

Wisconsin General Industry Safety Newsletter

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OSHA Revises Its Penalty Calculation System

For only the second time in the agency's history, OSHA is revising its penalty calculation system. Employers can expect these changes to result in higher penalties per citation. They are in the process of being implemented by local OSHA offices.

The original Occupational Safety and Health Act of 1970 allows OSHA to assess civil penalties to employers who violate the agency's regulations and standards. In his testimony this past July to Congress on provisions of the Mine Safety and Health Act, which addresses current OSHA laws, David Michaels, PhD, MPH, Assistant Secretary of Labor, stated OSHA's position on the need to increase inspection penalties.

"Safe jobs exist when employees have adequate incentives to comply with OSHA requirements. Those incentives are affected, in turn, by both the magnitude and the likelihood of penalties. Swift, certain and meaningful penalties provide an important incentive to "do the right thing." However, OSHA's current penalties are not large enough to provide adequate incentives, especially for large employers. Currently, serious violations - those that pose a substantial probability of death or serious physical harm to workers - are subject to a maximum civil penalty of only \$7,000. Let me emphasize that - a violation that causes a "substantial probability of death - or seri-

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The un-used portion of this horizontal metal-cutting band saw is not guarded.



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ous physical harm" brings a maximum penalty of only \$7,000. Willful and repeated violations carry a maximum penalty of only \$70,000.

“Congress has increased the OSH Act's monetary penalties only once in 40 years despite inflation during that period. Unscrupulous employers often consider it more cost effective to pay the minimal OSHA penalty and continue to operate an unsafe workplace than to correct the underlying health and safety problem. The current penalties do not provide an adequate deterrent. This is apparent when OSHA penalties are compared with penalties that other agencies are allowed to assess.

“For example, in 2001 a tank full of sulfuric acid exploded at an oil refinery in Delaware, killing Jeff Davis, a worker at the refinery. His body literally dissolved in the acid. The OSHA penalty was only \$175,000. Yet, in the same incident, thousands of dead fish and crabs were discovered, allowing EPA to assess a \$10 million penalty for violating the Clean Water Act. How do we explain to Jeff Davis' wife Mary, and their five children, that the penalty for killing fish and crabs is so much higher than the penalty for killing their husband and father?”

The revision to the penalty structure is not increasing the maximum gravity-based penalty of \$7000. It is changing the penalty adjustment factors which are used any time an inspection penalty is calculated. There are nine factors and a brief description of each change is as follows:

1. History Reduction—The time frame for considering an employer's history of violations will expand from three years to five. An employer who has been inspected by OSHA within the previous five years and has not been issued any serious, willful, repeat, or failure-to-abate citations will receive a 10 percent reduction for history.
2. History Increase—An employer that has been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violations within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum. Employers who have not been inspected and those who have received citations for serious violations that were not high gravity will receive neither a reduction nor an increase for history.
3. Repeat Violations—The time period for considering the classification of repeated violations will be increased from three to five years.

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Combustible dust clings to surfaces such as these steel joists.

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4. Severe Violator Enforcement Program—Where circumstances warrant, at the discretion of the Area Director, high gravity serious violations related to standards and hazards identified in the SVEP will not normally be grouped or combined, and may be cited as separate violations, with individual proposed penalties.
5. Gravity-Based Penalty (GBP) - The gravity of a violation is the primary consideration in calculating penalties and is established by assessing the severity of the injury/illness which could result from a hazard and the probability that an injury or illness could occur. OSHA is adopting a gravity-based penalty structure for serious citations which will range from \$3,000 to \$7,000.
6. Size Reduction—OSHA will be amending its penalty reduction structure based on the size of employers, allowing for a penalty reduction between 10 and 40 percent for those with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.
7. Good Faith—The current good faith procedures in the Field Operations Manual will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health program. Employers must have a safety and health program in place to get any good faith reduction. Good faith reductions are not allowed in the cases of high gravity serious, willful, repeat, or failure-to-abate violations.
8. The 15% Quick-Fix reduction, which is currently allowed as an abatement incentive program to encourage employers to immediately abate hazards identified during inspections, remains unchanged. However, the 10% reduction for employers with a strategic partnership agreement will be eliminated.
9. Minimum Penalties—The minimum proposed penalty for a serious violation will be increased to \$500. When the proposed penalty for a serious violation would amount to less than \$500, a \$500 penalty will be proposed for that violation. The proposed minimum penalty for a posting violation will increase to \$250 if the company was previously provided a poster by OSHA.
10. Additional Administrative Modifications to the Penalty Calculation Policy—Final penalties will be calculated serially, unlike the current practice where all penalty reductions are added and the total percentage of reductions is then multiplied by the gravity-based penalty to arrive at the proposed penalty. All penalty adjustment factors will be applied serially.

