



OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04-00-17

EFFECTIVE DATE: January 5, 2023

SUBJECT: Handling of Fatality and Catastrophe Cases

REGIONAL IDENTIFIER: Region IX

Purpose: To establish policy and procedures for handling fatality and catastrophe enforcement cases.

Scope: This instruction applies region wide.

References:

- A. OSHA Instruction CPL 02-00-080, Handling of Cases to Be Proposed for Violation By-Violation Penalties, October 21, 1990.
- B. OSHA Field Operations Manual, CPL 02-00-159
- C. OSHA Instruction CPL 02-00-098 (previously CPL 2.98). Guidelines for Case File Documentation for Use with Videotapes and Audiotapes, October 12, 1993.
- D. OSHA Instruction CPL 02-00-166, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, July 7, 2021.

Cancellations: None

Significant Changes: None

Action Offices: All offices in Region IX

State Plan Impact: None

Originating Office: San Francisco Regional Office/Enforcement Programs

Contact: Paul Leary
ARA/Office of Enforcement Programs
510-637-3824

By and Under the Authority of:

James D. Wulff
Regional Administrator

EXECUTIVE SUMMARY

Region IX is establishing this policy as guidance for Fatality and Catastrophe investigations. With the advent of the higher penalty structure passed by Congress and the Equal Access to Justice Act allowing qualified employers to recover attorney fees and other costs associated with successfully defending alleged violations, proposed enforcement actions must include meticulous documentation of the evidence for each violation. All FAT/CAT investigations under Federal OSHA in Region IX's jurisdiction will be reviewed at the Regional Office and, where necessary, will receive RSOL approval prior to citation issuance.

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I. PURPOSE:

It is the policy of the Regional Administrator to appropriately identify, investigate and issue penalties to those employers for which fatality related enforcement actions are warranted. Proposed citations and notices must, in every case, be developed and fully supported by evidence contained in the case file to withstand scrutiny by higher-level management, the Office of the Solicitor, the Occupational Safety and Health Review Commission and the Courts. Federal agency cases will be held to the same standards as the private sector.

II. SCOPE:

This instruction applies region wide.

III. REFERENCES:

- A. OSHA Instruction CPL 02-00-080, Handling of Cases to Be Proposed for Violation By-Violation Penalties, October 21, 1990. [Find Document Here](#)
- B. OSHA Field Operations Manual, CPL 02-00-164, April 14, 2020, [Find Document Here](#)
- C. OSHA Instruction CPL 02-00-098 (previously CPL 2.98). Guidelines for Case File Documentation for Use with Videotapes and Audiotapes, October 12, 1993. [Find Document Here](#)
- D. OSHA Instruction CPL 02-00-166, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, July 7, 2021. [Find Document Here](#)

IV. CANCELLATIONS:

None

V. SIGNIFICANT CHANGES:

None

VI. ACTION OFFICES:

All offices in Region IX

VII. STATE PLAN IMPACT:

None

VIII. PROCEDURES:

- A. The Area Office will complete and enter the Unprogrammed Activity in OIS for all fatalities and catastrophes as soon as possible after learning of the event. As much information as is known at the time of the initial report should be provided.
- B. The Area Office will notify the Regional Administrator, Deputy Regional Administrator, and Regional Enforcement Programs as soon as possible about the incident and provide an email summary of available information.
- C. An Investigation Form and Inspection Form must be opened, with all available information entered in OIS, and saved "final" as soon as possible after the office becomes aware of a workplace fatality and determines that it is within its jurisdiction. Use the same language and key words as the Unprogrammed Activity, and in the briefing memos. The information on this form enables the Agency to track fatalities and summarizes circumstances surrounding the event.
- D. Area Offices
 1. Role of the CSHOs. Gather as much evidence as possible including photographs, signed witness statements/interviews, and relevant employer documents. CSHOs should refer to Appendix G for guidance on conducting witness interviews.
 2. Role of the Area Director. The Area Director (or Assistant Area Director) should confer regularly with the CSHO, providing coaching and assistance as necessary. The AD should check in with the CSHO throughout the inspection process to consult on violation development. Following the completion of field work, the AD shall thoroughly review the case prior to submission to the Regional Office. The AD's personal attention to the case is essential so that he or she is prepared to discuss the case with EP, RSOL or the National Office.
 3. Next of Kin Communication. The Area Director will send the Condolence Letter to the identified next-of-kin ("NOK") within five days of the opening conference. The Area Director will email the Assistant Secretary's condolence letter to the Directorate of Enforcement Programs using next of kin letter

mailbox (zzoshanok@dol.gov). In addition to the letter, there should be (1) a detailed explanation of the events leading to the fatality, (2) name of the company, (3) the inspection number, and (4) a sufficient address for the next of kin. Where there are discrepancies, erroneous and/or missing information, DEP contacts the appropriate Area Office for clarification. After signature, the letter is mailed by the National Office to the next of kin and a copy forwarded to the appropriate Area Office. If there are no proposed citations or notices, an Inspection Findings and Closure Letter shall be sent to the NOK once this is determined. If there are violations, an Inspection Findings Letter shall be sent to the NOK once confirmation has been made that the citations have been delivered. Once the case becomes final order, a NOK Closure Letter shall be sent. Please review the Victim Family Directive CPL 02-00-166 and see Appendices B-F.

