

Testimony of Peg Seminario, Director Safety and Health, AFL-CIO
Before the House Committee on Education and Labor
Hearing
“Are OSHA Penalties Adequate to Deter Health and Safety Violations?”
April 28, 2009

Chairman Miller, Ranking Member McKeon, and other members of the committee, I appreciate the opportunity to testify today on the issue of the adequacy of penalties for violations of the Occupational Safety and Health Act.

Today is Workers Memorial Day – a day unions and others here and around the globe remember those who have been killed, injured and diseased on the job. Here in the United States, it also marks the 39th anniversary of when the Occupational Safety and Health Act went into effect.

While progress has been made since the OSH Act was passed, the toll of workplace injuries, illnesses and fatalities is still enormous. In 2007, 5,657 workers died on the job, an average of 15 workers every day, and an estimated 50,000 more lost their lives due to occupational diseases. In 2007, the Bureau of Labor Statistics reported more than 4 million work-related injuries. But this number does not reflect the full extent of job injuries, and the real number is estimated to be 2 to 3 times greater.

Nearly four decades after the Act was passed, enforcement of the job safety law remains weak and OSHA penalties remain low, particularly when compared with other safety and environmental laws. Yesterday the AFL-CIO released its annual report on job safety – *Death on the Job: The Toll of Neglect* - in conjunction with Worker’s Memorial Day. Our analysis found that the average penalty for a serious violation of the OSH Act is less than \$1,000, and the average penalty involving worker deaths is \$11,300, but there is great variability in enforcement and penalties, particularly in the states that operate their own state plans. Only a handful of fatality cases are prosecuted for criminal violations. OSHA’s capacity to inspect workplaces and oversee job safety has greatly diminished, as the number of job safety inspectors has been reduced while the size of the workforce and number of workplaces has grown.

Improvements in OSHA’s enforcement and penalty policies could help strengthen enforcement. But many of the deficiencies in enforcement rest with the OSH Act itself and must be addressed through Congressional action.

OSHA Enforcement and Penalties are Too Weak to Create an Incentive to Improve Conditions and Deter Violations

The Occupational Safety and Health Act places the responsibility on employers to protect workers from hazards and to comply with the law. The law relies largely on the good faith of employers to address hazards and improve conditions. For this system to work, it must be backed up with strong and meaningful enforcement. But at present, the Occupational

Safety and Health Act and the OSHA enforcement program provide little deterrence to employers who put workers in danger. OSHA inspections and oversight of workplaces are exceedingly rare. There are no mandatory inspections even for the most dangerous industries or workplaces. Between federal OSHA and the states there are approximately 2,050 inspectors. OSHA has the capacity and resources to inspect workplaces on average once every 94 years -- once every 137 years in the federal OSHA states. Over the years OSHA's oversight capacity has been diminished, as the number of inspectors has declined at the same time the workforce has increased. Today federal OSHA's capacity to inspect workplaces is the lowest level in the agency's history. (Attachment 1).

Since there is no regular oversight, strong enforcement when workplaces are inspected and violations are found is even more important. But the penalties provided in the OSH Act are weak. Serious violations of the law (those that pose a substantial probability of death or serious physical harm to workers) are subject to a maximum penalty of \$7,000. Willful and repeated violations carry a maximum penalty of \$70,000 and willful violations a minimum of \$5,000. These penalties were last adjusted by the Congress in 1990 (the only time they have been raised). Unlike all other federal enforcement agencies (except the IRS), the OSH Act is exempt from the Federal Civil Penalties Inflation Adjustment Act, so there have not even been increases in OSHA penalties for inflation, which has reduced the real dollar value of OSHA penalties by about 39%. For OSHA penalties to have the same value as they did in 1990, they would have to be increased to \$11,500 for a serious violation and to \$115,000 for a willful violation of the law.

By comparison, the Mine Safety and Health Act requires mandatory inspections - four per year at underground mines and two per year at surface mines. As a result of Congressional action following the Sago mine disaster and other disasters in 2006, the Mine Act now provides for much tougher penalties. The MINER Act increased maximum civil penalties for violations to \$60,000 (from \$10,000), which may be assessed on an instance-by-instance basis. The 2006 mine safety legislation also added a new provision for "flagrant" violations, with a maximum civil penalty of \$220,000. Since the MINER Act was passed, there has been a significant increase in MSHA penalties. In December 2008, MSHA assessed \$23 million in penalties for violations, compared to \$3 million assessed in December 2006.