These changes establish general agency policy and do not preclude the agency from assessing a different penalty, where appropriate under the Act, in light of all circumstances in a particular case.

Parts cleaners with flammable solvents should remain closed when not being used.



OSHA Revises Its Severe Violators Enforcement Program

OSHA has completed another revision to its Severe Violators Enforcement Program (SVEP) directive and it went into effect on June 18, 2010. This program focuses on employers who continually disregard their legal obligations to protect their workers. It applies OSHA-wide, regardless of the size of the employer.

SVEP is a tool that OSHA area offices use to address employers who repeatedly and willfully endanger workers by exposing them to serious hazards. Employers who meet the criteria for being SVEP employers may be subject to increased enforcement activity, such as mandatory follow-up inspections. These employers may also find that OSHA is inspecting other workplace locations of the same company where similar hazards or deficiencies may be apparent.

The entire directive that outlines the program can be found on the OSHA web site; the document number is CPL 02-00-149, Severe Violator Enforcement Program (SVEP). Although there is not enough space in this newsletter to explain the program in detail, the criteria for landing on the SVEP list are as follows:

1. Criteria for a Severe Violator Enforcement Case. Any inspection that meets one or more of criteria A through D, at the time that the citations are issued, will be considered a severe violator enforcement case.
 - A. A fatality/catastrophe inspection in which OSHA finds one or more willful or repeated violations or failure-to-abate notices based on a serious violation related to a death of an employee or three or more hospitalizations.
 - B. An inspection in which OSHA finds two or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to a high-emphasis hazard. (High emphasis hazards are explained in greater detail in the directive.)
 - C. An inspection in which OSHA finds three or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations re-

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Access to the electrical panel is blocked by storage.

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lated to hazards due to the potential release of a highly hazardous chemical, as defined in the Process Safety Management standard, 1910.119.

D. All egregious (e.g., per-instance citations) enforcement actions will be considered SVEP cases.

How easy is it to end up on an OSHA area office's SVEP list? An example of one case is that of a common general industry inspection scenario: A compliance officer conducts a local emphasis program inspection for amputations. While on-site, the compliance officer observes employees exposed to machine guarding and lockout hazards and cites the employer for two high-gravity willful violations of 29 CFR 1910.212 and 1910.147. This inspection meets the criteria outlined in item B above and the case is subject to SVEP.

Employer and employee groups looking for more detailed information about the SVEP program can contact their local OSHA area offices and ask for a presentation on the topic by their compliance assistance specialist or other OSHA staff. Employers looking to upgrade their safety and health efforts should contact the Wisconsin Onsite Consultation program at 1-800-947-0553 for their free services (applies to employers with less than 250 employees at any location and no more than 500 employee corporate-wide).

Region 5 General Industry Fatalities for February 2010 to April 2010

SIC code and accident description

0783—Ornamental Shrub and Tree Services

Two employees were trimming trees at a residence. One employee was operating a bucket truck and the second employee was using ropes to gather debris. The second employee called to the bucket truck operator that he needed more ropes. The bucket truck operator was climbing onto the back of the bucket truck to retrieve the extra ropes when he fell.

0782—Lawn and Garden Services

An employee was mowing on a hillside with a varying grade of 19 degrees to 24 degrees, on wet grass. The mower slipped at the bottom, at a culvert, and overturned into a water-filled ditch, trapping and drowning the victim. The roll-over protective structure (ROPS) had been removed.

4213—Trucking, except local

In the loading yard of a pipe manufacturer, three employees were loading 60 pieces of pipe onto a flatbed tractor trailer rig. Each pipe was 30 feet long, 16 inches diameter and weighed 800 pounds. The truck driver was standing between the cab and the trailer when four pipes at the top of the stack rolled off of the trailer and onto the truck driver, who was crushed.