4. Briefings. There will be several opportunities to share information on the investigation with Enforcement Programs, the Regional Administrator, and SOL. The purpose of these meetings is to ensure as much support and direction as needed to the CSHO and Area Office working the case.
 - a. The CSHO and/or AD will provide a summary of the incident to the Regional Administrator and EP within 72 hours of the investigation. Where necessary, EP will provide a point of contact to assist the Area Office and determine an RSOL contact.
 - b. Status updates and outcome discussions with the CSHO, AD, EP, the RA, and SOL will be conducted at monthly after the initiation of the investigation, or as needed.
5. Submission of Fatality Cases. Fatality cases shall be submitted to the RA in the form of the AD-RA Briefing Memorandum "Area Director Notification of Results of Fatality Investigation."
6. Documentation. The Area Director must ensure adequate documentation of proposed violations related to fatality investigations. Documentation will be maintained in the OSHA Information System (OIS) or in electronic format on appropriate "hard drives". Proper documentation shall include at a minimum:
 - a. The AD-RA briefing memorandum summarizing the information obtained and the rationale for the citations proposed. The

memorandum must also contain any known or potential employer defenses and analyses of how the defenses may be overcome. A sample briefing memorandum is attached as Appendix A.

- b. Copies of all citations proposed.
 - c. Copies of the OIS Investigation forms and all Narrative forms.
 - d. Copies of all OIS Violations supporting the citations.
 - i. If there are proposed willful violations, all supporting documents and statements and a Willful Criteria Sheet identifying the facts pertinent to the violations shall be included. A sample Willful Criteria Sheet is attached in Appendix H.
 - ii. Each proposed general duty or 1960.8(a) violation shall include a completed General Duty Violation Elements worksheet identifying the issues pertinent to the violation(s). A sample General Duty Violation Elements worksheet is attached in Appendix I.
 - iii. Copies of previous citations, OIS Violation forms, informal settlement agreements and evidence of final order used to justify repeat violations.
 - e. Any other evidence, documentation or other information deemed necessary to facilitate the review of the case.
7. **Deadline for Submission of Fatality Cases.** Area Offices must submit proposed fatality cases to the Region as soon as possible, but no later than eight weeks prior to the six-month date. Exceptions to this policy must be approved by the Regional Administrator. Once the fatality case is submitted, EP will work with the Area Office to review relevant documents, statements and evidence in electronic repositories including the OSHA Information System or various area, regional or national office computer “hard drives.”
8. **Federal Agency Fatality Cases.** It is the Regional Administrator’s policy that violations proposed during federal agency inspections will be

supported by the same level of case file documentation, and classified using the same criteria, as proposed violations for private sector employers.

9. Inspection Coding. The Area Office will ensure that the inspection type form in OIS is classified as FAT/CAT and coded appropriately.
10. SVEP. The Area Office will ensure that any significant case is evaluated in accordance with the Severe Violator Enforcement Directive (SVEP), CPL 02-00-169, September 15, 2022 [Find Document Here](#).

E. Regional Office

1. Role of the Regional Administrator. The Regional Administrator has the final approval authority for all fatality cases and will resolve any disagreements that may develop between EP and the AD regarding the evaluation and disposition of the case.
2. Role of the Office of Enforcement Programs (EP). The Regional Office of Enforcement Programs will conduct a critical review of the case file and act to test the evidence. EP will involve the Regional Office of The Solicitor as necessary in its review.
 - a. EP will maintain the FAT/CAT tracking log on the regional drive or other appropriate location.
 - b. EP will maintain a summary of the open FAT/CAT cases on the weekly performance report.
3. Regional Office Review of Fatality Cases.
 - a. The primary responsibility for the review and evaluation of fatality cases rests with EP. EP shall review the documentation in its electronic format and contact the CSHO, AD, the national office DEP and/or the Solicitor to obtain additional information, clarification, or advice as necessary.
 - b. Where appropriate, at the time a case is forwarded to the Solicitor for review, EP will forward information to the Region's Office of Public Affairs requesting that a press release be drafted. The Office of Public Affairs will be notified of the approximate citation issuance date.

APPENDIX A AD-RA BRIEFING MEMORANDUM

October 27, 2022

MEMORANDUM FOR: James D. Wulff
Regional Administrator

THROUGH: Paul Leary
Assistant Regional Administrator, Enforcement Programs

FROM: Area Director
Honolulu Area Office

SUBJECT: Notification of Results of Fatality Investigation

Employer Name:	School District	Inspection #: xxxxx	6 Month Date: February 23, 2023
Date/Time of Accident: 07/24/2022 @ 10:15am	Date/Time of Death: 08/15/2022 @ 11:05pm	Date/Time of Reporting: 08/22/2022 @11:30am	Inspection Date: 08/22/2022
CSHO Name and ID#: XXXXX/XXXXX	Supervisor: XXXXXX/XXXX	Type of Industry: General Industry	NAICS: 611110 # of EE's: 4000
Total Proposed Penalty: \$18,000	Accident-Related Items: Yes	Witness Statements: Yes	Comprehensive Case Review: Yes

Establishment Information: School District (SD) is a private charitable educational trust and Hawai'i's largest private landowner. KS is responsible for the stewardship of over 365,000 acres of land on Hawai'i island, Maui, Molokai, O'ahu and Kaua'i. The last time the employer was inspected was August 1999 where 15 violations were cited as part of a complaint inspection.

