspection	Max Size Prior 12 Months	Penalty	Rate Granted (%)	Rate Allowed (%)	Excess Reduction
1/22/2008	150	150	\$29,700 <sup>8</sup>	60	20	\$7,000
1/29/2008	25	150	19,000	60	20	7,600
4/23/2008	75	150	2,000	40	20	400
5/30/2008	23	150	4,500	60	20	1,800
11/3/2008	32	150	1,500	40	20	300
<b>TOTALS:</b>			<b>\$56,700</b>			<b>\$17,100</b>

### Informal Settlement Reduction justifications were not always documented by OSHA Area Directors

Informal Settlement reductions for the audit period totaled \$68.3 million; however, OSHA Area Directors did not always document the justification. OSHA's policy on informal settlements lacks clear guidance as to the specific improvements to workplace safety and health that would justify reductions, and OSHA officials stated that a driving factor for reducing penalties was the employer's right to contest an inspection, which

<sup>6</sup> Source: The Eagle-Tribute, North Andover, MA, January 27, 2010 and April 13, 2010.

<sup>7</sup> Source: Keloland TV, Sioux Falls, SD, July 22, 2008.

<sup>8</sup> One violation with penalty of \$17,500 was reduced at 60 percent. The other violations with penalty of \$12,200 were reduced by 20 percent.

could delay abatement and continue to expose employees to hazards. For an estimated \$31.8 million,<sup>9</sup> the justification for the reduction such as obtaining comprehensive improvements to workplace safety and health was not documented.

OSHA policies authorize Area Directors to enter into settlement discussions to actively negotiate the amount of penalty reductions, depending on the circumstances of the case and what improvements in employee safety and health can be obtained in return. Area Directors can change abatement dates, reclassify violations, modify or withdraw a penalty, a citation or a citation item if the employer presents, during the informal conference, evidence, which convinces the Area Director that the changes are justified. Such evidence may include entering into a CSA, providing employee training of a specified type and frequency, hiring a qualified safety and health consultant and implementing their recommendations, effecting a comprehensive safety and health program, and reporting new or other worksites to OSHA.

We found 60 percent of sampled inspections had informal settlements and lacked justification for reducing the penalty. The majority of these inspections were Expedited Informal Settlement Agreements (EISA), which reduced penalties by 30-60 percent. OSHA established the EISA program as a pilot for less serious and non-fatality cases. Draft policy was issued on September 4, 1996, offering reductions to employers in exchange for a waiver of right to contest and abatement of violations; however, OSHA has not formalized and evaluated the use of this tool. For the EISAs in our sample, comprehensive/enhanced improvements to safety and health did not always occur in exchange for penalty reductions. Additionally, the use of EISAs varied among sampled Area Offices as only the Denver Area Office documented and tracked enhanced abatement measures.

The following examples illustrate that informal settlement reductions do not necessarily lead to effective abatement:

- Penn Builders had 4 inspections with 6 serious violations from January 2008 to March 2009. In the first inspection in Norristown, PA, the employer was cited for failure to provide fall protection. The Area Office Director offered an EISA, which granted an additional 30 percent penalty reduction of \$630, in addition to, compliance officer reductions of \$1,400. The employer certified that fall protection measures had been implemented. However, in the third inspection in Willow Grove, PA, the employer was cited for the same fall protection standard and, in the fourth inspection, a worker fell from scaffolding at a construction site in Pottstown, PA, and died.<sup>10</sup> For the 4 inspections, total penalties of \$15,000 were reduced by \$10,070 to \$4,930 of final penalties.
- Sorbara Construction of New York City, NY, was cited for 23 serious and repeat violations on 6 inspections from November 2007 to March 2009. On the first

<sup>9</sup> This is the unbiased point estimate. Based on sample results, we are 90 percent confident that errors ranged between \$14.9 million and \$48.7 million. See Appendix B for sample methodology.

<sup>10</sup> Source: The Daily Local serving Chester County, PA, March, 14, 2009.

inspection, the employer was given an informal settlement reduction on a violation related to a fall protection standard. In the next inspection, a fatality inspection where a worker fell 10 feet,<sup>11</sup> Sorbara Construction was cited for two fall protection standards and was given an informal settlement reduction of \$11,250. For the 6 inspections, total penalties of \$186,500 were reduced by \$27,725 to \$158,775 of final penalties.

In 2004, GAO found that OSHA's National Office did not monitor and use available regional audit results. GAO found files did not contain adequate notes regarding the substance of informal conferences or information to justify the amount of penalty reduction or changes to the classification. Furthermore, 18 OSHA internal reports from 2005 to 2008 identified areas of concern with case settlements such as not documenting the justification for reductions, concessions and tangible employer commitment to improve employee safety and health.

The following excerpts from OSHA internal reports illustrate that OSHA has not effectively used the results for program improvement on a national level.

- From a June 2006 OSHA internal report, the following recommendation was made: "Settlement of Cases: Ensure that the ISA [Informal Settlement Agreement] evidences the concessions by the employer in exchange for penalty reductions or provides management's justification for not requiring concessions."
- From a February 2008 OSHA internal report, the following recommendation was made regarding procedures for informal settlements: "Make significant reductions in penalties and changes in classification contingent upon tangible employer commitment to improve safety and health programs. Document these commitments in the case file."

OSHA officials stated that a driving factor for reducing penalties was the employer's right to contest the inspection, which could delay abatement and continue to expose employees to hazards; and potentially impact OSHA and SOL resources. OSHA officials offered the Mine Safety and Health Administration as a comparison where increased penalties resulted in a greater backlog of contested cases. Additionally, inspections in contest that were not fully successful through department litigation could result in monetary restitution for the contesting employer under the Equal Access to Justice Act (EAJA). SOL officials provided the following case as an example:

- In 2003, Fabi Construction was cited for violations related to a garage collapse at an Atlantic City, New Jersey casino, where 4 died and 17 were injured. OSHA issued 6 citations with penalties of \$98,500. After adjudication, 2 were dismissed and 1 was reclassified from willful to serious and overall penalties were reduced by 83 percent to \$16,500. The U.S. Court of Appeals for the District of Columbia awarded Fabi \$165,304 for legal defense costs under EAJA.

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<sup>11</sup> Source: EHS Today, by Laura Walter, September 2, 2009.



## History Reductions were granted to employers with prior violations

History reductions totaled \$34.2 million, and averaged \$924 per inspection. OSHA incorrectly granted history reductions because IMIS cannot effectively track inspection information company-wide. OSHA directives allow employers to receive a reduction of 10 percent if not cited for any serious, willful, or repeat violations within the prior 3 years. However, 1,400 employers had violations within the prior 3 years and erroneously received reductions of \$1.1 million.

History determination is a manual search process, which can be affected by the lack of quality data for history searches due to employer-related companies and name variations. This is a repeat finding from a prior OIG audit report, *Employers With Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program*, (Report No. 02-09-203-10-105, Issued March 31, 2009).

The following are examples of employers that had an established history of violations and incorrectly received history reductions:

- Willbros was cited for serious violations in 4 fatality inspections from November 2007 to March 2009, and incorrectly received history reductions totaling \$2,500 in 2 inspections. Two fatalities occurred November 2007 in Deweyville, TX, and July 2008 in Carthage, TX, while workers were struck by exploding sections of pipeline. In March 2008, a worker was electrocuted while helping to move a section of pipe in Beaumont, MS. In March 2009, fire on a pipeline killed a worker and injured 6 others in Vacherie, LA.<sup>12</sup> For the 4 inspections, total penalties of \$37,000 were reduced by \$5,800 to \$31,200 of final penalties.
- Delek Refining of Tyler, TX, was cited for 47 serious violations in 3 inspections at the same worksite from February to November 2008 and was designated an EEP case. In the first inspection, Delek was cited for 12 violations relating to hazardous chemicals. In April 2008, they were again cited for violations related to hazardous chemicals. Three employees came in contact with hot oil while working on a coker unit and suffered burns requiring hospitalization<sup>13</sup>. In November 2008, flammable vapors were ignited after a discharge line ruptured; two workers died from extensive burns and three others were injured.<sup>14</sup> For the 3 inspections, total penalties of \$321,000 were reduced by \$32,100 for history reductions, including \$27,000 on 34 violations of a similar standard. Final penalties were \$288,900.

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<sup>12</sup> Source: The Times-Picayune, March 11, 2009.

<sup>13</sup> Source: US Department of Energy, Energy Assurance Daily, April 25, 2008.

<sup>14</sup> Sources: OSHA Region 6 News Release, OSHA-09-502-DAL, May 19, 2009; KLTV 7 News, Tyler, TX, November 21, 2008; and HAARETZ.com, Michael Rochvarger, August 12, 2008.

## **Good Faith Reductions were given to employers with a history of violating a similar standard**

Good faith reductions for the audit period totaled \$11.7 million, and the average reduction per inspection was \$769. Directives allow a reduction up to 25 percent to recognize an employer's effort to implement an effective safety and health management system. Reductions were not allowable for repeat violations, but could be allowed for violations of similar standards. The directives are not clear because violations of similar standards do not have to be issued as repeat and therefore, the employer can receive good faith reductions. There were 816 employers that received good faith reductions totaling \$0.6 million and violated a similar standard in 2 or more inspections indicating the employers may not have implemented effective safety and health systems.

The following illustrates an employer that received good faith reductions and had a history of violating the same standard:

- Con-Way Freight was cited for serious violations on 8 inspections from August 2007 to October 2008. In the second inspection in Manchester, NH, the employer was cited for willful and serious violations related to a death for "powered industrial truck" standards. The worker was crushed beneath the forklift he was operating after it went off the edge of a loading dock. The worker had not been using the forklift's manufacturer required seatbelt and had not been properly trained on forklift safety. An OSHA official stated "Con-Way Freight repeatedly has refused to require forklift operators to use seatbelts even though another worker died in a similar accident in Dallas in 2003."<sup>15</sup> On the sixth inspection in Belle, WV, OSHA granted Con-Way Freight a 25 percent good faith reduction of \$2,375 and cited it again for violating a similar standard relating to powered industrial trucks. For the 8 inspections, total penalties of \$150,500 were reduced by \$17,032 (\$14,532 by OSHA and \$2,500 by judicial decisions) to \$133,468 of final penalties.

## **Corporate-wide Settlement Agreements and Quick-Fix Reductions were minimally used**

OSHA did not use all tools at its disposal to effectively ensure company-wide safety and health. CSAs were seldom used with three agreements in effect between July 2007 and June 2009. Quick-fix reductions were used for 1,057, or 1 percent, of the 142,187 violations. With the limited use of these two programs, OSHA has not used all of its available tools to ensure comprehensive abatement and prevent future injuries, illnesses, and fatalities.

CSAs are formal agreements in writing for employers to abate cited hazards at all workplaces under its control. OSHA's criteria states that CSAs can result in significant improvement in the safety and health of workers. Nevertheless, recent CSAs were limited in scope and seldom used with only three employers participating in CSAs.