2759—Commercial Printing, Not Elsewhere Classified

An employee was operating a paper baler when the chute became clogged. The employee used a long metal hook tool to try to clear the clog and when that did not work climbed into the chute to about mid-chest. At that time the obstruction cleared and engulfed the employee causing asphyxiation.

2299—Textile Goods, Not Elsewhere Classified

An employee, helping to fill fabric tubes with waste, raw cotton, experienced tightness in his chest due to a reaction to the cotton dust and was leaving work to go home when he collapsed in the parking lot.

3499—Fabricated Metal Products, Not Elsewhere Classified

An employee was operating an automated laser cutter and was making adjustments when he became caught between the moving laser cutting head and the frame of the machine and experience fatal crushing injuries.



An LN-25 welding machine similar to the one noted in the ship yard fatality described below.

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3537—Industrial Trucks, Tractors, Trailers, and Stackers

An employee was repairing a broken axle on a fork lift. The fork lift fell off of the wooden blocks used to support it and crushed the employee.

2431—Millwork

An employee was in front of a lifted load of loosely stacked wooden planks when they tipped and fell from the forks and crushed the employee.

2841—Soap and Other Detergents, Except Specialty Cleaners

An employee was using a jib crane to lift a mixing tank agitator and was struck when the supported agitator fell.

3442—Metal Doors, Sash, Frames, Molding, and Trim

An employee was repairing a metal airport hanger door when the powered door started moving upward and caught and crushed the employee.

3731—Ship Building and Repairing

A painter was inside a barge cleaning debris from the interior floor using a broom, bucket, and a dustpan. He stopped working and was climbing a fixed metal ladder to exit the space and had the broom in one hand while making the climb. The painter was about 11 feet high and was attempting to hand the broom to a co-worker above when he lost his grip on the ladder and fell to the barge floor.

3356—Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum

An employee was in the process of applying a circumference band on a pup coil. He pushed a 2 inch band under the coil and was pulling the band through and over the top of the coil when the coil sprung open and struck the employee.

3732—Boat Building and Repairing

An employee was walking on a barge with a LN-25 welder that weighed about 70 pounds. The walkway had guardrails made of chain for top, mid, and bottom rail, there was a domed hatch in the open position located in the walkway as well as a keel located in the walkway. The toe boards were warped into the walkway also. The employee was found on the ground next to the barge, about 20 feet below.

3462—Iron and Steel Forgings

An employee was working in a forge shop as part of a 3-person crew, rotating between heating, forging, and trimming steel bars. On the day of the incident the employee was working as the heater and at one point in the shift developed symptoms (disorientation and shaking) of heat stroke. He died about 2 weeks later in the hospital. He

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This mechanic was exposed to 4 parts per million of the solvent heptane.

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had been filling in, as needed, for the heater operator for about 7 months.

4512—Air Transportation, Scheduled

An aircraft mechanic had been performing a light lube job on the nose landing gear of an Airbus 319 passenger aircraft and was working inside of the wheel well next to the landing gear with the door panels open when the door panels closed which caused crushing injuries to the employee.

4512—Air Transportation, Scheduled

An employee was part of the ramp cleaning crew and cleaned “remain over night” planes. The employees used cleaning chemicals that were diluted from concentrated chemicals. This employee experienced nasal ulceration, lung damage and respiratory failure.

4213—Trucking, Except Local

An employee was repairing bearings on a company truck when the truck rolled over the employee.

5153—Grain and Field Beans

Four employees, aged 14, 14, 19, and 20, were inside a corn bin at a cooperative grain elevator when two of the employees were engulfed by corn. They were emptying the bin and also scraping the crusted corn off of the bin walls. One employee became caught in the flowing corn and the remaining three employees attempted to free him. One employee left the bin to call 911 and to tell the control room to stop the conveyors.

5172—Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals

An employee was refueling a 1200 gallon fuel truck when he opened the ventilation hatch on the top of the truck and was asphyxiated.

5099—Durable Goods, Not Elsewhere Classified

While working from a high-lift industrial truck this employee fell from a height of about 17 feet. He was wearing a harness but was not connected.

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5211—Lumber and Other Building Materials Dealers

Two employees were repairing an overhead garage door opener and working from step ladders when one of the employees received an electrical shock and fell to the garage floor.