Next-Of-Kin Involvement: On August 26, 2022, we contacted XXXXXX, the sister of the victim by phone to let her know we were investigating. On August 26, 2022, we sent a NOK letter to XXXXX. On August 26, 2022, the Assistant Secretary NOK letter was forwarded to the National Office. On September 15, 2022, and October 23, 2022, contact was made with Ms. XXXX.

Accident Description: On July 24, 2022, the victim and another employee were assigned to strip and seal the bathroom floors with a corrosive chemical (Heavy Duty Non-Butyl Floor Stripper). The employees were on the last of six bathrooms for the day when the victim felt a burning sensation on her right upper thigh. The employees used a garden sprayer to dispense the undiluted Heavy Duty Non-Butyl Floor Stripper and were only required to wear safety goggles and rubber gloves. According to the coworker, the Heavy-Duty Non-Butyl Floor Stripper probably leaked from the garden type sprayer onto the victim’s leg as they were moving from one bathroom location to another. The employees used a milk type crate to move all the chemicals and tools from one bathroom to another.

The victim went to the first aid station on campus and then was transported by the employer to the hospital and was admitted into the Straub burn unit where she underwent treatment for the chemical burn. On August 13, 2022, the victim was discharged from Hospital and on August 15, 2022, began experiencing chest pains and was rushed to the medical center for treatment and further analysis where she died later that day.

According to the Medical Examiner’s Office, the victim died of a clot in her lung that had traveled from a vein in her leg and listed the cause of death was accidental and was directly related to the accident on July 24, 2022.

VIOLATION SUMMARY

School District
 Inspection # XXXXXX

ITEM	STANDARD	DESCRIPTION	GBP/ADJ FACTORS	PENALTY
SERIOUS:				
1-1a	1910.101(b)	Section 3.4.4, of the Compressed Gas Association Pamphlet P-1 1965, as adopted by 29 CFR 1910.101(b): Compressed gas cylinder(s) were not properly supported to prevent them from being knocked over.	Low, Lesser Size: 0% Good Faith: 0% History: 0%	\$3,000

ITEM	STANDARD	DESCRIPTION	GBP/ADJ FACTORS	PENALTY
1-1b	1910.253(b)(4)(iii)	Oxygen cylinders in storage were not separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.	Low, Lesser Size: 0% Good Faith: 0% History: 0%	
1-2	1910.132(a)	Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered.	High, Lesser Size: 0% Good Faith: 0% History: 0%	\$5,000
1-3	1910.1200(h)(3)(iii)	Employee training did not include the measures employees can take to protect themselves from chemical hazards, including specific procedures the employer had implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures and personal protective equipment to be used.	High, Lesser Size: 0% Good Faith: 0% History: 0%	\$5,000
OTHER THAN SERIOUS:				
2-1	1904.39(a)	The employer failed to report to OSHA a work-related death within eight (8) hours after the death of the employee.	Minimal Size: 0% Good Faith: 0% History: 0%	\$5,000
2-2	1910.303(f)(2)	Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, was not legibly marked to indicate its purpose, nor located and arranged so the purpose was evident.	Minimal, Lesser Size: 0% Good Faith: 0% History: 0%	\$0
SERIOUS (3):				\$13,000
OTHER THAN SERIOUS (2):				\$5,000
TOTAL PENALTY FOR INSPECTION #XXXXXX				\$18,000

APPENDIX B AREA DIRECTOR CONDOLENCE LETTER

Dear _____:

Please accept our sincerest sympathy in the tragic death of [victim's name]. We deeply regret the loss of your [husband's, mother's, friend's, son's, etc.] life.

We want you to know that the Occupational Safety and Health Administration (OSHA) is investigating the circumstances surrounding Mr./Ms. _____'s death. We will share our findings when our inspection is complete, which may take up to six months. Enclosed is some information about OSHA fatality inspections. If you believe you or another family member or friend may have information concerning your [husband's, mother's, friend's, son's, etc.] death, please contact us so that we can discuss this with you.

If you have any questions about our inspection or any of the information enclosed, please contact me.

Area Director
USDOL/OSHA
Street Address
City, State Zip Code
Telephone: _____
E-Mail: _____@dol.gov

Again, please accept our heartfelt condolences and let us know if we can be of any assistance to you, your family, or friends.

Sincerely,

Area Director
Enclosures

OSHA CITATIONS AND PENALTIES

OSHA citations state the specific safety and health standards the company is alleged to have violated. They note, both by number and name, the individual sections of OSHA standards that the employer allegedly failed to follow. (A complete listing of OSHA standards is available for review at the OSHA area office or can be accessed on the agency's Internet site at www.osha.gov under "Standards.")

Citations specify the location in the facility or on the work site where the violation occurred and the circumstances surrounding the violation. The Area Director of the local OSHA office that conducted the inspection signs and issues the citations. Citations must be issued within six months following identification of the alleged violations. Even if the employer disagrees with the findings, employers must post a copy of each citation at or near the place where an alleged violation occurred or where workers can see the citations for three days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

OSHA proposes citations when a standard has been violated. The civil penalty amounts, if any, associated with citations are adjusted based on employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history. The maximum penalty amounts can be found at <https://www.osha.gov/penalties>.

Violations are classified as willful if OSHA has evidence that the employer intentionally disregarded the requirements of the Occupational Safety and Health Act of 1970 (OSH Act) and/or was plainly indifferent to the safety of employees. Violations are identified as serious if there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm, is classified as other-than-serious. Violations may also be characterized as repeat if OSHA has cited the company for a substantially similar hazard within the past five years.