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<sup>15</sup> Source: Occupational Safety and Health Online, April 9, 2008.

Quick-fix is an abatement incentive program meant to encourage employers to immediately abate hazards and to prevent potential injuries, illness, and death. The many qualifiers of the quick-fix policy limit OSHA's use of this program. Penalty reductions were permitted only in circumstances where OSHA has determined that the serious violation was of low to medium gravity,<sup>16</sup> abatement was permanent and substantial, and within 24 hours of the inspection. Violations related to fatalities and serious injuries were also precluded. We found 74,217 low- and medium-gravity serious violations that were potentially eligible for the reduction, where only 1,057 violations received the quick-fix reduction.

## **Conclusion**

OSHA has not effectively evaluated the use of \$351.2 million of penalty reductions as an incentive for employers to improve workplace safety and health. Moreover, up to \$127 million of penalty reductions may not have been appropriately granted. The use of size reductions resulted in what amounts to an entitlement, as 98 percent of all cited violations were reduced at the maximum allowable rate. OSHA's information management system cannot effectively track employers with a company-wide history of violations, which affects OSHA's ability to use available tools to ensure comprehensive company-wide correction of violations. Small employers were granted the largest reductions, averaging 78 percent of penalties, but generally had the worst safety and health history with the most inspections, fatalities, and high-gravity serious (likely to cause death) and repeat violations. However, OSHA had not determined the impact of those reductions on workplace safety and health.

Based on the issues identified in this report, OSHA needs to revise its policies to ensure penalty reductions are limited for employers with prior violations. By effectively using penalty reductions as incentives for employers to improve workplace safety and health, OSHA could potentially reduce the risk of future injuries, illnesses, and fatalities.

## **Recommendations**

We recommend that the Assistant Secretary for Occupational Safety and Health commit the necessary resources to:

### Develop and Perform the Following Evaluations

1. Impact of penalty reductions as an incentive for employers to improve workplace safety and health.
2. Fully implement the requirements of MAP and institute changes based on its results to improve Nationwide OSHA program results.

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<sup>16</sup> In 2009, OSHA modified its policies to include violations which were also of medium gravity.

3. Determine if the EISA draft policy should be formalized and used, or eliminated. If used, the policy should contain clear guidance as to the specific improvements to workplace safety and health that would justify reductions.
4. Determine if the national quick-fix programs should be expanded or eliminated.

#### Improve Information Systems

5. Develop a module in the management information system to identify and monitor employers on a company-wide basis. Before granting reductions for employers with prior violations of the same standard, consider the following characteristics:
  - a. High-gravity serious and willful violations
  - b. Violations of the same standard, regardless of the “repeat” classification
  - c. Hospitalized injuries and fatalities
  - d. Delinquency of penalty payments
  - e. Parent and subsidiary ownership
6. Increase transparency and access by displaying on OSHA’s website the  
(a) gravity-based penalty amount and (b) amount of penalty reductions by type, including both compliance officer and post-citation reductions.

#### Revise and Implement Policies and Procedures

7. Revise directives to consider an employer’s overall character while coordinating reductions as a whole before individually applying the size, good faith, and informal settlement reductions.
8. Establish clear policy on limiting the size reduction for small employers and ensure this deterrent provision is used. This policy should address factors such as fatalities/hospitalized injuries, and multiple high-gravity, serious, repeat, or willful violations.
9. Provide formal training to Area Directors on the use and documentation requirements to justify informal settlement reductions according to directives.
10. Revise the policy of good faith reductions for employers with prior violations of the same standard, which were not classified as repeat, so that their status can be appropriately considered before granting penalty reductions.
11. Establish clear policy and guidance to determine when CSAs are to be used for employers with prior violations to ensure comprehensive and company-wide abatement of hazards.

The total monetary impact of the report recommendations is as much as \$127 million of penalty reductions that may not have been appropriately granted. See table below for the breakout of the monetary impact amounts and relationship to our recommendations:

<b>Amount (millions)</b>	<b>Recommendations</b>	<b>Description</b>
\$94.1	1, 2, 5, 6, 7, and 8	Size reductions for small employers were granted at the maximum allowable rate, and for all employers that exceeded the limits set forth in OSHA directives.
\$31.8	1, 2, 3, 5, 6, 7, and 9	Informal settlement reductions where the justification for the reduction was not documented.
\$1.1	2, 5, 6, and 7	Erroneous history reductions granted to employers that had prior inspections within a 3-year period.
<b>\$127.0</b>	<b>Total Monetary Impact</b>	

We appreciate the cooperation and courtesies that OSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix F.



Elliot P. Lewis  
Assistant Inspector General for Audit

## Exhibits

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**Exhibit 1****Penalty Reductions by Employer Size***Dollar amounts shown in millions*

	<b>All Employers</b>	<b>Small 25 or less Employees</b>	<b>Mid-Size 26-100 Employees</b>	<b>Large 101-250 Employees</b>	<b>Very Large Over 250 Employees</b>
<b>Gravity-Based Penalty</b>	\$523.5	\$290.8	\$112.9	\$38.7	\$81.1
<b>Compliance Officer Reductions</b>					
Size	\$224.0	\$173.1	\$43.2	\$7.2	\$5.5
History	34.2	22.0	7.0	2.2	3.0
Good Faith	11.7	4.3	3.4	1.4	2.6
Quick-Fix <sup>1</sup>	0.2	0.1	0.1	*	*
Subtotal	\$270.1	\$199.5	\$53.7	\$10.8	\$6.1
<b>Post Citation Reductions</b>					
OSHA Area Director	\$68.3	\$24.6	\$18.0	\$8.4	\$17.3
SOL/Judicial Decisions	12.8	2.9	3.0	1.4	5.5
Subtotal	\$81.1	\$27.5	\$21.0	\$9.8	\$22.8
<b>Total Reductions</b>	<b>\$351.2</b>	<b>\$227.0</b>	<b>\$74.7</b>	<b>\$20.6</b>	<b>\$28.9</b>
<b>Final Penalty</b>	<b>\$172.3</b>	<b>\$63.8</b>	<b>\$38.2</b>	<b>\$18.1</b>	<b>\$52.2</b>
<b>Total Rate Reduced</b>	<b>67%</b>	<b>78%</b>	<b>66%</b>	<b>53%</b>	<b>36%</b>

<sup>1</sup> Quick-fix reductions for Large and Very Large Employers were less than \$50,000.



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## Exhibit 2

### Employers with Serious Violations on Two or More Inspections and Fatalities

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
<b>Small Employers (1-25 employees)</b>							
1	TJC Construction <i>Dallas and Fort Worth, TX</i>	310442710 312120637	1	\$15,000	\$2,250	\$12,750	85%
2	Garry Lewis Properties <i>Baton Rouge and Livingston, LA</i>	311521033 311529457	1	10,000	1,950	8,050	81%
3	Colony Insulation <i>Falmouth and North Falmouth, MA</i>	312098551 312098809	1	68,000	13,560	54,440	80%
4	RPM Recycling <i>Wind Gap, PA</i>	311270516 311270979	1	29,000	6,090	22,910	79%
5	Boston Power Crushing <i>Westford, MA</i>	312589450 312626336	1	82,000	18,200	63,800	78%
6	Dakota Pump & Control <i>Aberdeen, SD</i>	312320666 312570773	2	20,000	4,375	15,625	78%
7	Luis Martinez <i>Bellaire and Webster, TX</i>	311957047 311957864	1	24,000	5,200	18,800	78%
8	Building Keeper <i>Woodbridge, NJ and Philadelphia, PA</i>	310718630 310721873 311918643	1	35,000	7,988	27,012	77%
9	Execute Projects <i>Houston and Spring, TX</i>	311957245 312831605	1	35,000	8,330	26,670	76%
10	Markland Welding <i>Salem and Salisbury, MA</i>	311596605 312187495	1	32,500	8,000	24,500	75%
11	Gulf Coast Electric <i>Beaumont, TX</i>	311962401 311962807	1	17,500	4,725	12,775	73%
12	Romo Carpentry <i>Bainville and Sidney, MT</i>	311212765 311214761	1	38,500	10,650	27,850	72%
13	Vilgar Remodeling <i>Oklahoma City, OK</i>	312378896 312379175	1	27,500	8,250	19,250	70%
14	Frame To Finish <i>Shelter Island, NY</i>	311132617 311134282	1	34,500	10,550	23,950	69%
15	Tesmer Construction <i>Galloway and Grantsburg, WI</i>	307044610 312551534	1	14,500	4,800	9,700	67%
16	Crispin Aguilera <i>Fort Worth and Irving, TX</i>	309545697 310445812	1	15,000	5,200	9,800	65%
17	L.A Molina Construction <i>Jacksonville and Winter Park, FL</i>	311815526 311816391 312240914	1	39,500	13,750	25,750	65%
18	Rene Regalado <i>Boerne and San Antonio, TX</i>	311308241 311314348	1	17,500	6,050	11,450	65%
19	International Diving Services <i>Paris and The Colony, TX</i>	309578367 310447107	1	166,000	65,900	100,100	60%
20	Omega Underground <i>Coral Springs and Fort Lauderdale, FL</i>	311083927 312154313	1	9,500	4,144	5,356	56%
21	Dixie Marine <i>Miami, FL</i>	311085575 312150055	1	26,500	12,600	13,900	52%
22	CKR Contractor <i>New York City, NY</i>	307610816 311224653	1	26,500	13,100	13,400	51%
23	Hutchison Contractors <i>Macon, GA</i>	311034029 311038665	1	25,500	13,375	12,125	48%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
24	Top Hat Steel Erectors <i>Land O' Lakes and New Port Richey, FL</i>	312697550 313047771	1	12,000	6,213	5,787	48%
25	DEC Management <i>Niagara Falls, NY</i>	311349302 311493563 311614085 311688402	1	94,000	64,050	29,950	32%
<b>Subtotals</b>			<b>26</b>	<b>\$915,000</b>	<b>\$319,300</b>	<b>\$595,700</b>	
<b>Average</b>			<b>1</b>	<b>\$36,600</b>	<b>\$12,772</b>	<b>\$23,828</b>	<b>65%</b>

