

## OSHA Policy Regarding High Penalties For Safety Violations

### (From the Compliance Officer's Manual)

**Background.** Over the past several years, in a limited number of cases OSHA has alleged a separate violation and proposed a separate penalty for each instance of noncompliance with OSHA recordkeeping regulations, with the safety and health standards, and with the General Duty Clause [Section 5(a)(1) of the Occupational Safety and Health Act (the Act)]. The resulting large aggregate penalties are part of a compliance strategy which improves the efficiency and effectiveness of the agency and conserves its limited resources. This instruction is intended to serve as the master document covering the procedures applicable in cases where the violation-by-violation citation and penalty provisions are employed.

1. In the context of the Act, penalties are intended to provide an incentive to employers to prevent safety and health violations in their workplaces and to correct such violations which do exist voluntarily.
  
2. The Act intends that this incentive be directed not only to an inspected employer but also to any employer who has hazards and violations of standards or regulations.
  - a. The large proposed penalties that accompany violation-by-violation citations are not, therefore, primarily punitive nor exclusively directed at individual sites or workplaces; they serve a public policy purpose; namely, to increase the impact of OSHA's limited enforcement resources.
  - b. The criteria contained in this instruction are intended to ensure that when they are proposed, large penalties serve this public purpose.
  
3. Large proposed penalties result from application of existing FOM penalty calculation guidelines; but, instead of grouping or combining violations for penalty purposes, each instance of noncompliance is considered a separate violation and a penalty applied separately. This procedure is known as the egregious or violation-by-violation penalty procedure.
  - a. Application of these procedures is appropriate in situations where the violations in question constitute willful violations of OSHA standards or regulations or of the general duty clause of the Act and meet certain criteria to be discussed later in this instruction at N.2.
  - b. Since large penalties are likely to result in investigation and widespread public attention, review at the Regional and National Offices of OSHA and

the Office of the solicitor of Labor (SOL) is currently mandated. c. In all other respects, such cases are handled in accordance with the FOM.

4. While this practice of citing each violative instance as a separate violation has been utilized by the agency only since 1986, OSHA is authorized to use this approach by the language of the statute, its legislative history, and the agency's historic role as the sole prosecutor of violations occurring under the Act. 5. In these cases, as in all other cases, violation-by-violation citations and penalties are proposed by the Area Director.

### **Guidance.**

1. Early Identification of Cases. It is important that the Area Director identify cases which may be appropriate for violation-by-violation treatment as early as possible.
  - a. Meticulous documentation of evidence for each violation and appropriate involvement of such technical specialists as may be required for investigation is essential to the successful pursuit of potential egregious cases.
  - b. Coordination with the Regional and the National Offices must be scheduled in time for comprehensive review before the expiration of the statutory 6-month citation period.
  - c. Early involvement of the Regional solicitor's office will ensure adequate legal, evidentiary, and resource coordination.
2. Criteria. In general, this instruction identifies those conditions which normally constitute a flagrant violation of the Act or OSHA standards or regulations such that violation-by-violation handling is appropriate.
  - a. The criteria given in the following section shall be used by the Area Director to determine whether to recommend the use of violation-by-violation citations and penalties.
  - b. Cases under consideration for such treatment must be classified as willful (category (1) below) as well as at least one of the categories given in (2) through (7).
    - (1) The employer is found in violation of an OSHA requirement:
      - (a) Of which she/he has actual knowledge at the time of the violation. Such knowledge may be demonstrated through previous citation history, accident experience, widely publicized agency enforcement, direct evidence of specific recognized jobsite hazards or other appropriate factors; and

- (b) Intentionally, through conscious, voluntary action or inaction, having made no reasonable effort to eliminate the known violation.
- (2) The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses.
- (3) The violations resulted in persistently high rates of worker injuries or illnesses.
- (4) The employer has an extensive history of prior violations of the Act.
- (5) The employer has intentionally disregarded its safety and health responsibilities.
- (6) The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties under the Act.
- (7) The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.