OSHA proposes penalties because of violations but does not actually have the authority to impose fines. That authority is granted by law to the Occupational Safety and Health Review Commission (OSHRC), an administrative review board that is separate from OSHA and the United States Department of Labor. Employers can contest (challenge) alleged violations, proposed penalties, or abatement dates before this board. If the employer decides to challenge

any part of OSHA's findings, they must do so within 15 working days after the employer receives the citations.

Employers may request a meeting with OSHA to discuss the issued citations and possibly to enter an informal settlement of the case. In some cases, penalties may be reduced when a company secures prompt correction of hazards and is able to provide documentation of actions aimed at securing sustainable improvements to protect other employees at the work site, and when a company is willing to evaluate and potentially implement these sustainable improvements at other locations. OSHA's primary concern remains prevention of injuries, illnesses, and deaths rather than collection of funds. (All penalty monies go directly to the United States Treasury; they are not part of OSHA's budget or credited to the agency.)

If an employer acknowledges the violations, agrees to pay the proposed penalties, and certify the hazard has been corrected then the citations as issued or amended automatically become a final order of OSHRC. The employer pays the penalties, and the case is closed. The employer may also contest a part of a citation and pay part of the penalties assessed or contest the entire case. Contested cases proceed through an administrative review process at the OSHRC. The employer or OSHA may further appeal the case in the appropriate United States Court of Appeals, if dissatisfied with the OSHRC's decision.

When an employer willfully violation of an OSHA standard and the alleged violation was the direct cause of, or a contributing factor to, an employee's death, OSHA may refer the case to the United States Department of Justice to seek criminal prosecution of the employer. These are difficult cases to prove; few cases reach court, and convictions are rare. However, should an employer be convicted, he or she could face a fine of up to \$250,000 individually and/or a jail term of up to six months. A corporation could receive a fine of as much as \$500,000.

OSHA FATALITY INSPECTIONS

Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) to assure safe and healthful working conditions for working men and women. The Occupational Safety and Health Administration (OSHA) was established under the OSH Act to provide for the enforcement of standards developed under the Act. There are both Federal and State OSHA programs.

OSHA inspects the worksites where fatalities have occurred to determine whether a violation of OSHA safety and health standards occurred. These inspections are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer and may also refer the case to the United States Department of Justice for possible criminal prosecution.

OSHA does not issue citations solely because there was a workplace fatality. However, if during any inspection, OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

Upon written request, OSHA will provide you with the portions of the inspection file that may be released under the Freedom of Information Act (FOIA). In an effort to keep the next of kin apprised of developments during an inspection, OSHA sends them copies of citations (the formal notice of alleged hazards in the workplace), appeal letters (the employer's notice of disagreement with the issued citations), and informal settlements (a binding agreement between OSHA and the employer to settle the case) as soon as the documents are issued. Furthermore, OSHA is committed to the exchange of information with the next of kin as follows:

- Any time during the inspection or the resulting litigation, the next of kin may contact the local OSHA office to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the inspection, they are encouraged to take a proactive role and share this information by writing, calling, or e-mailing the local OSHA office.
- The next of kin is encouraged to follow up and inquire about any information they have sent to OSHA or on information received from OSHA. In such cases, they are free to write or call the local OSHA office.
- Upon issuance of the final order, the next of kin will be afforded the opportunity to

meet with the Area Director to answer questions and explain the settlement decision.

OSHA will notify the next of kin when the case is closed. At that time, the portions of the file that can be released under FOIA will be made available to family members, at no charge, upon written request.

APPENDIX C ASSISTANT SECRETARY’S CONDOLENCE LETTER

Dear Mr./Ms./Mrs. Last Name:

Please accept my heartfelt condolences on the tragic death of your [**describe relationship: husband, wife, child, etc.**], [**victim First Name Last Name**]. We deeply regret the loss of his/her life.

Please be assured that the Occupational Safety and Health Administration (OSHA) is investigating the circumstances surrounding [**Mr./Ms./Mrs. Last Name's**] death. We realize that the results of this inspection are very important to you, so we will share our findings as soon as the inspection is completed. We are committed to preventing injuries and illnesses on the job. Given our mission of providing safer workplaces, we understand that each worker's death is a personal loss and tragedy.

Since your [**husband's/wife's/child's etc.**] death occurred in [**State**], which is part of OSHA's Region #, our investigators from the region will be handling the inspection. If you have any questions about the inspection (ref: OSHA Inspection No. **#####**), or any information you think might be helpful, please do not hesitate to contact [**First Name Last Name**], Area Director, at the following address:

USDOL/OSHA
Street Address
City, State ZIP
Phone: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX
E-Mail: _____@dol.gov

Again, please accept my sincere sympathy and regret for your loss. If OSHA can be of any assistance to you, your family, or friends, please do not hesitate to contact us.

Sincerely,

Assistant Secretary

APPENDIX D INSPECTION FINDINGS AND NOK CLOSING LETTER

No Citations/Notices

Dear _____:

We are writing to share with you the findings of the recent Occupational Safety and Health Administration (OSHA) inspection into the death of your [husband, mother, son, etc.].

[Insert one or two sentences on the workplace hazard(s) that may have contributed to accident or death if possible. Example: OSHA investigated the circumstances surrounding this tragic event to determine if the fall protection used was sufficient....]