**Mid-Size Employers (26-100 employees)**

26	Liberty Building Products <i>Grove Hill, AL</i>	311109557 312758774	1	14,000	1,050	12,950	93%
27	Armstrong Steel Erectors <i>Youngstown, OH and Osage, WV</i>	309476869 311500524	1	31,000	4,025	26,975	87%
28	Rockwell American Mfg Company <i>Seagoville, TX</i>	309545226 309545259	1	21,500	2,750	18,750	87%
29	System Services Broadband <i>Lake Charles, LA and Branson, MO</i>	310253380 310935457	1	19,000	2,500	16,500	87%
30	Maggio Roofing <i>Washington, DC</i>	311715643 311770663 311897656 312331945	1	18,000	3,050	14,950	83%
31	R-Hive Holding <i>Kenosha, WI</i>	309360436 311402473 311403026	1	83,500	14,765	68,735	82%
32	North East Linen <i>Linden, NJ</i>	310150248 310150453	2	193,500	36,625	156,875	81%
33	Southwest Sealants <i>Fort Sam Houston, TX</i>	311315584 312848518	1	16,500	3,400	13,100	79%
34	Campanella & Sons <i>Gurnee, IL</i>	311852107 311852149	1	61,000	14,600	46,400	76%
35	Charles Gluth & Son Roofers <i>Glen Ellyn and New Lenox, IL</i>	311371108 312723505	1	46,000	11,300	34,700	75%
36	Dan D. Drilling <i>Braman and Tonkawa, OK</i>	311002638 312379662	1	20,500	5,050	15,450	75%
37	Hoogendoorn Construction <i>Brookings, Canton, and Sioux Falls, SD</i>	311239800 312320765 312570724	1	17,000	4,980	12,020	71%
38	Tec-Cast. <i>Carlstadt, NJ</i>	311049720 311049811 311051155 311056105	1	24,000	7,655	16,345	68%
39	Boomer Well Service <i>Cheyenne and Woodward, OK</i>	311006605 312376676	1	14,500	4,750	9,750	67%
40	Mercer Well Service <i>Kilgore and Longview, TX</i>	309545283 309575561	1	7,500	2,475	5,025	67%
41	Penn Builders <i>Center Valley, Norristown, Pottstown, and Willow Grove, PA</i>	311266233 311268940 311270854 312488927	1	15,000	4,930	10,070	67%
42	Faulkner USA <i>San Antonio, TX</i>	311310064 311312979 312850134	1	32,000	10,800	21,200	66%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
43	Monarch <i>Milwaukee, WI</i>	311396931 311402861	1	22,500	7,750	14,750	66%
44	Venture Chemicals <i>Seagraves, TX</i>	312386394 312473622	1	77,000	25,846	51,154	66%
45	Recycling Services <i>Chicago, IL and Claremont, NH</i>	311590038 312593809	1	46,000	16,750	29,250	64%
46	Texas Erectors <i>Brownsville and Dallas, TX</i>	311242804 312118599	2	19,000	6,825	12,175	64%
47	Scenic Ridge Construction <i>Lancaster, Loganton, and Wyndmoor, PA</i>	309867331 311267769 312289051 312501992	1	83,000	30,835	52,165	63%
48	B & R Development <i>Garland and Waco, TX</i>	309562080 311945919	1	31,000	11,880	19,120	62%
49	Kusler Masonry <i>Monroeville, PA and Granville, WV</i>	311325161 311679054	1	23,500	8,890	14,610	62%
50	Matthews Roofing Company <i>Chicago and Des Plaines, IL</i>	311369359 311376842 312567621 312596174	1	122,000	45,890	76,110	62%
51	New York Hoist <i>New York City, NY</i>	311286256 311286454 311632103 311831523 313236937	1	49,500	19,675	29,825	60%
52	Samuel Grossi & Sons <i>Bensalem, PA</i>	311269385 312972300	1	15,000	6,150	8,850	59%
53	WER Corporation <i>Sinking Spring, PA</i>	112665260 310845771	1	19,000	7,745	11,255	59%
54	W & K Erection <i>Canonsburg and Connellsville, PA</i>	311329726 311329874 311330484	1	27,000	11,475	15,525	58%
55	Sailer Stone & Stucco <i>Riceboro and Savannah, GA</i>	310992185 310993142	1	15,500	6,624	8,876	57%
56	Swallow Construction <i>Arlington Heights and Aurora, IL</i>	311244776 311248538 311264808	1	241,000	106,500	134,500	56%
57	Kirk's Framing <i>Orange Park, FL</i>	310032479 311819015	1	15,500	6,950	8,550	55%
58	Robert H. Kepler Masonry <i>Hanover and Middletown, PA</i>	112664669 310839170	1	18,500	8,250	10,250	55%
59	W.M. Cramer Lumber Company <i>Marlinton, WV</i>	311679138 311685200	1	39,500	18,350	21,150	54%
60	Demon Demolition <i>Alpharetta and Duluth, GA</i>	310958533 312523152	1	44,000	21,000	23,000	52%
61	Blue Ridge Construction <i>Oakland, NJ and Chester, NY</i>	311056766 311975080	1	32,500	16,500	16,000	49%
62	C&N Electric, Power and Contracting <i>Paris and Waldron, AR</i>	311130306 311829162	1	54,500	27,600	26,900	49%
63	D & D Industries <i>Madison, NE</i>	308685841 308685858	1	30,500	16,300	14,200	47%
64	Southern Construction Erectors <i>Baton Rouge and Ruston, LA</i>	310253562 311520381	1	7,500	4,000	3,500	47%
65	Brownville Specialty Paper Products <i>Brownville, NY</i>	310752415 310752902	1	204,500	116,250	88,250	43%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
66	E.E. Hood & Sons <i>San Antonio and Uvalde, TX</i>	311309546 311317523	1	7,000	4,200	2,800	40%
<b>Subtotals</b>			<b>43</b>	<b>\$1,879,500</b>	<b>\$686,940</b>	<b>\$1,192,560</b>	
<b>Average</b>			<b>1</b>	<b>\$45,841</b>	<b>\$16,755</b>	<b>\$29,087</b>	<b>63%</b>

**Large Employers (100-250 employees)**

67	Florida Transportation Service <i>Fort Lauderdale, FL</i>	311088405 312145154 312146269	3	108,500	9,850	98,650	91%
68	HJD Capital Electric <i>San Antonio, TX</i>	312848450 312849672	1	42,500	5,000	37,500	88%
69	C.N. Construction <i>Austin, Fort Worth, and Waxahachie, TX</i>	311308530 311946586 311946974	2	25,000	5,600	19,400	78%
70	A-1 Systems <i>Fort Worth, TX</i>	310445002 311944557	1	20,000	5,200	14,800	74%
71	D.W. White Construction <i>New Bedford and Peabody, MA</i>	311612840 312105638	1	19,000	5,600	13,400	71%
72	U S Utility Contractor Company <i>Delaware, OH and Shepherdstown, WV</i>	309476984 310481619	1	25,000	7,200	17,800	71%
73	Balfour Lumber <i>Thomasville, GA</i>	310989199 310991765	1	31,000	10,375	20,625	67%
74	Pyco Industries <i>Lubbock, TX</i>	311359954 311360010 312602337	1	37,500	12,325	25,175	67%
75	Superior Rigging & Erecting <i>West Point and Woodstock, GA</i>	310958046 311036073	1	19,000	6,538	12,462	66%
76	Marine Express <i>Mayaguez, PR</i>	306194309 306194614	1	30,500	10,788	19,712	65%
77	Rochester Utility Contractors <i>Binghamton and Rochester, NY</i>	311349427 312368822	1	19,500	7,105	12,395	64%
78	Trans-Acc <i>Blue Ash, OH</i>	311501498 312816861	1	170,000	62,168	107,832	63%
79	Premium Well Drilling <i>Ballinger and Carrizo Springs, TX</i>	310446828 311969307	2	11,000	4,400	6,600	60%
80	Save-On-Wall Company <i>Lincoln, MA and Hudson, NH</i>	311584742 312733082	1	5,000	2,000	3,000	60%
81	Mid South Lumber <i>Meridian, MS</i>	308776475 308776673	1	26,500	10,925	15,575	59%
82	ESA <i>Aspen, CO</i>	311903371 311903504	1	16,500	7,350	9,150	55%
83	IEW Construction Group <i>Jersey City, Montague, and Wharton, NJ</i>	312364862 312364888 312645641 313159139	1	52,000	23,560	28,440	55%
84	Michael F. Ronca & Sons <i>Columbia and Phoenixville, PA</i>	310720016 312500275	1	19,200	8,715	10,485	55%
85	Central Florida Equipment Rental <i>Fort Lauderdale and Homestead, FL</i>	312148075 312153596	1	21,000	9,625	11,375	54%
86	All American Recycling Corporation <i>Jersey City, NJ</i>	312186109 312427099	1	40,000	18,900	21,100	53%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
87	Master Boat Builders <i>Coden, AL</i>	311109706 311969570 312283047	1	74,500	35,125	39,375	53%
88	Hi-Tech Electrical <i>Miami and Miami Beach, FL</i>	311087696 313101438	1	24,000	11,588	12,412	52%
89	United Waste Water Services <i>Cincinnati and Middletown, OH</i>	311675953 312250954	1	25,000	11,900	13,100	52%
90	Murfin Drilling <i>Great Bend and Liberal, KS</i>	310779004 310779012 311787444	1	12,500	6,268	6,232	50%
91	Nichiha USA. <i>Macon, GA</i>	311036578 311038327 311038749	1	74,500	38,125	36,375	49%
92	K & B Machine Works <i>Houma, LA</i>	310253190 311528699	1	16,000	8,290	7,710	48%
93	Eagle Manufacturing Company <i>Wellsburg, WV</i>	311683684 311686042	1	56,000	29,447	26,553	47%
94	Advanced Concrete Systems <i>Middleburg, PA</i>	310231493 310231709 310233085	1	21,500	11,506	9,994	46%
95	Robert C. Hatton <i>South Bay, FL</i>	311087365 311087837	1	27,500	15,181	12,319	45%
96	SER Construction Partners <i>Corpus Christi and Houston, TX</i>	311491591 312538424	1	7,500	4,475	3,025	40%
97	Andrew Electric Company <i>Decatur, GA</i>	311033807 311034284	1	19,000	11,800	7,200	38%
98	Blount Seafood Corporation <i>Fall River, MA</i>	312103492 312105612	1	16,500	10,325	6,175	37%
99	Imperial Industries <i>Rothschild, WI</i>	122018062 122018070	1	6,500	4,235	2,265	35%
100	A-1 Excavating <i>Merrimac, New Richmond, and Wausau, WI</i>	307047191 309843597 310770953	1	873,000	794,000	79,000	9%
101	Scalise Industries <i>Braddock and Pittsburgh, PA</i>	311330120 311330468	1	54,000	51,800	2,200	4%
<b>Subtotals</b>			<b>39</b>	<b>\$2,046,700</b>	<b>\$1,277,289</b>	<b>\$769,411</b>	
<b>Average</b>			<b>1</b>	<b>\$58,477</b>	<b>\$36,494</b>	<b>\$21,983</b>	<b>38%</b>