The maximum civil penalties provided for under the OSH Act are rarely assessed. Indeed, just the opposite is the case. In FY 2008, the average penalty for a serious violation of the law was \$960 for federal OSHA and \$872 for the state OSHA plans combined. Again this is the average penalty for violations that pose a substantial probability of death or serious physical harm. California had the highest average penalty for serious violations (\$4,890) and South Carolina had the lowest (\$331). Both of these are state plan states. For violations that are "other" than serious, which also carry a statutory maximum of \$7,000, the average federal OSHA penalty was just \$215. Clearly, for most employers these levels of penalties are not sufficient to change employer behavior, improve workplace conditions or deter future violations.

OSHA penalties for violations that are willful or repeated also fall well below the maximum statutory penalties. For both willful and repeat violations, the OSH Act provides a maximum penalty of \$70,000 per violation. For violations that are willful, a \$5,000 mandatory minimum penalty is also prescribed. In FY 2008, the average federal OSHA penalty for a willful violation was \$41,658, and the average willful penalty for state plans was \$28,943. For repeat violations, the average federal OSHA penalty was only \$4,077 and for state plans the average was \$2,021, a fraction of the statutory maximum penalty for such violations.

Even in cases where workers are killed, penalties are abysmally low. According to OSHA inspection data, the average serious penalty in fatality cases for FY 2008 was just \$2,476 for federal OSHA and \$3,978 for the state plans combined. The average total penalty assessed in fatality cases was just \$11,311 nationally (\$13,462 for federal OSHA and \$8,615 for the OSHA state plans). (Attachment 2). These averages include open cases, which when finally resolved, will result in a reduction in these average penalty levels. Average penalties in fatality cases for FY 2003 – 2007, where most cases have been resolved, show a national average of \$6672 (\$6646 for federal OSHA and \$5363 for the state plan states). All of these average penalties include several high penalty cases. The median penalty, which is more representative of the typical penalty in a fatality case, is much lower.

A state-by-state review shows that there is wide variability in penalties assessed in cases involving worker deaths, with the penalties in some states exceedingly low. For example, in FY 2008, in the state of Iowa, the average penalty in worker fatality cases was \$45,499, but in the state of Utah the average penalty in worker fatality cases was just \$1,106, and in South Carolina the average penalty was \$1,383. (Attachment 3).

Last year the Senate Committee on Health, Education, Labor and Pensions Majority staff conducted an in-depth investigation of OSHA enforcement in fatality cases. Their study - *Discounting Death: OSHA's Failure to Punish Safety Violations That Kill Workers* - analyzed detailed enforcement data for thousands of fatality investigations and individual case files for hundreds of enforcement cases. It found that OSHA penalties in cases involving worker deaths were consistently low and routinely reduced in settlement negotiations. For all federal OSHA fatality investigations conducted in FY 2007, the median initial penalty was just \$5,900. But after negotiation and settlement, the median final penalty for workplace fatalities was reduced to only \$3,675. For willful violations in fatality cases, the final median penalty was \$29,400, less than half the statutory maximum of \$70,000 for such violations.

The following examples are typical of OSHA enforcement and penalties in many fatality cases:

In 2004, two Pennsylvania sewer workers, Robert Hampton, 43 and Larry Dunning, 61, were asphyxiated and died while working in a 10-foot deep manhole. No confined space entry procedures were followed or protection provided. The contractor, Rittenbaugh, Inc., was cited for one serious violation of the general duty clause (since there still is no

confined space entry standard for construction) and one serious violation of safety training requirements, with an initial penalty of \$1,500. The case was settled for \$1,000.

In New Jersey, Jose Duran Painting was cited for one serious violation and penalized \$2,000 in the death of an immigrant worker, for failing to provide fall protection. The penalty was reduced to \$1,400.

In Michigan, in 2006, Midwest Energy Cooperative was fined \$4,200 for 2 serious violations for excavation and safety program requirements in the death of Danny Young, 27, who was killed when a backhoe hit a gas line that exploded. The case was settled for \$2,940.