OSHA inspects the worksites where these tragedies have occurred to determine whether a violation of OSHA safety and health standards occurred. These inspections are often comprehensive in nature, but at times are limited to the area in which the fatality occurred. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the United State Department of Justice for possible criminal prosecution. However, OSHA does not issue citations solely because there was a workplace fatality.

OSHA inspected the worksite(s) of [name of company] to determine whether a violation of OSHA safety and health standards related to the accident had occurred. The workplace inspection found that no alleged violation(s) of safety and health standards had occurred related to the accident, and therefore, no citations or proposed penalties were issued to the employer. Despite the inspection indicating that the employer did not violate safety and health standards, we know that no amount of money or compensation can measure the loss you and your family have suffered and your lives have been changed forever because of this tragedy. I would like to express to you my deepest sympathy.

If you have any questions about our inspection, please contact me:

Area Director
USDOL/OSHA
Street Address
City, State ZIP
Telephone: _____
E-Mail: _____@dol.gov

The Freedom of Information Act (FOIA) governs the release of information concerning accident inspections conducted by OSHA. The releasable portions of the file will be made available to

you upon written request. OSHA's policy is to waive fees for Freedom of Information Act requests in these circumstances, subject to the requirements of 29 CFR Part 70.

Sincerely,

Area Director

APPENDIX E NOK INSPECTIONS FINDINGS LETTER

Dear _____:

We are writing to share with you the findings of the recent Occupational Safety and Health Administration (OSHA) inspection into the death of your [husband, mother, son, etc.].

[Insert one or two sentences on the workplace hazard(s) that contributed to accident or death, if possible. For example, "OSHA's inspection determined that the trench Mr. Jones was working in was not properly sloped or shored and no cave-in protection such as a trench box was provided. Rain on the day of the accident and heavy equipment operating nearby increased the risk of cave-in."]

Enclosed is a copy of the citations and proposed penalties against [name of company]. OSHA citations state the alleged violations of safety and health standards at the worksite. They also note which alleged violations OSHA has determined to be specifically associated with Mr./Ms. _____'s death.

We would like to emphasize that, under the Occupational Safety and Health Act, civil penalties that OSHA imposes are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one consideration in penalty calculation. Penalties may be reduced from the maximum allowable by law based on the company's size and history of previous violations. In some cases, penalties may be reduced in exchange for a company's prompt correction of problems in order to protect other employees at the site and to resolve the hazards promptly.

Enclosed is a brief fact sheet that further explains OSHA's citation and penalty policy and should help in understanding the citations. We know that no amount of money or compensation can measure the loss you and your family have suffered and your lives have been changed forever because of this tragedy. I would like to express to you my deepest sympathy. If you have any questions about our inspection or any of the information enclosed, please contact me:

Area Director
USDOL/OSHA
Street Address
City, State ZIP
Telephone: _____
E-Mail: _____@dol.gov

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Citations specify the location in the facility or on the work site where the violation occurred and the circumstances surrounding the violation. The Area Director of the local OSHA office that conducted the inspection signs and issues the citations. Citations must be issued within six months following identification of the alleged violations. Even if the employer disagrees with the findings, employers must post a copy of each citation at or near the place where an alleged violation occurred or where workers can see the citations for three days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

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Employers may request a meeting with OSHA to discuss the issued citations and possibly to enter an informal settlement of the case. In some cases, penalties may be reduced when a company secures prompt correction of hazards and is able to provide documentation of actions aimed at securing sustainable improvements to protect other employees at the work site, and when a company is willing to evaluate and potentially implement these sustainable improvements at other locations. OSHA's primary concern remains prevention of injuries, illnesses, and deaths rather than collection of funds. (All penalty monies go directly to the United States Treasury; they are not part of OSHA's budget or credited to the agency.)

If an employer acknowledges the violations, agrees to pay the proposed penalties, and certify the hazard has been corrected then the citations as issued or amended automatically become a final order of OSHRC. The employer pays the penalties, and the case is closed. The employer may also contest a part of a citation and pay part of the penalties assessed or contest the entire case. Contested cases proceed through an administrative review process at the OSHRC. The employer or OSHA may further appeal the case in the appropriate United States Court of Appeals, if dissatisfied with the OSHRC's decision.

When an employer willfully violation of an OSHA standard and the alleged violation was the direct cause of, or a contributing factor to, an employee's death, OSHA may refer the case to the United States Department of Justice to seek criminal prosecution of the employer. These are difficult cases to prove; few cases reach court, and convictions are rare. However, should an employer be convicted, he or she could face a fine of up to \$250,000 individually and/or a jail term of up to six months. A corporation could receive a fine of as much as \$500,000.

OSHA FATALITY INSPECTIONS

Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) to assure safe and healthful working conditions for working men and women. The Occupational Safety and Health Administration (OSHA) was established under the OSH Act to provide for the enforcement of standards developed under the Act. There are both Federal and State OSHA programs.

OSHA inspects the worksites where fatalities have occurred to determine whether a violation of OSHA safety and health standards occurred. These inspections are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the United States Department of Justice for possible criminal prosecution.