**Very Large Employers (over 250 employees)**

102	G. A. West & Company <i>Chunchula and Perdue Hill, AL</i>	310756606 311612295	1	19,500	-	19,500	100%
103	Quanta Utility Services <i>Hurst and North Richland Hills, TX</i>	310445234 310447263	1	25,000	-	25,000	100%
104	Miller & Long Concrete Construction <i>Washington, DC</i>	311770572 312331747 312881956	1	10,000	1,219	8,781	88%
105	Brasfield & Gorrie <i>Tuscaloosa, AL and Fayetteville, GA</i>	310960950 311731129	1	34,500	4,500	30,000	87%
106	Garco Construction <i>Coeur D Alene, ID; Great Falls, MT; and Oak Harbor, WA</i>	309093573 311212617 311576946	1	27,500	4,750	22,750	83%
107	Rheem Heating & Cooling <i>Fort Smith, AR</i>	311130363 311130371	1	8,500	1,500	7,000	82%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
108	Wireco Worldgroup <i>Sedalia and St Joseph, MO</i>	310935499 310938659 312216930	1	28,500	5,250	23,250	82%
109	Blommer Chocolate Company <i>Chicago, IL</i>	311374417 312591571	1	91,000	17,500	73,500	81%
110	Lewis Tree Service <i>Leesburg, FL; Mount Vernon, ME; and New Richmond, OH</i>	112520739 311335905 312948847 313396681	1	21,000	4,500	16,500	79%
111	Milwaukee Valve Company <i>New Berlin and Prairie du Sac, WI</i>	310763610 310765011 311402119	1	32,500	8,150	24,350	75%
112	Nabors Drilling USA <i>Sidney, MT and Ridge, TX</i>	308311760 311215966 311899249	1	19,500	5,000	14,500	74%
113	Propex <i>Ringgold, GA</i>	310957949 312770613	1	24,500	6,375	18,125	74%
114	United Forming <i>Orange Beach, AL and Austin, TX</i>	311309165 311365092	2	45,500	12,000	33,500	74%
115	Verizon <i>Plymouth, MA; Portland, ME; Lynbrook, NY; Miller Place, NY; Malvern, PA; and Philadelphia, PA</i>	112522107 307637322 310675780 310718564 310721311 311136261	2	49,500	14,250	35,250	71%
116	Alton Steel <i>Alton, IL</i>	309291524 309292282	1	19,500	5,910	13,590	70%
117	American Electric Power <i>Brilliant, OH and Sarita, TX</i>	311407845 311833958	1	5,000	1,488	3,512	70%
118	Ceres Marine Terminals <i>Garden City, GA and Portsmouth, VA</i>	309729002 310990510	1	9,500	2,844	6,656	70%
119	Clarkwestern Building Systems <i>Bristol, CT and Pendergrass, GA</i>	311038913 311759526	1	15,000	4,850	10,150	68%
120	Oscar Renda Contracting <i>North Little Ro, AR; Arlington, TX; and Cedar Park, TX</i>	310444989 311308167 311364673	3	94,500	30,000	64,500	68%
121	KMA Manufacturing <i>Beaver, PA</i>	308006824 311324917 311327985	1	199,000	65,000	134,000	67%
122	West Virginia Paving <i>Pax and Winfield, WV</i>	309476661 311679633	1	6,000	2,000	4,000	67%
123	Swan Oil Field Services <i>Morgan Mill and Rhome, TX</i>	311945109 311947303	1	12,000	4,075	7,925	66%
124	Welded Construction <i>Toledo, OH and Columbus, WI</i>	309448801 310765243	1	23,500	8,488	15,012	64%
125	Capstar Drilling <i>Notrees and Odessa, TX</i>	311130751 312238587 312602345	2	49,500	18,394	31,106	63%
126	Gulf Stream Marine <i>Corpus Christi and Houston, TX</i>	311472773 311719488	1	18,500	7,000	11,500	62%
127	Bender Shipbuilding & Repair <i>Mobile, AL</i>	311969968 312161235	1	52,500	21,000	31,500	60%
128	S & F Concrete Contractors <i>Fairhaven, Taunton, and Weston, MA</i>	312102429 312105703 313554008	1	17,000	7,000	10,000	59%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
129	Creamer-Sanzari A Joint Venture East Rutherford, NJ; Hackensack, NJ; Lodi, NJ; and New York City, NY	311048318 311049647 311052021 311054233 311056295 311473789 312424658 313236911	2	43,000	19,275	23,725	55%
130	Keystone Consolidated Industries Bartonville and Peoria, IL	310799945 310802376	1	25,000	11,150	13,850	55%
131	National Envelope Worcester, MA and Union, NJ	310627229 311914782	1	10,500	4,757	5,743	55%
132	A D M Milling Abilene, KS; St Louis, MO; and Lincoln, NE	311465157 312801111 313111742	1	22,500	10,250	12,250	54%
133	Saw Pipes USA Baytown, TX	310264304 310265236 311960736	1	274,000	128,250	145,750	53%
134	Wastequip Manufacturing Durant, OK and Beeville, TX	312379332 312870330	1	13,000	6,100	6,900	53%
135	ABC Professional Tree Services East Haddam, CT and Orange Park, FL	109178277 311815617	1	37,500	18,000	19,500	52%
136	Delphi Automotive Systems Dayton and Vandalia, OH	312335532 312335623 312816986	1	9,500	4,536	4,964	52%
137	Temple-Inland Northlake, IL; Kansas City, KS; Fenton, MO; Milltown, NJ; Spotswood, NJ; Middletown, OH; and San Antonio, TX	310148523 310150321 311243471 311243711 311310122 311551824 311784789 311966204	1	95,500	45,440	50,060	52%
138	Peak Oilfield Service Kenai, AK; Nikiski, AK; and Parshall, ND	307502336 307502500 307503821 307503839 313043077	1	19,000	9,325	9,675	51%
139	Arcelor Mittal Blasdell, NY and Steelton, PA	112984919 313365918	1	17,000	8,500	8,500	50%
140	Mckinney Drilling Atlanta, GA; Port Arthur, TX; and South Padre Island, TX	311888010 311962138 312522956	1	22,000	10,969	11,031	50%
141	Team Industrial Services Lake Charles, LA and Weston, MO	311523906 312222896	2	19,000	9,500	9,500	50%
142	AK Steel Corporation Coshocton and Middletown, OH	311832703 313110728	1	14,500	7,500	7,000	48%
143	Albany International Corporation Montgomery, AL; Homer, NY; and Menasha, WI	309841393 310753827 311612261	1	47,000	24,633	22,367	48%
144	West County Power Partners Loxahatchee, FL	312145170 312149008 312149404	1	22,500	11,650	10,850	48%
145	Cactus Drilling Company Sentinel, OK and Pyote, TX	311001325 312238710	1	43,000	22,825	20,175	47%



Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
146	Supervalu Anniston, AL; Quincy, FL; Seaville, NJ; and Denver, PA	310034111 310841085 312127368 312767437	1	19,000	9,997	9,003	47%
147	Golden Peanut Company Ashburn, GA and Seagraves, TX	310991823 311566194	1	20,000	10,766	9,234	46%
148	Pepsi Windsor, CT; Holiday, FL; Pompano Beach, FL; St Petersburg, FL; Tampa, FL; Atlanta, GA; Bogart, GA; Martinez, GA; Chicago, IL; Portland, ME; Sedalia, MO; Billings, MT; Alliance, NE; Omaha, NE; Manchester, NH; Somerset, NJ; Whippany, NJ; Mount Vernon, NY; Rochester, NY; Syracuse, NY; Utica, NY; Watertown, NY; Lima, OH; Twinsburg, OH; Wadsworth, OH; Mckees Rocks, PA; Rosenberg, TX; St. Croix, VI; St. Thomas, VI; Eau Claire, WI; and Milwaukee, WI	122394059 306193681 306193723 306194465 306194549 307045401 308686583 310751821 311039028 311041834 311089940 311178636 311213540 311279012 311279129 311327456 311423644 311465918 311548507 311565857 311584395 311606271 311756761 311916522 311960876 312216898 312284441 312367360 312367923 312367949 312550189 312595044 312645625 312770605 313069130	1	178,400	96,205	82,195	46%
149	Perini Corporation Newark, NJ and Nyack, NY	311242481 311280135 311280143	1	20,000	10,800	9,200	46%
150	Appleton Papers Incorporated Roaring Spring, PA and Appleton, WI	309842748 311323273	1	17,000	9,300	7,700	45%
151	Menard Scottsbluff, NE and Eau Claire, WI	307044958 307045823 311466221	1	16,500	9,000	7,500	45%
152	Century Steel Erectors Ambridge, PA; Johnstown, PA; Mars, PA; and Kingwood, WV	306961137 311327035 311329155 311686034	1	20,500	11,510	8,990	44%
153	Hubbard Feeds Beloit, KS and Columbus, NE	310780648 311464325	1	9,500	5,300	4,200	44%
154	Parker Hannifin Corporation Kittery, ME; Washington, MO; Olive Branch, MS; Alliance, NE; Clyde, NY; and Lewisburg, OH	308686500 310751219 310751227 311413462 311497598 311912943 312752736	1	60,000	33,710	26,290	44%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
155	Unit Drilling <i>Bessie, OK; Sharon, OK; and Wheeler, TX</i>	311003677 311005151 312238629	1	16,000	9,000	7,000	44%
156	Patterson-UTI Drilling <i>Gilcrest, CO; Kaplan, LA; Sidney, MT; Lehigh, OK; Canadian, TX; Chapman Ranch, TX; Fort Worth, TX; Hearne, TX; Lamesa, TX; Midland, TX; Portland, TX; Robstown, TX; and Sonora, TX</i>	310472410 310999354 311215701 311310825 311312524 311312599 311528400 311884001 311945000 312155518 312155575 312155732 312238736 312481369 312538044 312538374	1	61,900	35,570	26,330	43%
157	Virginia International Terminal <i>Norfolk, VA</i>	309729465 309730349	1	28,000	16,100	11,900	43%
158	Petro-Hunt <i>Lambert, MT and Ray, ND</i>	311216352 312966104	1	17,000	9,900	7,100	42%
159	Weyerhaeuser Company <i>Natchitoches, LA; Mount Vernon, OH; and Idabel, OK</i>	310254487 311835334 312379381	1	16,500	9,528	6,972	42%
160	Brayman Construction Company <i>Dunbar and South Charleston, WV</i>	309470847 309478295	1	82,000	48,000	34,000	41%
161	Daniel Marr and Son <i>Boston and Quincy, MA</i>	312100563 312101868	1	35,000	20,500	14,500	41%
162	Kreilkamp Trucking <i>Edison, NJ and Appleton, WI</i>	122018500 311920425	1	7,500	4,407	3,093	41%
163	Pike Electric <i>Mobile, AL; Glenford, OH; and West, TX</i>	310479985 311944847 311969588	2	133,000	80,000	53,000	40%
164	Quala Systems <i>Garden City, GA</i>	310986997 310992482	1	51,500	31,000	20,500	40%
165	Gilster Mary Lee Corporation <i>Centralia, IL; Chester, IL; Momence, IL; Steeleville, IL; Jasper, MO; and Perryville, MO</i>	309289429 309291557 309292340 310934914 311195960 312596091 313012262	1	42,500	26,201	16,299	38%
166	Jeld-Wen <i>Pottsville, PA; Sulphur Springs, TX; and Craigsville, WV</i>	309548030 311678833 312289770	1	13,000	8,080	4,920	38%
167	Pacific Steel & Recycling <i>Pocatello and Twin Falls, ID</i>	311575351 311581748	1	19,000	12,000	7,000	37%
168	S.W. Jack Drilling Company <i>Liberty and Rock Cave, WV</i>	311678676 311685291	2	47,500	30,000	17,500	37%
169	Sherwin-Williams Company <i>Orlando, FL; Chicago, IL; Andover, KS; Carbondale, PA; Providence, RI; and St. Thomas, VI</i>	306193632 310160429 310229851 310778154 311369979 312830243	2	28,000	17,620	10,380	37%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
170	IFCO Systems North America <i>Kansas City, MO; St Louis, MO; Montgomery, NY; Columbus, OH; and Mcallen, TX</i>	311334502 311472781 311497697 311839120 311979124 312217169 312217219 312401987 312884356	1	137,700	88,780	48,920	36%
171	J. R. Simplot Company <i>Aberdeen and Pocatello, ID</i>	309971976 311575930 311577605 311577613	1	59,000	37,550	21,450	36%
172	Commercial Concrete Homes <i>Fort Myers and Naples, FL</i>	311084347 311766760	1	17,000	11,250	5,750	34%
173	Difama Concrete <i>New York City, NY</i>	311632285 312497886	2	100,500	67,000	33,500	33%
174	Mosser Construction <i>Toledo, OH</i>	309448389 311602478	1	15,000	10,000	5,000	33%
175	Rotonics Manufacturing <i>Commerce City, CO; Bartow, FL; and Caldwell, ID</i>	310471677 311573307 311730618	1	45,500	30,615	14,885	33%
176	Georgia Pacific <i>Monroeville, AL; Ricon, GA; Duck Hill, MS; Mogadore, OH; Muskogee, OK; and Phillips, WI</i>	307047423 310988134 310990205 311001184 311031504 311412852 311412894 312868128	2	74,000	50,475	23,525	32%
177	The Lane Construction Corporation <i>Lakeland, FL; Bangor, ME; Lincoln, ME; and Avella, PA</i>	312225881 312633431 312697576 313360646	1	34,000	23,015	10,985	32%
178	Saia Motor Freight Line <i>Birmingham, AL; Henderson, CO; Broussard, LA; West Chester, OH; and Kerrville, TX</i>	311312755 311444228 311527881 311909378 312335458	1	35,500	24,825	10,675	30%
179	Dura-Bond Pipe <i>Steelton, PA</i>	112665252 113742852	1	57,000	40,500	16,500	29%
180	S.J. Louis Construction of Texas <i>Carrollton and San Antonio, TX</i>	310447495 312847908 312849029	1	22,500	16,175	6,325	28%
181	Timken <i>Canton, OH</i>	311162226 311333215 311474456 312934086 312965981	1	74,000	53,250	20,750	28%
182	Gene D. Yost & Son <i>Jefferson, PA; Union City, PA; and Hurricane, WV</i>	309341840 311323075 311677959	1	98,000	71,575	26,425	27%
183	C. C. Forbes Company <i>Driscoll, Pyote, and Robstown, TX</i>	311883953 312481443 312481484	1	10,000	7,400	2,600	26%
184	Norfolk Southern Railway Company <i>Portsmouth, OH and Norfolk, VA</i>	309730729 311501035	1	29,500	22,190	7,310	25%
185	United Rentals <i>Concord, NH and Fairmont, WV</i>	309558245 313369092	1	3,500	2,625	875	25%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
186	List Industries <i>Apopka and Deerfield Beach, FL</i>	312149941 312284227	1	59,500	45,325	14,175	24%
187	Royal American Construction <i>Panama City and Panama City Beach, FL</i>	310033402 310035209	1	11,300	8,550	2,750	24%
188	Wayne Farms <i>Union Springs, AL and Ovett, MS</i>	311411680 311969877	1	27,000	20,600	6,400	24%
189	Greenheck Fan Corporation <i>Schofield, WI</i>	122018435 309839041	1	12,500	9,600	2,900	23%
190	Offshore Specialty Fabricators <i>Houma, LA and Ingleside, TX</i>	311242556 311520977	1	35,000	27,000	8,000	23%
191	APM Terminals <i>Oakland, CA; Garden City, GA; and La Porte, TX</i>	310990635 311959563 312245095	1	11,000	8,594	2,406	22%
192	Allied Systems <i>Rome, GA; Marysville, OH; and Midlothian, TX</i>	311832620 311944953 312770118	1	21,500	16,938	4,562	21%
193	Pioneer Natural Resources USA <i>Trinidad, CO; Weston, CO; Midkiff, TX; and Midland, TX</i>	310594635 312136153 312139058 312139066 312140346 312238959 312473523	1	46,000	36,250	9,750	21%
194	Mass. Institute of Technology <i>Cambridge, MA</i>	312085400 312733348 313425035	1	46,500	37,500	9,000	19%
195	Mas Tec North America <i>Colorado Springs, CO; Coolidge, GA; Imperial, MO; and Madison, WI</i>	310769575 310992425 312138100 312884166	1	172,500	142,200	30,300	18%
196	National Coal County <i>Cheyenne and Loco, OK</i>	312376544 312380074	1	59,500	48,550	10,950	18%
197	Ensign United States Drilling <i>Gill, CO and Eufaula, OK</i>	311003602 311908628	1	12,000	10,000	2,000	17%
198	Weatherford International <i>Trinidad, CO; Alex, OK; and Cheyenne, OK</i>	312141153 312376684 312379035	1	18,500	15,300	3,200	17%
199	Turner Industries Group <i>Orange and Paris, TX</i>	309545622 310263868	1	8,500	7,125	1,375	16%
200	Walt Disney World <i>Lake Buena Vista and Orlando, FL</i>	311730675 312328263 312735236 312735368 312834708 313047987	4	49,500	41,375	8,125	16%
201	Willbros <i>Vacherie, LA; Beaumont, MS; Carthage, TX; and Deweyville, TX</i>	311413728 311491815 311529960 312117534	4	37,000	31,200	5,800	16%
202	Sorbara Construction <i>New York City, NY</i>	311441406 312209802 312321847 312321979 312424757 313041386	1	186,500	158,775	27,725	15%
203	Community Asphalt <i>Fort Lauderdale and Hialeah, FL</i>	311082713 311087241	1	27,000	23,250	3,750	14%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
204	Adobe Drilling Services <i>Midland, Odessa, and Tarzan, TX</i>	311130546 312238801 312238835	1	56,500	50,000	6,500	12%
205	International Paper Company <i>Augusta, GA; North Kansas City, MO; and Lancaster, PA</i>	312222839 312503337 312524754 312525272 312525280	1	129,000	113,680	15,320	12%
206	Con-Way Freight <i>Shrewsbury, MA; Manchester, NH; Tonawanda, NY; Parma, OH; Wilkes-Barre, PA; York, PA; Franklin, WI; and Belle, WV</i>	112896626 122383409 309470946 309559250 310625884 311162390 311493621 312287527	1	150,500	133,468	17,032	11%
207	G.M. Fabricators <i>Ingleside, TX</i>	311969232 312870355	1	82,500	73,125	9,375	11%
208	Smurfit Stone Container Enterprises <i>Fernandina Beach, FL; North Chicago, IL; and Beloit, WI</i>	310770342 311820625 313005514	1	30,500	27,225	3,275	11%
209	American Bridge Company <i>Grand Rivers, KY; Newport, RI; and Chincoteague, VA</i>	301415493 301416160 309730554 312340649	1	109,000	97,603	11,397	10%
210	Cyclone Drilling <i>Parachute, CO; Rifle, CO; Lambert, MT; Marmarth, ND; and Stanley, ND</i>	310469259 311214753 311907448 312174360 313043192	1	39,500	35,550	3,950	10%
211	Delek Refining <i>Tyler, TX</i>	309573350 309578219 312119340	2	321,000	288,900	32,100	10%
212	Packaging Corporation of America <i>Liverpool, NY; Ashland, OH; and Tomahawk, WI</i>	309843001 311604268 312366834	3	32,500	29,112	3,388	10%
213	Sulzer Metco Coating <i>Barboursville, WV</i>	311685663 311685762	1	59,500	53,550	5,950	10%
214	JBS Swift And Company <i>Greeley, CO</i>	310471875 311908982 311909568	1	53,000	48,290	4,710	9%
215	Allied Waste Industries <i>Buffalo, NY; Clarence, NY; and Houston, TX</i>	310265020 311962377 312241151 312241482	2	47,000	43,600	3,400	7%
216	Halliburton <i>Durango, CO; Fort Lupton, CO; Rifle, CO; and Midland, TX</i>	310467808 311307797 311907836 312138761	3	40,500	37,560	2,940	7%
217	Asplundh Tree Expert <i>Sandersville, GA; Dixon, IL; and Austin, TX</i>	311041917 311245088 311314959	2	35,500	33,250	2,250	6%
218	JMEG <i>Arlington, TX</i>	311945083 311949259	1	10,000	9,500	500	5%
219	Vaughn Construction <i>Houston, TX</i>	311962583 312321417	1	12,000	11,500	500	4%

Seq.	Establishment Name and Location(s)	Inspection Numbers	No. of Fatalities	Gravity Penalty	Final Penalty	Penalty Reductions	Rate Reduced
220	SSA Cooper / SSA Terminals Oakland, CA; Brunswick, GA; Savannah, GA; Wilmington, NC; and Charleston, SC	308327634 310987458 310989280 310990049 311093744 311318158 312422264	3	88,500	86,000	2,500	3%
221	Boh Bros Construction Slidell, LA	311528012 311528889	2	22,500	22,125	375	2%
222	DCS Sanitation Management Springfield, MO and Lexington, NE	310935754 311460281	1	122,000	119,500	2,500	2%
223	Deep South Crane and Rigging Garyville, LA and Houston, TX	311525554 311958565	4	72,000	70,500	1,500	2%
224	Crucible Specialty Metals Syracuse, NY	310755327 312367576 312368194	1	254,200	252,450	1,750	1%
225	BP Products North America Oregon, OH and Texas City, TX	309449106 310266085	1	30,000	30,000	-	0%
226	Leed Energy Services Gilcrest and La Salle, CO	310468103 310471776	1	10,000	10,000	-	0%
227	Imperial Sugar Company <sup>1</sup> Port Wentworth, GA and Gramercy, LA	310988712 311522858	12	*	*	*	*
<b>Subtotal</b>			<b>168</b>	<b>\$6,114,000</b>	<b>\$4,092,042</b>	<b>\$2,021,958</b>	
<b>Average</b>			<b>1</b>	<b>\$48,912</b>	<b>\$32,736</b>	<b>\$16,176</b>	<b>33%</b>

**All 227 Employers with Serious Violations on Two or More Inspections and Fatalities**

<b>Total<sup>1</sup></b>		<b>276</b>	<b>\$10,955,200</b>	<b>\$6,375,571</b>	<b>\$4,579,629</b>	
<b>Average<sup>1</sup></b>		<b>1</b>	<b>\$48,474</b>	<b>\$28,210</b>	<b>\$20,264</b>	<b>42%</b>

<sup>1</sup> Imperial Sugar Company penalty amounts of \$8.8 million were excluded so as not to distort overall averages.