In Austin, Texas, in September 2004, a worker was killed in a trench cave in. The sewer contractor, ID Guerra, was cited for one serious and one repeat violation of OSHA's trenching standards, and penalized \$8,400, including a \$5,600 penalty for the repeat violation. Despite being cited by OSHA for a similar trenching violation in 2003, OSHA reduced the repeat penalty in the fatality case to just \$2,800. (Under the Act, the maximum penalty for a repeat violation is \$70,000).

What kind of message does it send to employers, workers and family members, that the death of a worker caused by a serious or even repeated violation of the law warrants only a penalty of a few thousands dollars? It tells them that there is little value placed on the lives of workers in this country and that there are no serious consequences for violating the law.

The OSH Act and OSHA Enforcement Policies Discount Penalties for Violations Even in Cases of Worker Death

So why are OSHA penalties for workplace fatalities and job safety violations so low? The problems are largely systemic and start with the OSH Act itself. The Act sets low maximum penalty levels, particularly for serious violations, which carry a maximum of \$7,000. For a willful or repeat violation the maximum penalty is \$70,000. In assessing penalties, under the Act, employer size, good faith, history, and gravity of the violation are to be taken into consideration.

Throughout its history, OSHA procedures for considering these four factors have resulted in proposed penalties that are substantially below the maximum penalties. The agency starts with a gravity based penalty, which is then reduced by specified percentages for each of the other 3 factors (except in certain circumstances). Under OSHA's current penalty policy, for high gravity serious violations, except in rare cases, OSHA starts with a base of \$5,000, not \$7,000 to determine the penalty. This is true even for fatality cases, which under OSHA policy are supposed to be classified as high-gravity. In fatality cases, no reductions are allowed for good faith, but penalty reductions are still allowed for employer size and history.

Under the penalty policy, reductions for employer size range from 20 percent (for employers with 101-250 employees) to 60 percent (for employers with 1-25 employees),

but a larger reduction of 80 percent reduction is provided for serious violations that are willful for employers with 10 or fewer employees. The reduction for no history of serious, willful or repeat violations in the past 3 years is an additional 10 percent. So in many cases there is an automatic 30 to 90 percent discount in penalties, regardless of the gravity of the violations that are found.

OSHA's general policy is to group multiple instances of the same violation into one citation, with one penalty. So, for example, if five workers are injured due to an employer's failure to provide guarding for machines, the employer will only be cited once for the violation, even though five workers were hurt. This policy further minimizes the level of overall penalties in enforcement cases, including fatalities.

In 1986, OSHA instituted a policy to provide for instance-by-instance penalties in those cases where there was a flagrant and willful violation of the law. This "egregious" policy as it came to be known, was designed to penalize employers who put workers at risk and to send a message to other employers about the potential consequences of not complying with the law. Over the years, the egregious policy has had some positive impact, particularly when used as part of an industry-wide enforcement initiative, as was the case in the 1980's and early 1990's, when it was used for widespread injury reporting and ergonomic hazard violations. But in recent years, the impact of the policy was reduced, as the Bush appointees to the Occupational Safety and Health Review Commission (OSHRC) took an exceedingly restrictive view of the types of violations that may be cited on an instance-by-instance basis.

The initial citations and penalties in OSHA enforcement cases, weak to begin with, are reduced even further in the resolution of cases. Due to limited staff and resources, OSHA area directors and Department of Labor solicitors are under tremendous pressure to settle cases and avoid time consuming and costly litigation. In both informal settlements by the agency, and formal settlements after employer challenges to OSHA citations, penalties are routinely cut by another 30 – 50 percent. Indeed, it is OSHA practice to offer employers an automatic additional 30 percent penalty reduction at the time the citations are issued, no questions asked, if the employer agrees to correct all violations. (Attachment 4). The effect of these policies and practices in most cases is to reduce penalties to a level too minimal to have any effect.

Last year the *Las Vegas Sun* conducted an in-depth investigation of construction worker fatalities on the Las Vegas Strip that highlighted the weakness of OSHA enforcement in responding to and preventing workplace fatalities. In an 18-month period from December 2006 to June 2008, 12 workers died on a massive construction project overseen by some of the nation's largest contractors.