OSHA does not issue citations solely because there was a workplace fatality. However, if during any inspection, OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

Upon written request, OSHA will provide you with the portions of the inspection file that may be released under the Freedom of Information Act (FOIA). In an effort to keep the next of kin apprised of developments during an inspection, OSHA sends them copies of citations (the formal notice of alleged hazards in the workplace), appeal letters (the employer's notice of disagreement with the issued citations), and informal settlements (a binding agreement between OSHA and the employer to settle the case) as soon as the documents are issued. Furthermore, OSHA is committed to the exchange of information with the next of kin as follows:

- Any time during the inspection or the resulting litigation, the next of kin may contact the local OSHA office to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the inspection, they are encouraged to take a proactive role and share this information by writing, calling, or e-mailing the local OSHA office.
- The next of kin is encouraged to follow up and inquire about any information they have sent to OSHA or on information received from OSHA. In such cases, they are free to write or call the local OSHA office.

- Upon issuance of the final order, the next of kin will be afforded the opportunity to meet with the Area Director to answer questions and explain the settlement decision.

OSHA will notify the next of kin when the case is closed. At that time, the portions of the file that can be released under FOIA will be made available to family members, at no charge, upon written request.

APPENDIX F NOK CLOSING LETTER

With Proposed Citations

Dear _____:

We are writing to share with you the post-inspection and abatement results of the Occupational Safety and Health Administration (OSHA) inspection into the death of your [husband, mother, son, etc.], and to inform you that the case has been closed as of the [insert final order date].

[Insert one or two sentences to explain results of the final order and any abatement.]

We would like to emphasize that, under the Occupational Safety and Health Act, any penalties proposed by OSHA as a result of a citation are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one consideration in penalty calculation.

The Freedom of Information Act (FOIA) governs the release of information concerning accident inspections conducted by OSHA. Now that the inspection file is a final order, the releasable portions of the file will be made available to you upon written request. OSHA's policy is to waive fees for Freedom of Information Act requests in these circumstances, subject to the requirements of 29 CFR Part 70.

If you have any questions about our inspection, please contact me:

Area Director
USDOL/OSHA
Street Address
City, State ZIP
Telephone: _____
E-Mail: _____@dol.gov

Again, I would like to express to you my deepest sympathy.

Sincerely,

Area Director

APPENDIX G INTERVIEWING WITNESSES

Witness interviews and statements are extremely important in FatCat investigations. It is pivotal that the CSHO keep their focus while conducting interviews and ask questions that will establish the elements needed to document any violations there may be. Every attempt should be made to get signed witnessed statement as part of the case file.

This appendix will provide general guidelines, relevant questions to ask and a checklist for gathering evidence. This guide does not mandate a procedure or provide a required list of questions as the circumstances surrounding each alleged violation can be vastly different.

General Ideas for all Interviews:

Plan Ahead. Make a list of questions you know you want to ask prior to the interview and build on these during the interview. Do not lock yourself into a rigid set of questions but use the list as a memory jogger of points you wish to cover.

Interview Early. Conduct important interviews including the employer representative and witnesses to an event as early in the investigation as possible. You can always reinterview later if needed. It is important to immediately capture the information before witnesses think about what to say to protect themselves or their employer.

Interview Privately. Unless mandated as a condition of the interview by the person being interviewed, do not allow others to be present at the interview. If possible, secure a quiet, private location. If other non-governmental parties are allowed to attend the interview, most likely confidentiality protections have been waived. Always document in the statements who is present (refer to section on Governmental Informant's Privilege).

Rights and Responsibilities. During formal statements, advise the person being interviewed of the governmental informant's privilege, if it applies, and Section 17G of the OSH Act which requires truthful testimony during an investigation.

Minimize the Use of Leading Questions. Leading questions in general are those where you make a statement and ask the person to agree or disagree. Get the witness to explain what happened in their own words. Leading questions are appropriate in some cases, such as summarizing facts of a situation as provided by the person being interviewed and asking if the summary is correct.

Focus on Establishing Violations. A lot of information can be surrounding the circumstances of the incident. It is important for the CSHO to keep in mind what violations they want to cite and ensure information is gathered to support all the elements required.

Governmental Informant's Privilege

This privilege allows us to promise a witness that their statement is confidential until they are called to testify in a formal hearing. The statement will be released during discovery in preparation for the hearing. Not all witnesses are entitled to this privilege, and the privilege can be lost in some situations. The following is a summary of the key issues to consider ensuring confidentiality, when appropriate, and know when we cannot promise confidentiality.

Who is protected?

- Non-supervisory personnel of this employer and other employers.
- Supervisory and corporate officers of other employers who wish their and their company's identities be kept confidential from the employer under investigation. (These statements may be obtainable by the corporation under FOIA, since these individuals might be deemed to be the corporation, which has a right to obtain its own statements.)
- Working foremen may be protected, but the issue is debatable. Lead persons are undoubtedly not protected.

Who is not protected?

- Officers or directors of a corporate Respondent.
- High level supervisory employees who oversee large portions of Respondent's operation are probably not protected including:
 - Project superintendents.
 - Supervisors responsible for different divisions or plants.
 - Supervisors who supervise other high or middle level supervisory personnel and are not directly involved in production.
- Federal, state, and local government employees who make statements to you in the course of their normal duties.
- Experts who we eventually decide to call to testify.

What should witnesses be told?

- Non-supervisory employees should be told their statements will remain confidential unless they authorize their release, reveal to others the content of their statements, or they are called to testify by OSHA at which point their statements may be released to Respondent. Advise them they do not have to tell their employer that they gave a statement or what they said.
- Directors, officers or high-level supervisors should be given no assurance of confidentiality.
- Working foremen may be given a more watered-down confidentiality assurance, such as everything will be done to keep your statement confidential unless the witness

authorizes the release of the statement, the witness reveals the content of their statements to others, or they are called to testify by OSHA.