5261—Retail Nurseries, Lawn and Garden Supply Stores

An employee was assembling a plow and was working between the tire and the frame of the plow and was hammering out a rocker cylinder maintenance lock. When the lock came out the action of the plow caused the wheels to rock upward and pinned the employee between the wheel and the frame.

6512—Operators of Nonresidential Buildings

An employee was hanging sheetrock and fell from a ladder and struck his head.

8744—Facilities Support Management Services

An employee was trouble-shooting an air handling unit that was not providing adequate cool air to a copying room when he fell from the 10 foot step ladder he was working from.

7382—Security Systems Services

An employee was crushed by the powered cart that he was driving. The cart had non-factory modifications such as a cab structure and a tool storage compartment. The vehicle tipped while being driven and pinned the employee.

7349—Building Cleaning and Maintenance Services, Not Elsewhere Classified

An employee was part of a crew of workers performing lawn mowing and was operating a 48 inch self-propelled walk behind mower. The weather was sunny and temperatures were above 90 degrees. In the afternoon the employee was acting irrationally and then he collapsed due to heat stroke.

7538—General Automotive Repair Shops

A vehicle had been driven in to a car repair bay and it began to roll backwards towards the parking lot. The employee ran behind the moving vehicle and was attempting to stop it when the vehicle continued to move and pinned him against a parked vehicle.

8211—Elementary and Secondary Schools

An employee was mowing the lawn and was operating a riding lawn mower when the mower caught fire. The employee's clothing also caught fire causing fatal burns to the employee.

Top Ten Violations

Listed below are the "top ten" cited violations found during Federal OSHA general industry inspections from October 2008 through September 2009.

<u>Rank</u>	<u>Standard</u>	<u>Hazard</u>
1.	29 CFR 1910.147	The Control of Hazardous Energy
2.	29 CFR 1910.1200	Hazard Communication
3.	29 CFR 1910.134	Respiratory Protection
4.	29 CFR 1910.212	General Requirements for All Machines
5.	29 CFR 1910.305	Wiring Methods, Components, and Equipment for General Use
6.	29 CFR 1910.178	Powered Industrial Trucks
7.	29 CFR 1910.303	General Electrical Requirements
8.	29 CFR 1910.119	Process Safety Management of Highly Hazardous Chemicals
9.	29 CFR 1910.219	Mechanical Power-Transmission Apparatus
10.	29 CFR 1910.215	Abrasive Wheel Machinery

This newsletter provides an overview of OSHA standards and does not alter or determine compliance responsibilities, which are described in the OSHA standards and the *Occupational Safety and Health Act*. Because interpretations and enforcement policy may change over time, the best sources for additional guidance on OSHA compliance requirements are current administrative interpretations and decisions by the Occupational Safety and Health Review Commission and the courts.



This mechanic was exposed to noise at an average level of 87.2 dB.

Wisconsin Contact Information

Wisconsin OSHA Consultation Offices:

- Wisconsin State Laboratory of Hygiene
2601 Agriculture Drive, Madison, WI 53718
(608) 226-5240 (Health)
- Wisconsin State Laboratory of Hygiene
141 NW Barstow Street, Fourth Floor, Waukesha, Wisconsin 53188
800-947-0553 (Safety)

Wisconsin OSHA Enforcement Offices:

- Appleton Area Office, 1648 Tri Park Way, Appleton, Wisconsin 54914,
(920) 734-4521, (920) 734-2661 FAX
- Eau Claire Area Office, 1310 W. Clairemont Avenue, Eau Claire, Wisconsin 54701
(715) 832-9019, (715) 832-1147 FAX
- Madison Area Office, 4802 E. Broadway, Madison, Wisconsin 53716
(608) 441-5388, (608) 441-5400 FAX
- Milwaukee Area Office, 310 Building, Suite 1180, 310 West Wisconsin Avenue
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(414) 297-3315, (414) 297-4299 FAX

Do you have comments or ideas for articles?

E-mail them to the Wisconsin General Industry Safety Newsletter at Zortman.Chris@dol.gov

Ideas for Articles for Upcoming Issues

Do you have any ideas for articles that you want to see or topics that you think are important?
Please let us know at the email address listed just above.