The *Sun* reported that Nevada OSHA inspections of many of the fatalities initially resulted in findings of serious violations of safety standards and penalties, albeit fairly low. However, in case after case during informal conferences with the contractors, the agency withdrew many citations and reduced the penalties, in some cases removing all the citations and penalties in their entirety. For example, in a case involving the death of

Harvey Englander, a veteran operating engineer, who was killed when struck by a man-lift in August 2007, Nevada OSHA issued 3 serious violations with \$21,000 in penalties against the Pernini Building Company for lock-out and training violations. The citations and penalties were later withdrawn. Just a few months later, in October 2007, Harold Billingsly, a 46 year-old iron worker fell to his death, falling 59 feet through an unguarded opening. SME Steel Contractors was issued three serious citations and penalized \$13,500 for failing to provide fall protection and other violations. But, as in the Perini case, following an informal conference with the company, Nevada OSHA withdrew all the citations and penalties.

The *Sun* expose, which recently was awarded the Pulitzer prize, brought intensive scrutiny to the safety practices at the Las Vegas construction projects on the Las Vegas strip, and led to improvements in training and safety measures. It also led to examination of Nevada OSHA enforcement practices by federal OSHA and the Nevada legislature, and some changes in those practices. There have been no deaths on the Strip since June 2008. But, if it hadn't been for the enterprising work of the *Sun* reporters, it's unlikely likely that these dangerous practices and conditions would have changed.

Another way the impact of OSHA enforcement is minimized is through downgrading the classification of citations from willful to serious, which greatly reduces civil penalties and undermines any possibility of criminal prosecution under the OSH Act. In some cases OSHA has utilized a practice of changing the characterization of willful or repeat violations to "unclassified," even though the OSH Act makes no provision for the issuance of such citations. Employers will seek "unclassified" violations, particularly in fatality cases, not only to undermine the potential for criminal prosecution, but to lessen the impact of the violations in any civil litigation and to keep willful or repeat violations off their safety and health record.

In FY 2003 there were 50 unclassified violations in federal OSHA fatality cases and in FY 2004 there were 49 such violations. In recent years that number has dropped, and for FY 2008, OSHA inspection data shows 13 unclassified violations, but no unclassified violations associated with fatality cases.

The use of these "unclassified" violations may allow for settlements with higher monetary penalties or additional safety and health requirements. But these "unclassified" violations greatly weaken the deterrent effect of OSHA enforcement to prevent future occurrence of similar violations.

For example, in a fatality investigation of a worker death at McWane Inc. Atlantic States Cast Iron Pipe Company in March 2000, OSHA downgraded four repeat violations to "unclassified" violations, even though the company had been cited previously for serious violations in a fatality that occurred at the same facility the year before. Within 6 months of these citations, 2 more workers were killed at other McWane facilities. The company was subsequently prosecuted for a series of violations at multiple facilities, with most of the criminal charges being brought under environmental laws due to weaknesses in the OSH Act.

In another case that involved a planned inspection at the Bayer Cropscience chemical plant in Institute, West Virginia, in 2005 OSHA originally cited the company for 2 willful violations and 8 serious violations of the process safety management (PSM) standard and related requirements and proposed \$135,000 in penalties. In a formal settlement the serious violations were deleted, and the 2 willful violations were changed to “unclassified” with a \$110,000 final penalty assessed.

In August 2008, there was a powerful explosion and fire at the Bayer facility that killed two plant operators and threatened the community. The explosion occurred when there was a runaway reaction during the restart of a methomyl unit. Methomyl is a highly toxic substance that is sold as a pesticide. In the preliminary report on its investigation of the explosion, the Chemical Safety Board found significant deficiencies in process safety management that according to the Board likely contributed to the accident. The CSB also found that the explosion could have been catastrophic. Within 80 feet of the site of the explosion, there is a 37,000 pound capacity tank of methyl isocyanate (MIC), the same chemical that caused the deaths of thousands in the toxic gas release in Bhopal, India in 1994. The CSB found explosion debris near the MIC unit, which if compromised could have led to a catastrophic outcome.

The OSHA investigation of the 2008 Bayer explosion found extensive violations of the process safety management standard. OSHA issued 11 serious and 2 repeat violations, but no willful violations, and proposed \$143,000 in penalties. The company has contested all the citations.