Protecting witness confidentiality.

- Never reveal the content of any confidential statement to another witness or non-DOL employee. We may release the statement to other governmental officials with SOL approval.
- Once you reveal anything that a witness said, you have waived the privilege for their entire statement, and we will have to release it to the employer.
- You can summarize what someone else has told you without saying who, if you are absolutely certain that revealing this information will not identify the source of the statement.
- If a witness told you something that dozens of other persons could have had knowledge of, it is okay to summarize what they said. Once this is done, upon request, we are obligated to release to Respondent all portions of the witness' statement that can be released without identifying the witness.
- If a witness told you something only a handful of people would possibly know, then you probably cannot reveal this to someone else without waiving the privilege, even if you do not say who said this. If in doubt, do not reveal the statement.

Information to Collect During Interview

Basic Information.

- Witness' name, address, phone number, and any relevant identifying information such as employee number. If the employee frequently moves, also record a permanent address whereby the witness may be reached.
- Employer, and nature of employer's work.
- Job title, duties performed, and work shift times.
- Time of employment in current job and with this employer.
- Experience in the job/activity.
- Was the person a direct witness to the accident or condition?

Safety and Health Program Information.

- Is the witness familiar with the written safety and health program?
- Are systems in place for employees to report hazards, and how does the employer respond to these notices?
- Has the hazardous condition been discussed before? What was said; by whom?
- What attempts were made to correct the hazardous condition?
- Are specific work rules established to address the hazardous condition? What are they? How were the rules communicated to the workers?

- Are work procedures to address the hazardous condition enforced; how and by whom?
- Has the hazardous condition existed before, were there near misses, what action was taken, and who in management was aware of this? What is the witness' level of training on safety and health issues? How is training done?

Information on the Accident or Hazardous Condition. Document the who, what, when, where, and how for the accident or hazardous condition.

- Pinpoint the exact time and location of events.
- Inquire about environmental conditions such as weather.
- Determine the exact location of the witness: the distance and relative position to the events/situation described.
- Document everything the witness saw.
- Document everything the witness said and heard.
- Document everything the witness did.
- Document everything the witness was told and by whom.
- Document any other potential witnesses.

Follow-up Questions for Potential Willful Citations. These are the hard questions or direct questions to the employer representative(s) to determine why they failed to take action or took action that resulted in the hazardous condition. Interrogate the employer representative as early in the investigation as possible. Possible questions include:

- Who has the responsibility for maintenance and repair of the equipment?
- Did anyone advise you that the equipment had a problem? When and who?
- Why wasn't the equipment corrected?
- If the hazard was brought to your attention, why were workers allowed to continue?
- Are there any company policies or procedures regarding broken or unsafe equipment? If so, then obtain copies.
- Why, why, why, why, WHY ...

Specific Guidelines for Written Statements

- **Use OSHA Forms.** Use OSHA Forms 181A (first page), 181B (continuation page) and 181C (signature page) for collecting written statements. Use the paper copy or an electronic version completed on the computer and printed for signature.
- **Write Statement from Notes.** Take notes during the interview, and then construct the statement from the notes and write it in the general language of the witness.
- **Review Statement with Witness.** Allow the person to review the statement making changes to ensure the statement accurately reflects the facts as known by the person. Have the witness initial all changes. Have witness initial each page of the statement.

- **Obtain Signature from Witness.** Have the person sign and date the statement. If the witness refuses to sign the statement, ask the witness to review the statement and indicate whether the witness believes it is accurate. If the witness agrees that the statement is accurate, note the agreement on the statement and sign it as a witness to the statement.

Specific Guidelines for Video Taped or Recorded Statements

- **Use Standard Recorded Format.** Initiate each interview by reading the recorded statement format at the end of this appendix.
- **Keep the number of interviewers to as few as possible.** More than one interviewer can be confusing, to both the witness and any party reviewing the interview at a later date. It can also lead to the lack of focus on the material facts you are attempting to obtain. If more than one interviewer is present, always state your name prior to asking questions each time the interviewer changes.
- **Video Witness during Video Taped Statements.** Video may provide non-verbal indicators relating to the witness's credibility. Other factors to consider is whether a video of the witness is necessary; the willingness of the witness and location of the interview.
- **Only Accept Verbal Answers.** Do not allow the witness to give non-verbal answers such as nodding the head, or answers contain vague references such as "from here to the wall."
- **Do Not Interrupt.** Do not allow more than one interviewer to engage in conversation with the witness during the recording. Focus the statement on the collection of information important to your investigation. Do not engage in general conversation while recording.
- **Keep Statements Concise.** Since tapes may have to be transcribed if a case is contested, it is important to keep the statements on point and directly relevant to the investigation. Try to keep the interview on the subject matter at hand by using the list of questions you prepared prior to the interview, and refer back to your list during the course of the interview. Do not make statements, opinions, and extraneous comments while conducting the interview.
- **Transcribe recorded statements.** In accordance with Reference 4, these statements shall be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate, and other significant cases so that it may be signed. CSHOs are encouraged to

produce a written statement for correction and signature as soon as possible, identifying the transcriber.

Format for Recorded Statements

The following is a tool to use when collecting a recorded statement. Following this guide will ensure you collect the basic information needed for a statement, and that the witness is given warnings, rights and responsibilities related to this statement.