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## Appendices

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**Appendix A****Background**

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The purpose of the OSH Act of 1970 was to assure so far as possible that American workers have safe and healthful working conditions by encouraging employers to reduce hazards and institute safety and health programs. When unsafe conditions are identified, OSHA inspectors issue citations with penalties. In setting penalty amounts, OSHA is required to give consideration to the gravity of violations, and employer's size, good faith, and history. While penalty reductions are not mandated by the Act, OSHA policies established these reductions as an incentive to abate violations voluntarily and resulted in significantly reduced final penalties. OSHA officials maintained that reduced penalties would lead to quicker and more comprehensive abatement.

OSHA's application of the penalty reductions has been the subject of OIG and GAO reports for more than 20 years. Excerpts from prominent OIG and GAO reports are included below.

From a 1987 OIG report, *Targeting Employers with Fatalities* (OIG Report No. 02-87-012-10-105, March 10, 1987), a review of selected OSHA case files disclosed a particular contractor had 19 known fatalities and 30 associated violations nationwide between 1975 and 1984. OSHA national data revealed at least 20 other employers with similar or worse histories of fatalities. OSHA did not identify and target for inspection employers with significant numbers of fatalities, and use its nationwide fatality inspection data in citing and penalizing repeat violations.

In another 1987 OIG report, *OSHA Enforcement Activities* (OIG Report No. 02-86-028-10-105, September 11, 1987), OIG identified internal control weaknesses as well as instances of noncompliance with OSHA policies and procedures in the following area: Management Control Systems, Abatement of Hazards, Targeting and Scheduling Inspections, and Penalty Assessments. Such problems, if not corrected, could seriously impair the agency's effectiveness in discharging its duties.

In May 1991 GAO report, *OSHA: OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards* (GAO/HRD-91-35), OSHA treats construction inspections like its other inspections. It cites the employer for violations and requires the employer to correct the problem. However, once the construction site is no longer in operation OSHA considers the hazard abated. After work has ended at the inspected site, OSHA requires no further abatement effort by the contractor even if the cause of the problem — such as untrained personnel, defective equipment, or inadequate procedures for performing work safely — could continue at another worksite if the same personnel, equipment, and procedures are used again. OSHA accepts completion of work at a site as a form of abatement and closes the case.

In April 1992, GAO issued a report titled *Penalties for Violations Are Well Below Maximum Allowable Penalties* (GAO/HRD-92-48) to the Subcommittee on Health and Safety, Committee on Education and Labor, House of Representatives. One of the

objectives was to determine "... if OSHA's policy of reducing penalties to avoid litigation achieved its goal of quicker and more comprehensive abatement of cited hazards." The report goes on to state that: "OSHA officials believe reducing penalties leads to both quicker and more comprehensive abatement. They told us that reducing penalties makes employers more likely to accept the penalty rather than contest it or to continue the appeal if they have already contested it. "

In August 2004, GAO issued a report titled *OSHA's Oversight of Its Civil Penalty Determination and Violation Abatement Processes Has Limitations* (GAO-04-920), which recommended that OSHA ensure its regional offices complete internal monitoring in accordance with its MAP, and use the monitoring results for oversight of penalty determination and violation abatement processes.

## Appendix B

### Objectives, Scope, Methodology, and Criteria

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#### Objective

Has OSHA effectively evaluated the impact of penalty reduction incentives on workplace safety and health?

#### Scope

The audit covered 49,192 Federal OSHA inspections of non-Federal employers initiated during the 2-year period between July 1, 2007, and June 30, 2009. The same policies and practices for reductions remain in effect today. The inspections resulted in 142,187 citations and \$523.5 million in penalties which were reduced by \$351.2 million, or 67 percent of total penalties.<sup>1</sup>

#### Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We evaluated internal controls pertaining to penalty reductions and abatement; and assessed the reliability of related inspection data maintained on IMIS. We reviewed OSHA policies and procedures; reports on IMIS controls and penalties; and internal monitoring reports. We discussed OSHA policies, procedures, and localized practices for penalty reductions with OSHA National, Regional and Area Office officials. We discussed settlement procedures and inter-agency coordination with Regional Solicitors of Labor.

To achieve the audit's objective, we extensively relied on computer-processed data for inspections and citations contained in IMIS. We assessed the reliability of this data by (1) performing analytical tests of data elements, (2) interviewing OSHA officials knowledgeable about data and system controls, (3) reviewing OIG and GAO reports on IMIS and OSHA enforcement, (4) utilizing corroborating on-line IMIS records, and (5) tracing selected data elements to source inspection file documents. Based on these tests and assessments, we concluded the data was sufficiently reliable to be used in meeting the audit's objective.

Compliance officer reduction rates were maintained separate from IMIS data and were provided by OSHA using data records from Area Offices. We examined the reduction

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<sup>1</sup> Citations, penalties and reductions information was obtained through September 18, 2009, for inspections opened in the 2-year audit period.

rates for obvious errors and inconsistencies by recalculating the initial citation amount and comparing it to the value in IMIS. We traced the reduction rates to corroborating documents in sampled inspection files. We believe the reduction rate data is sufficiently reliable to provide estimates for how penalties were reduced prior to citation issuance.

OSHA penalty reductions occur at two points — compliance officer reductions at initial citation (i.e., quick-fix, size, history and good faith) and post-citation reductions (i.e., informal settlement, amendments, and government dismissed). The two points were tested separately.

### Compliance officer reduction testing

Compliance officer reductions were tested using IMIS data. Reductions were applied on 47,560 inspections or 135,610 citations. We used IMIS data and criteria in OSHA directives to determine whether the reduction was allowable based on the type of violation. We found 1,423 inspections with excessive reductions and another 25 inspections with anomalous data.<sup>2</sup>

- From the 1,423 inspections, 536 inspections had excessive reductions of \$1,000 or more, and represented 81 percent of total excess reductions. From the universe of 536 inspections with excessive reductions of \$1,000 or more, we selected a simple random sample of 35 inspections to confirm compliance test results by tracing the IMIS data to inspection file documents. There were no sampling errors, thus confirming the accuracy of our test results at a 95 percent confidence level and an accuracy of +/- 7 percent.
- For the 25 inspections with anomalous data, we judgmentally sampled all inspections and concluded that the data was accurate, which verified data reliability.

### Post-citation reduction testing

Post-citation reductions were tested using two-tiered stratified random samples of Area Offices and inspections, and results were projected. Post-citation reductions were applied to 33,838 inspections or 97,253 citations.

Area Offices were stratified based on the number of inspections with reductions, the average reduction amount, and the average rate of the reductions to the penalties. We selected a random sample of 6 Area Offices (Fort Worth, TX; Denver, CO; Pittsburgh, PA; Allentown, PA; Savannah, GA; and Little Rock, AR) out of 84 with post-citation reductions. For each selected Area Office, we selected random samples of 30 inspections, for an overall total of 180 inspections, with reductions and reviewed the inspection file documentation for justification. We provided OSHA Regional and Area

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<sup>2</sup> Anomalous data consisted of violations with differences between the IMIS and OIG calculated issued penalty amounts that could not be explained by incorrect or missing compliance officer reduction rates.

Office officials with statements of facts and discussed compliance exceptions. Results were projected at a 90 percent confidence level and an accuracy of +/- 7 percent.

### Employers with prior violations

We identified 4,791 employers with two or more inspections (totaling 11,629 inspections) within the period July 1, 2007, through June 30, 2009. Because IMIS does not relate inspections company-wide, there were inherent limitations to identifying employers with two or more inspections. While we attempted to mitigate these limitations, we consider our list of these employers and inspections to be the minimum that could be identified and verified using the available IMIS data and other resources. Employers that only had inspections opened on the same date were excluded as OSHA frequently conducts separate safety and health inspections at the same employer simultaneously.

Within the list of 4,791 employers with two or more inspections, we identified 2,406 employers, which were cited with violations of similar standards in the 2-year period. Similar standards were determined using the first eight characters of the standard code.

### **Criteria**

- Occupational Safety and Health Act of 1970, Public Law 91-596, December 29, 1970, as amended through January 1, 2004
- OSHA Instruction CPL 02-00-148, Field Operations Manual, Chapter 6 – Penalties and Debt Collection, January 1, 2009 and consolidates policies from:
  - CPL 02-00-103, Field Inspection Reference Manual, Section 8 – Chapter IV - Post-Inspection Procedures, September 26, 1994
  - CPL 02-00-112, National Quick-Fix Program, August 2, 1996
  - CPL 02-00-114, Abatement Verification Regulation Enforcement Policies and Procedures, May 28, 1998
- OSHA Instruction CPL 02-00-90, Guidelines for Administration of Corporate-Wide Settlement Agreements, June 3, 1991
- OSHA Instruction EAA 01-00-003, Management Accountability Program, July 23, 2007
- DRAFT OSHA Instruction CPL 02-00-117, Nationwide Expedited Informal Settlement Agreements, September 4, 1996

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**Appendix C****Acronyms and Abbreviations**

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CSA	Corporate-wide Settlement Agreement
Compliance Officer	Compliance Safety and Health Officer
DOL	U.S. Department of Labor
EAJA	Equal Access to Justice Act
EEP	Enhanced Enforcement Program
EISA	Expedited Informal Settlement Agreement
GAO	U.S. Government Accountability Office
IMIS	Integrated Management Information System
ISA	Informal Settlement Agreement
MAP	Management Accountability Program
OIG	Office of Inspector General
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration
SOL	Solicitor of Labor, DOL



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**Appendix D****Glossary of Terms**

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1. **Abatement** – Action by an employer to comply with a cited standard or to eliminate a recognized hazard identified by OSHA during an inspection.
2. **Citation** – Written notice describing the nature of the alleged violation (referenced to the Act, standard, rule, regulation, or order violated), and fixing a reasonable time for the abatement of the violation.
3. **Contest** – Dispute by an employer of a citation and/or notice of proposed penalty before the Occupation Safety and Health Review Commission.
4. **Company-wide / Employer-related Company** – Includes all locations of the company, divisions, or operational units and related companies with common ownership, such as parent/subsidiaries in which the parent owns more than 50 percent.
5. **Corporate-wide Settlement Agreement** – Signed agreement with an employer to extend abatement requirements to all covered locations of the company.
6. **Expedited Informal Settlement Agreement** – Signed agreement with an employer which provides a penalty reduction incentive in exchange for giving up the right to contest and agreeing to correct all violations by the abatement date.
7. **Final Order** – The citation, notice of proposed penalty and abatement date becomes a final order after the contest and appeal process has been completed.
8. **Gravity of Violation** – Based on assessment of (a) the severity of injury or illness, which could reasonably be expected to result from the alleged violation; and (b) the probability that an injury or illness could occur as a result of the alleged violation.
  - a. **Severity** – Classified as High (death, permanent disability, or chronic, irreversible illness); Medium (hospitalized injury, not of a permanent nature); or Low (an injury requiring only minor supportive treatment).
  - b. **Probability** -- Categorized as Greater or Lesser determined by considering factors such as the number of employees exposed, frequency or duration of exposure, and employee proximity to the hazardous conditions.
9. **Gravity-Based Penalty** – Unadjusted penalty determined for each violation based on the severity and probability assessments; professional judgment; and OSHA guidelines on penalty levels (e.g., \$5,000 for high gravity; \$2,000 to \$3,500 for medium gravity; and \$1,500 for low gravity serious violations).