OSHA’s Enhanced Enforcement Program Needs Enhancement

In 2003, in response to a *New York Times* expose on McWane, Inc’s history and pattern of worker deaths and OSHA’s weak enforcement actions, OSHA adopted a new Enhanced Enforcement Program (EEP). The purpose of the program as described by then-OSHA Assistant Secretary John Henshaw was to target “employers who are indifferent to their obligations under the OSH Act. Under the program, employers with worker fatalities with willful or repeat violations, or who have a history of previous violations or fatalities, are subject to enhanced oversight. This enhanced scrutiny is supposed to include follow-up inspections and/or inspections at other facilities of the employer and may result in stricter settlement practices and enforcement actions in future cases.

In FY 2008, after OSHA modified the EEP program criteria to focus on more significant violations, there were 475 inspections involving EEP cases. This compares to 719 inspections involving EEP cases in FY 2007, 467 EEP cases in FY 2006, 593 EEP cases in FY 2005 and 313 EEP cases in FY 2004. Many of the cases in the earlier years were among small employers (25 or fewer) who had workplace fatalities with a serious violation, but no prior OSHA history. The 2008 changes in the program eliminated these types of cases.

The concept behind the EEP program – enhanced enforcement for persistent violators - is a good one. But unfortunately, in practice the program has been highly deficient. A recent investigation of the EEP program conducted by the U.S. Department of Labor Office of Inspector General (OIG) found that in 97 percent of the EEP cases OIG evaluated, OSHA’s follow-up was deficient or lacking. At 45 of the worksites where OSHA oversight and follow-up was deficient, 58 workers were subsequently killed by job hazards, deaths that may have well been prevented if proper procedures were followed.

There are also significant problems in the design of the EEP program itself. The program includes no provisions for actually enhancing penalties against serial violators or even changing practices for informal settlements or penalty reductions in future cases. For example, in one EEP case at ADM Milling in Nebraska, in 2003, the employer was cited for serious and repeat violations of lock-out/tag-out, machine guarding and electrical safety requirements. Initial penalties of \$124,000 were proposed, reduced to \$62,000 in an informal settlement. Two years later a follow-up inspection at the same plant found 2 repeat violations for machine guarding standards. Penalties of \$50,000 were proposed, but were later reduced by OSHA to \$32,500 in an informal settlement -- clearly not a deterrent for a company the size of ADM, which had \$44 billion in sales in 2007.

Under the EEP, expansion of investigations to other facilities of the same employer is not automatic, and only occurs in limited cases. Thus, the program provides little leverage to force employers who have similar violations and unsafe practices at multiple facilities to change the behavior and address hazards on a corporate-wide basis.

OSHA keeps an internal list of employers who are targeted for this enhanced enforcement and notifies employers that they have been targeted for enhanced scrutiny. But there is no public disclosure of the list of companies that are being targeted under the EEP due to their history of fatalities and serious, willful or repeat job safety violations. Publicizing this list could increase public awareness and scrutiny of these companies and create an added incentive for these companies to change their safety and health practices.

OSHA Criminal Penalties Are Weak and Provide Almost No Deterrence

If the civil penalties under the Occupational Safety and Health Act provide little deterrence or incentive for employers, the criminal penalties are even weaker. Under the Occupational Safety and Health Act, criminal penalties are limited to those cases where a willful violation of an OSHA standard results in the death of a worker, and to cases of false statements or misrepresentations. The maximum period of incarceration upon conviction is six months in jail, making these crimes a misdemeanor.

The criminal penalty provisions of the OSH Act have never been updated since the law was enacted in 1970 and are weaker than virtually every other safety and environmental law. For example, since 1977 the Mine Safety and Health Act has provided for criminal penalties for willful violations of safety and health standards and knowing violations for failure to comply with orders or final decisions issued under the law, and the Mine Act

makes these violations a felony. Unlike the OSH Act, these criminal penalties are not limited to cases involving a worker's death.

Federal environmental laws have also been strengthened over the years to provide for much tougher criminal penalties. The Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act all provide for criminal prosecution for knowing violations of the law, and for knowing endangerment that places a person in imminent danger of death or serious bodily harm, with penalties of up to 15 years in jail. Again, there is no prerequisite for a death or serious injury to occur.

The weak criminal penalties under the OSH Act result in relatively few prosecutions. With limited resources, federal prosecutors are not willing or able to devote significant time or energy to these cases. According to information provided by the Department of Labor, since the passage of the Act in 1970, only 71 cases have been prosecuted under the Act, with defendants serving a total of 42 months in jail. During this time, there were 350,000 workplace fatalities according to National Safety Council and BLS data, about 20 percent of which were investigated by federal OSHA. In FY 2008, there were 14 cases referred by DOL for possible criminal prosecution. To date, 2 of these cases have resulted in guilty pleas, with monetary penalties and probation. Prosecutions have been initiated in 2 additional cases, and the other 10 cases are still under review by the Justice Department.