*Today's date is _____. I am _____, a compliance officer with the U.S. Department of Labor, Occupational Safety and Health Administration. **(Have other people in the room attending the interview, besides the witness, state their name and position/title. This establishes the identity of each voice for later transcription.)** The location of this interview is _____. Prior to asking you any questions, I must inform you that this interview is being taped. Do you have any objections to having your statement recorded?*

At the beginning of the recorded witness statement record the following statement if the statement will remain confidential: *This statement will be held in confidence until such time as you may be called to testify in a court proceeding, at which time it may be produced upon demand of opposing counsel. Additionally, this statement may be made available to other agencies if it will assist them in the performance of their statutory functions. Upon the closing of this case, this statement may be subject to disclosure only in accordance with applicable statutes and agency policy.*

It is important that this statement contains facts which are true and correct to the best of your knowledge and belief. Public Law 91-596, Paragraph 17(G) makes it a criminal offense to knowingly make a false statement or misrepresentation in this statement. Do you understand your obligation to provide a true and correct statement? _____

*Would you provide your full name and spell it for the record?
What is your mailing address?
What is your home phone number?
What is (was) your employee number (if applicable)?
How long have (had) you worked for this employer?
What is (was) the address of your place of employment?
What is (was) your job classification/title?
How long have (had) you worked in this job classification/title?
What is your experience in this type of work?
What shifts do (did) you work?*

This completes the statement of _____. (Employee name)

APPENDIX H WILLFUL CRITERIA SHEET

WILLFUL VIOLATION DETERMINATION

A WILLFUL VIOLATION UNDER THE ACT IS WHERE EVIDENCE SHOWS THAT THE EMPLOYER COMMITTED AN INTENTIONAL AND KNOWING VIOLATION OF THE ACT.

VIOLATION ELEMENTS

1. What evidence exists that the employer/employer-representative knew that the condition was a hazard?
 2. What evidence shows that the employer or his representative knew that the condition violated a standard or other obligation under the OSHA Act? What evidence shows that the employer/employer-representative knew that OSHA requirements or other obligations were involved?
 3. What knowledge regarding safety and health matters for the violation or obligation under the OSHA Act would be reasonably expected in/for this industry?
 4. What precautions were taken by the employer to limit the hazardous conditions?
 5. Were any similar violations or hazardous conditions brought to the attention of the employer? / Was the violation or hazardous condition a generally recurring problem in this facility or other facilities under the employer's control?
 6. Did the nature and extent of the violation constitute plain indifference to safety and health?
 7. Did the nature and extent of the violations constitute a purposeful or intentional disregard of the employer's responsibilities under the OSHA Act?
 8. What was the company able to gain by not complying with the standards or the employer's obligation under the OSHA Act?
-
- What evidence indicates that the existence of the violation was deliberate, voluntary, or intentional on the part of the employer?
 - What evidence indicates that the violations were not inadvertent, accidental or caused by ordinary negligence?

- Discuss the nature of the employer's business and the knowledge of safety and health matters which could reasonably be expected in the industry.
- Discuss the precautions taken by the employer to eliminate the existence of the hazardous condition and how the employer knew that the precautions were not fully effective at eliminating the hazard.
- Discuss the employer's awareness of the Act and of the responsibility to provide safe and healthful working conditions.
- Discuss whether similar violations and/or conditions have been brought to the attention of the employer.
- Discuss whether the nature and extent of the violations disclose a purposeful disregard of the employer's responsibility.
- Discuss whether the employer has observed the employees engaged in the violative conduct or being exposed to the violative condition.
- Discuss whether the employer was aware of past practice of employees engaging in this violative practice or being exposed to this violative condition.
- Discuss whether the employer of his/her free will or choice either intentionally disregarded the standard or was plainly indifferent to its requirement (an omission or failure to act is willfully done if done voluntarily and intentionally).
- Discuss whether the employer in fact believed that its actions met the underlying purpose of the standard through other means.
- Discuss supervisory behavior. An employer is excused from responsibility for acts of its supervisory employees only if it shows that the acts were contrary to consistently enforced company policy, that supervisors were adequately trained in safety matters, and that reasonable steps were taken to discover safety violations committed by its supervisors.
- Discuss any affirmative defenses raised by the employer or known by the Area Office such as employee misconduct, isolated incident, multi-employer worksite, greater hazard to comply, etc.

TYPE(S) AND QUALITY OF DOCUMENTATION:

- The employer's overall safety and health program
- Safety and health meeting notes
- Union/employee complaints
- Employee suggestions
- Safety rule enforcement program
- Employee training programs
- Employer internal correspondence and memorandum
- Injury data (OSHA 300 and workers compensation)
- Consultant or insurance carrier reports
- Does the employer have a copy of the standards?

- Membership in trade associations
- Employer self-inspection program reports
- Prior training sessions attended by the employer
- Employee interview statements (signed, dated, witnessed)
- Physical measurements of hazardous condition using proper techniques and calibrated equipment
- Photographs

APPENDIX I GENERAL DUTY VIOLATION ELEMENTS WORKSHEET

GENERAL DUTY CLAUSE

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.
2. The hazard was recognized by the employer or the industry.
3. Employer knew of the violative condition.
4. The hazard was causing or was likely to cause death or serious physical harm.
5. The employer's employees are exposed to the hazardous activity or condition.
6. Feasible means exist to materially reduce the risk of harm. (Identify national consensus standard upon which abatement is based, when available).
7. No OSHA Standard applies to the hazardous condition or activity.