**10. Informal Settlement Agreement** – Signed agreement with an employer resulting from the informal conference or afterward, but prior to the end of the contest period.

**11. Penalty Reductions** –

- a. Good Faith – A 25 percent reduction to recognize an employer’s effort to implement an effective safety and health management system in the workplace. A 15 percent reduction may be granted if the safety and health plan has incidental deficiencies. No reduction allowed on repeat, willful, or high-gravity serious violations. If one violation is classified as willful, no reduction for good faith can be applied to any violation in the inspection.
- b. History – 10 percent reduction given to employers who have not been cited for any serious, willful, or repeated violations in the prior 3 years.
- c. Quick-Fix – abatement incentive program using a 15 percent reduction to encourage employers to immediately abate hazards found in an inspection and prevents potential employee injury, illness, and death. Corrective action to abate a violation must be permanent and substantial and not temporary and superficial. No reduction allowed on repeat, willful, or high-gravity serious violations, or on inspections with fatalities or hospitalized injuries.
- d. Size – Calculated based on the maximum number of employees nationwide that the employer has at any time during the previous 12 months. Reduction rates range from zero for very large employers to 80 percent for willful violations of small employers.

<u>Willful Violations</u>		<u>Other Types of Violations</u>	
<u>Employees</u>	<u>Max Rate</u>	<u>Employees</u>	<u>Max Rate</u>
10 or fewer	80	25 or fewer	60
11-20	60	26-100	40
21-30	50	101-250	20
31-40	40	251 or more	0
41-50	30		
51-100	20		
101-250	10		
251 or more	0		

**12. Violation Types** –

- a. Serious – Substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.
- b. Willful – Either an intentional violation of the Act or plain indifference to its requirements. The employer committed an intentional and knowing violation if

- (1) aware of the requirements of the Act, applicable standard or regulation, or comparable legal requirements; (2) aware of a condition or practice in violation of those requirements, and (3) did not abate the hazard.
- c. Repeat – Cited previously for a substantially similar condition and the citation has become a final order.
  - d. Failure-to-Abate – Violation that has not been corrected for an issued citation and the abatement deadline has passed.

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Appendix E

OSHA Response to Draft Report

U.S. Department of Labor

Assistant Secretary for  
Occupational Safety and Health  
Washington, D.C. 20210



SEP 28 2010

MEMORANDUM FOR:

ELLIOT P. LEWIS  
Assistant Inspector General  
for Audit

A handwritten signature in dark ink, appearing to read "D. Michaels".

FROM:

DAVID MICHAELS, PhD, MPH

SUBJECT:

Response to OIG's Draft Audit Report  
No. 02-10-201-10-105  
"OSHA Needs to Evaluate the Impact and Use of Hundreds  
of Millions of Dollars in Penalty Reductions as Incentives  
for Employers to Improve Workplace Safety and Health."

This memorandum is in response to your August 18, 2010, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 02-10-201-10-105, "OSHA Needs to Evaluate the Impact and Use of Hundreds of Millions of Dollars in Penalty Reductions as Incentives for Employers to Improve Workplace Safety and Health." We appreciate this opportunity to respond to the findings and recommendations of the OIG. While we agree with most of the recommendations, we also convey our concerns about some of the audit findings and recommendations.

**The basis for the OIG's penalty reduction calculation is wrong**

As the draft audit report notes, OSHA is required to give consideration to the gravity of violations, and employer's size, good faith, and history. The OIG contends that penalties were reduced by 67 percent, or \$351.2 million, in the two year time period studied, but starts with an inaccurate premise that all penalties start at the highest level allowed after assessing the gravity of the violation. The Occupational Safety and Health Act (OSH Act) clearly requires that size of the employer, good faith of the employer and the history of previous violations be considered in the assessment of civil penalties. Therefore, the Agency believes that the OIG should recalculate penalty reductions it examined *after* those three criteria have been applied and change the title and content of the report to reflect the corrected calculations (see attached tables for an example of accurate penalty reduction calculations). This change would then accurately reflect the difference between the OSHA proposed and final penalties.

**The draft audit report findings incorrectly imply that penalty reductions were erroneously applied for employers with a history of serious violations, including some employers who had worksite fatalities.**

Although the Agency is aware of the limitations of its current inspection database, and is in the process of developing a new data management system (i.e., OSHA Information System (OIS)), which will provide the ability to more accurately track the history of an employer through the use of Dun & Bradstreet data, it does not believe that the penalties the OIG has identified were incorrectly assessed. While the OIG reports the cases identified all had serious violations, it failed to provide information on the gravity of these violations. In addition, the majority of the reductions cited in this subset of cases were for the size of employer. Furthermore, the draft report suggests that a fatality from a prior inspection should preclude an employer from receiving future reductions. This suggestion would require further evaluation and consideration by OSHA. A worksite fatality alone does not automatically mean the cause was work-related or the employer failed to maintain a safe workplace.

**The OIG inappropriately used internal monitoring reports to suggest systematic weaknesses in the penalty process.**

Internal monitoring reports are valuable tools that OSHA uses to oversee and improve its own field activities. They are OSHA office-specific and are provided to the manager of the specific office who is then required to explain how they plan to correct the problem. Rather than suggest systematic weaknesses, the internal monitoring reports serve as an effective internal review tool that helps the Agency monitor and improve many of its programs, including the penalty process. At the same time, we recognize the need to increase our audits and ensure we are calculating penalties correctly and consistently amongst Area Offices and across Regions. The Agency will evaluate audit procedures once the revised penalty policies are implemented to ensure they are being implemented correctly.

**Penalties cannot be assessed in a vacuum independent of contest rates**

Because employers are not required to abate violations during the contest period, OSHA's penalty adjustment process is a part of the settlement of a case and directly relates to ensuring expedited abatement. OSHA is always seeking ways to ensure the quickest abatement and discourage employers from continuing unsafe or unhealthful working conditions. Recently, OSHA reviewed its penalty policies, and is currently piloting new criteria for calculating penalties.

**RECOMMENDATIONS**

OSHA appreciates the timeliness of this report and provides the following responses to the recommendations.

**Develop and Perform the Following Evaluations:****Recommendation 1: Impact of penalty reductions on workplace safety and health.**

**OSHA Response:** While the Agency agrees with this recommendation in principle, this would be a very resource intensive project that would require the expenditure of funds for which the Agency has neither budgeted nor requested. Existing research highlights the complexity of the topic and the difficulty in identifying clear causal relationships between penalties and injury reductions, let alone how penalty reductions might impact injuries. It is clear that OSHA penalties are effective providing an incentive for employers to implement measures that will reduce workplace injuries, although clearly the differential impact of penalties needs to be evaluated for various employer sizes. In addition, while the 1992 GAO report explained that it was difficult to establish a causal relationship between penalty reductions and quicker, or more comprehensive abatement, it also noted that GAO was in agreement with OSHA that because abatement is not required during the contest period, “reducing the penalty could make an employer more willing to accept the citation, and the sooner a citation is resolved, the sooner abatement is required.” As noted in the OIG’s report, the driving factor for reducing penalties is the employer’s right to contest an inspection and the desire to readily obtain abatement for serious hazards to protect workers. Although employers are always responsible for compliance, they may not receive failure-to-abate penalties during the pendency of a contest proceeding. The 1992 GAO report also found that contested cases had a much higher penalty reduction than other cases.

**Recommendation 2: Fully implement the requirements of the Management Accountability Program (MAP) and institute changes based on its results to improve Nationwide OSHA program results.**

**OSHA Response:** The Agency believes that it has already complied with this recommendation. As the OIG reports, the Agency has internal monitoring reports that have identified opportunities for improvements in documenting justifications for penalty reductions. What the OIG report fails to show is that these reports are then presented to the managers of the OSHA office where they occurred and the manager is required to provide a response to the report explaining what actions it will be take to address the findings of the audits. The Agency will continue to improve its auditing program with the introduction of the revised penalty policy and continue to work at ensuring that penalty calculations are consistent across Area Offices.

**Recommendation 3: Determine if the Expedited Informal Settlement Agreement (EISA) and national quick-fix programs should be formalized and expanded, or eliminated.**

**OSHA Response:** The Agency is currently reviewing both policies and will take appropriate steps once these reviews are completed.



**Improve Information Systems**

**Recommendation 4: Develop a module in the management information system to identify, monitor, and limit penalty reductions for employers with prior violations.**

**For these employers consider the following characteristics:**

- a. High-gravity serious and willful violations**
- b. Violations of the same standard, regardless of the “repeat” classification**
- c. Hospitalized injuries and fatalities**
- d. Delinquency of penalty payments**
- e. Parent and subsidiary ownership**

**OSHA Response:** The Agency is in partial agreement with this recommendation and believes it will be in partial compliance with the roll-out of the revised penalty policy and OSHA’s Information System (OIS).

- Under the revised penalty policy, the time frame for considering an employer’s history of violations will expand from three to five years. Employers who have been inspected in the last five years and have not been issued any high gravity serious, willful, repeat or failure-to-abate citations will receive a 10 percent reduction for history.
- Those employers who are issued any high gravity serious, willful, repeat or failure-to-abate citations will receive a 10 percent increase in their penalty up to the statutory maximum.
- The new policy does not allow penalty reductions to be made at an informal conference if the employer is delinquent in paying earlier penalties.
- The OIS will improve the tracking of employer’s history by using Dunn & Bradstreet data to populate the employer fields. This data will allow the Agency to more easily identify parent and subsidiary ownership.

The Agency is hesitant to make changes that would automatically limit penalty adjustments whenever the same standard is cited. Each inspection presents a unique environment and numerous variables that must be taken into consideration. OSHA created the repeat criteria to identify violations that are substantially similar or identical. The Agency is also hesitant to insist that existence of a previous fatality or hospitalization should automatically limit a history adjustment. Once again, the individual circumstances of these types of incidents should determine whether a history adjustment should be denied.

**Recommendation 5: Increase transparency and access by displaying on OSHA’s website the (a) gravity-base penalty amount and (b) amount of penalty reductions by type, including both compliance officer and post-citation reductions.**

**OSHA Response:** The Agency would want to further evaluate this proposal. The rationale to adjust the penalty for each inspection may not be easily categorized and will often vary based on the circumstances of each case. The Agency has concerns that

posting limited information to OSHA's website associated with penalty adjustments could result in unintended consequences.