By comparison, according to EPA in FY 2008 there were 319 criminal enforcement cases initiated under federal environmental laws and 176 defendants charged resulting in 57 years of jail time and \$64 million in penalties – more cases, fines and jail time in one year than during OSHA's entire history. The aggressive use of criminal penalties for enforcement of environmental laws and the real potential for jail time for corporate officials, serve as a powerful deterrent to environmental violators.

In recent years the Justice Department launched a new Worker Endangerment Initiative that focuses on companies that put workers in danger while violating environmental laws. The Justice Department prosecutes these employers using the much tougher criminal provisions of environmental statutes. Under the initiative, the Justice Department has prosecuted employers such as McWane, Inc. a major manufacturer of cast iron pipe, responsible for the deaths of several workers; Motiva Enterprises, which negligently endangered workers in an explosion that killed one worker, injured eight others and caused major environmental releases of sulfuric acid; and British Petroleum for a 2005 explosion at a Texas refinery that killed 15 workers.

These prosecutions have led to major criminal penalties for violations of environmental laws, but at the same time underscore the weaknesses in the enforcement provisions of the Occupational Safety and Health Act.

In the Motiva case, the company pleaded guilty to endangering its workers under the Clean Water Act and was ordered to pay a \$10 million fine. The company also paid more than \$12 million in civil penalties for environmental violations. In contrast, in 2002 following the explosion, OSHA initially cited the company for 3 serious and 2 willful violations with

proposed penalties of \$161,000. As a result of a formal settlement, the original serious and willful citations were dropped and replaced with “unclassified” citations carrying \$175,000 in penalties, greatly undermining any possibility of criminal enforcement under the OSH Act.

In the BP Texas City refinery disaster, where 15 workers were killed and another 170 injured, under a plea agreement, the company pleaded guilty to a felony violation of the Clean Air Act and agreed to pay \$50 million in penalties and serve a 3-year probation. BP also agreed to pay \$100 million in criminal penalties for manipulating the propane market. But BP paid no criminal penalties under the OSH Act, even though 15 workers died and OSHA issued hundreds of civil citations for willful, egregious violations of the law. And under the OSH Act, even if BP had paid criminal penalties, it would have been a misdemeanor, not a felony. Cases like this send a terrible message to workers about the value our laws place on their health and safety on the job.

OSHA and the Congress Should Act to Strengthen Enforcement and Penalties for Job Safety Violations

Current OSHA enforcement and penalties are far too weak to provide any meaningful incentive for employers to address job hazards or to deter violations. As a result, workers are exposed to serious hazards that put them in danger, and cause injury and death.

Action is needed to put teeth into enforcement of the job safety law, and to bring OSHA enforcement into line with the enforcement practices and authorities under other safety and environmental laws.

OSHA can and should take action under the existing law to make enforcement more effective and to enhance penalties for violations that put workers in serious danger and cause death and injury.

The entire OSHA penalty policy and formulas should be reviewed and revamped. The agency should use its the full statutory authority to impose meaningful penalties for serious, willful and repeat violations of the law, particularly in cases involving worker deaths.

OSHA should cease the practice of issuing “unclassified” violations in all enforcement cases.

The Enhanced Enforcement Program (EEP) should be overhauled to actually provide for enhanced enforcement, stiffer penalties and follow-up for employers who persistently violate the law.

Federal OSHA should conduct an in-depth review of the enforcement and penalty policies and practices in the state plan states to determine whether they are “as effective as” the federal OSHA enforcement program, as required by law, and take action where plans are found to be deficient.

OSHA should greatly expand the access to and disclosure of information on employer's enforcement records. The list of employers on OSHA's EEP list should be posted on the web, along with reports about the employers' violations and progress towards addressing hazards. The OSHA inspection data base should be not only searchable by establishment, but also by industry, geographic area, standards violated and types of violations and linked to the data bases on exposure measurements and injury rates reported under the OSHA data initiative.

The Congress must also act to address the serious deficiencies in the OSH Act itself.