#### **Revise and Implement Policies and Procedures**

**Recommendation 6: Revise directives to consider an employer's overall character while coordinating reductions as a whole before individually applying the size, good faith, and informal settlement reductions.**

**OSHA Response:** The Agency believes that the revised penalty policy will partially address this recommendation. At the same time, the Agency is limited by the OSH Act which clearly states that due consideration must be given "to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations." At the same time, the revised penalty policy will modify the criteria used to assess these categories. Under the revised penalty policy, the time frame for considering an employer's history of violations will expand from three to five years. Employers who have been inspected in the last five years and not been issued any serious, willful, repeat, or failure-to-abate citations will receive a 10 percent reduction for history. Those employers who were issued any high gravity serious, willful, repeat or failure-to-abate citations will receive a 10 percent increase in their penalty up to the statutory maximum. Employers who had not been inspected or who were issued serious violations that were not high gravity will not receive a reduction or increase for history.

Under the revised policy, the penalty reduction for size will continue to apply to employers with less than 251 employees. However, employers under 251 will now be eligible for a penalty reduction between 10 and 40 percent instead of between 20 and 60 percent. Current good faith procedures will be retained but OSHA is eliminating the additional 10 percent reduction for employers who participate in a strategic partnership agreement. The minimum penalties for a serious violation will be raised to \$500.

Finally, the revised penalty policy will give the Area Director the authority to determine if a size or history reduction should be granted. Under the revised policy, an Area Director who determines that imposing the full-gravity-based penalty is necessary to achieve the appropriate deterrent effect may do so after fully documenting the rationale in the case file. The Agency believes this policy strikes the appropriate balance, addressing both the intent and requirements of the OSH Act.

**Recommendation 7: Establish clear policy on limiting the size reduction for small employers and ensure this deterrent provision is used. This policy should address factors such as: fatalities/hospitalized injuries, and multiple high-gravity, serious, repeat, or willful violations.**

**OSHA Response:** As with Recommendation 6, the Agency believes that the revised penalty policy partially addresses this recommendation. At the same time, the Agency is

limited by the OSH Act which clearly states that due consideration must be given “to the appropriateness of the penalty with respect to the size of the business of the employer being charged.” The Agency is also hesitant to insist that the existence of a fatality or hospitalization should be automatically linked to a size adjustment. The Agency already has an established policy for limiting the application of a size reduction in certain circumstances. When an employer with 1-25 employees has one or more serious violations of high gravity or a number of serious violations of moderate gravity indicating a lack of concern for employee safety and health, the inspector may recommend that only a partial reduction in penalty shall be permitted for size. As noted earlier, the history adjustment has now been modified and includes a 10 percent increase for an employer that has been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the previous five years, up to the statutory maximum.

**Recommendation 8: Provide formal training to Area Directors on the use and documentation requirements to justify informal settlement reductions according to directives.**

**OSHA Response:** The Agency believes it has already fulfilled this requirement. All Area Directors are provided with training appropriate to their responsibilities. OSHA believes that the majority of its Area Directors are in compliance with the penalty policies and were provided training on the revised penalty policy. Area Directors who are not in compliance have been identified through internal audits and are required to explain what steps they will take to come into compliance. The Agency is planning additional training on the new penalty policy.

**Recommendation 9: Revise the policy of good faith reductions for employers with prior violations so that reductions are not granted on violations of the same standard not classified as repeat.**

**OSHA Response:** The agency disagrees with this recommendation. As noted in its response to Recommendation 4, the Agency is hesitant to make changes to insist that penalty adjustments should be automatically limited if the same standard is cited. Each inspection presents a unique environment with a number of variables that must be taken into consideration. OSHA created the repeat criteria to identify violations that are very similar or identical.

**Recommendation 10: Establish clear policy and guidance to determine when CSAs are to be used for employers with prior violations to ensure comprehensive and company-wide abatement hazards.**

**OSHA Response:** OSHA believes it is already in compliance with this recommendation with the CPL 02-00-090 - CPL 2.90 - Guidelines for Administration of Corporate Wide Settlement Agreements. OSHA is in the process of revising its corporate-wide settlement agreement directive and will work to ensure guidance is provided with respect to

assessing the appropriate use of such agreements to address company-wide hazards. In addition, when OIS launched, the Agency will have better access to identifying all the worksites for one employer.

**OIG Identified Employers with Serious Violations on Two or More Inspections and Fatalities****ATTACHED TABLES:**

Below are the inspections which the OIG reported as having more than a 66 percent reduction in penalties. OSHA has recalculated these penalty reductions using the correct initial penalty amounts, resulting in a much lower penalty reduction.

**Small Employers (1-25 Employees)**

<b>Establishment Name</b>	<b>Initial Penalty</b>	<b>Current Penalty</b>	<b>OSHA Calculated Rate Reduction</b>	<b>OIG Reported Rate Reduction</b>
1. TJC Construction	\$4,500	\$2,250	50%	85%
2. Gary Lewis Properties	\$1,500	\$900	40%	81%
3. Colony Insulation	\$27,200	\$13,560	50%	80%
4. RPM Recycling	\$8,700	\$6,510	25%	79%
5. Boston Power Crushing	\$24,600	\$18,200	26%	78%
6. Dakota Pump & Control	\$6,500	\$4,375	33%	78%
7. Luis Martinez	\$10,900	\$5,200	52%	78%
8. Building Keeper	\$13,750	\$7,988	42%	77%
9. Execute Projects	\$12,650	\$9,080	28%	76%
10. Markland Welding	\$13,800	\$8,400	39%	75%
11. Gulf Coast Electric	\$5,075	\$4,725	7%	73%
12. Romo Carpentry	\$13,500	\$11,150	17%	72%
13. Vilgar Remodeling	\$8,250	\$4,125	50%	70%
14. Frame To Finish	\$10,550	\$10,550	0%	69%
15. Tesmer Construction	\$7,600	\$5,800	24%	67%
16. Crispin Aguilera	\$6,000	\$5,200	13%	65%
17. L.A. Molina Construction	\$15,550	\$13,750	12%	65%
18. Rene Regalado	\$7,550	\$7,550	0%	65%

Attachment - 1

## OIG Identified Employers with Serious Violations on Two or More Inspections and Fatalities

## Mid-Size Employers (26-100 Employees)

Establishment Name	Initial Penalty	Current Penalty	OSHA Calculated Rate Reduction	OIG Reported Rate Reduction
1. Liberty Building Products	\$1,050	\$1,050	0%	93%
2. Armstrong Steel Erectors	\$14,750	\$4,525	69%	87%
3. Rockwell American Mfg. Co.	\$10,750	\$2,750	74%	87%
4. System Services Broadband	\$10,900	\$10,900	0%	87%
5. Maggio Roofing	\$7,275	\$3,425	53%	83%
6. R-Hive Holding	\$64,750	\$14,765	77%	82%
7. North East Linen	\$135,250	\$36,625	73%	81%
8. Southwest Sealants	\$10,900	\$3,400	69%	79%
9. Campanella & Sons	\$29,225	\$14,600	50%	76%
10. Charles Gluth & Son Roofers	\$27,600	\$11,300	59%	75%
11. Dan D. Drilling	\$8,050	\$5,050	37%	75%
12. Hoogendorn Construction	\$8,700	\$4,980	43%	71%
13. Tec-Cast	\$14,075	\$9,155	35%	68%
14. Boomer Well Service	\$7,250	\$4,750	34%	67%
15. Mercer Well Service	\$4,125	\$2,475	40%	67%
16. Penn Builders	\$7,900	\$4,930	38%	67%
17. Faulkner USA	\$20,400	\$10,900	47%	66%
18. Monarch	\$11,188	\$2,750	75%	66%
19. Venture Chemicals	\$37,446	\$25,844	31%	66%

Attachment - 2

## OIG Identified Employers with Serious Violations on Two or More Inspections and Fatalities

## Large Employers (100-250 Employees)

Establishment Name	Initial Penalty	Current Penalty	OSHA Calculated Rate Reduction	OIG Reported Rate Reduction
1. Florida Transportation Service	\$101,803	\$10,550	90%	91%
2. HJD Capital Electric	\$34,925	\$21,825	48%	88%
3. C.N. Construction	\$16,500	\$6,600	60%	78%
4. A-1 Systems	\$14,000	\$5,200	63%	74%
5. D.W. White Construction	\$10,500	\$5,600	47%	71%
6. U S Utility Contractor Co.	\$17,500	\$8,700	50%	71%
7. Balfour Lumber	\$24,550	\$10,375	58%	67%
8. Pyco Industries	\$32,475	\$12,325	62%	67%
9. Superior Rigging & Erecting	\$14,450	\$6,538	55%	66%
10. Marine Express	\$15,650	\$10,787	31%	65%

Attachment - 3

## OIG Identified Employers with Serious Violations on Two or More Inspections and Fatalities

## Very Large Employers (Over 250 Employees)

Establishment Name	Initial Penalty	Current Penalty	OSHA Calculated Rate Reduction	OIG Reported Rate Reduction
1. G.A. West & Company	\$20,800	\$1,000	95%	100%
2. Quanta Utility Services	\$21,500	\$0	100%	100%
3. Miller & Long Concrete Const.	\$14,000	\$4,594	67%	88%
4. Brasfield & Gorrie	\$34,500	\$4,500	87%	87%
5. Garco Construction	\$22,125	\$4,750	79%	83%
6. Rheem Heating & Cooling	\$9,450	\$1,500	84%	82%
7. Wireco Worldgroup	\$30,475	\$6,500	79%	82%
8. Blommer Chocolate Company	\$91,000	\$17,500	81%	81%
9. Lewis Tree Service	\$16,750	\$6,750	60%	79%
10. Milwaukee Valve Company	\$44,050	\$10,950	75%	75%
11. Nabors Drilling USA	\$19,275	\$5,000	74%	74%
12. Propex	\$26,800	\$6,375	76%	74%
13. United Forming	\$45,500	\$12,000	74%	74%
14. Verizon	\$48,300	\$14,250	70%	71%
15. Alton Steel	\$18,800	\$5,910	69%	70%
16. American Electric Power	\$12,125	\$3,987	67%	70%
17. Ceres Marine Terminals	\$5,625	\$2,844	49%	70%
18. Clarkwestern Building Systems	\$16,050	\$4,850	70%	68%
19. Oscar Renda Contracting	\$67,800	\$15,300	77%	68%
20. KMA Manufacturing	\$119,400	\$65,000	46%	67%
21. West Virginia Paving	\$7,100	\$4,450	37%	67%
22. Swan Oil Field Services	\$18,950	\$4,075	78%	66%



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## **Appendix F**

### **Acknowledgements**

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Key contributors to this report were Mark Schwartz (Audit Director), Rebecca Bowen, Jason Jelen, Danielle Brown-Buzan, Eliacim Nieves-Perez, John Schick, Reza Noorani and Mary Lou Casazza.





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