The OSHA civil penalties should be increased – significantly. The enhanced penalties for mine safety adopted by Congress in the MINER Act in 2006 - \$60,000 for serious violations and \$220,000 for flagrant violations - provide a good guide. There should also be a floor for penalties in fatality cases, to take into account the harm that has been done. These increased penalties should be automatically adjusted for inflation, as is the case with other federal laws, so their impact is not diluted with the passage of time.

OSHA's authority to issue violations and assess penalties for each instance of a violation should be made clear and unambiguous. The greater the number of workers put at risk or in danger or who have been injured or killed due to workplace violations, the greater the penalty should be. The use of 'unclassified' citations should be prohibited.

Consideration should be given to adopting special provisions to address safety and health practices at the corporate level. Presently, the enforcement structure of the OSH Act is focused primarily at the establishment level, which is inadequate to change the practice and culture at the corporate level. Requirements for corporate officials to address identified violations and hazards on a corporate-wide basis would greatly enhance the Act's effectiveness, and result in improved workplace conditions and greater protection for workers.

The criminal enforcement provisions of the Act must also be strengthened and expanded. At a minimum, criminal violations should be made a felony carrying a significant prison term and monetary fines, and expanded to cover cases where violations cause serious injury to workers. The law should make clear that responsible corporate officials are subject to prosecution in appropriate cases. As a matter of fundamental fairness and sound public policy, the criminal provisions of the Occupational Safety and Health Act should be strengthened so that violations of workplace safety laws carry at least the same potential consequences under our criminal justice system as violations of federal environmental statutes.

For these legislative improvements to be effectively implemented, OSHA and the Department of Labor must be given additional resources to enforce the law.

The Protecting America's Workers Act (H.R. 2067), introduced last week by Rep. Miller and Rep. Woolsey with the support of others incorporates many of these needed measures.

The bill would strengthen OSHA enforcement by increasing civil and criminal penalties and expanding their scope. It would also put in place a mandatory minimum penalty in cases involving worker deaths, so that we would no longer see the current meager fines of a few thousand dollars in fatality cases. Worker rights in enforcement cases would be expanded and family members of victims would also be given rights in OSHA investigations.

In addition to strengthening enforcement, the Protecting America's Workers Act (PAWA) would extend the Act's coverage to state and local public employees, flight attendants and other workers who currently lack OSHA protection. It would enhance the anti-discrimination provisions of the OSH Act to better protect workers from retaliation, by bringing the law into line with other federal whistleblower statutes.

The Protecting America's Workers Act is a good, sound bill that should be enacted into law.

Four decades after the passage of the Occupational Safety and Health Act, its time for the country and the Congress to keep the promise to workers to protect them death, injury and disease on the job.

Federal OSHA Safety and Health Compliance Staffing 1973 - 2007

Year	Total Number Federal OSHA Compliance Officers ¹	Employment (000) ²	OSHA Compliance Officers per Million Workers
1973	567	84,300	6.7
1974	754	86,200	8.7
1975	1,102	85,200	12.9
1976	1,281	88,100	14.5
1977	1,353	91,500	14.8
1978	1,422	95,500	14.9
1979	1,441	98,300	14.7
1980	1,469	98,800	14.9
1981	1,287	99,800	12.9
1982	1,003	98,800	10.2
1983	1,160	100,100	11.6
1984	1,040	104,300	10.0
1985	1,027	106,400	9.7
1986	975	108,900	9.0
1987	999	111,700	8.9
1988	1,153	114,300	10.1
1989	1,038	116,700	8.9
1990	1,203	117,400	10.2
1991	1,137	116,400	9.8
1992	1,106	117,000	9.5
1993	1,055	118,700	8.9
1994	1,006	122,400	8.2
1995	986	126,200	7.8
1996	932	127,997	7.3
1997	1,049	130,810	8.0
1998	1,029	132,684	7.8
1999	1,013	134,666	7.5
2000	972	136,377	7.1
2001	1,001	136,252	7.3
2002	1,017	137,700	7.4
2003	1,038	138,928	7.5
2004	1,006	140,411	7.2
2005	956	142,894	6.7
2006	948	145,501	6.5
2007	948	147,215	6.4

¹ Compliance officers for 1973 to 1989 from Twentieth Century OSHA Enforcement Data. A Review and Explanation of the Major Trends. U.S. Department of Labor 2002. Compliance Officers for 1990 to 2007 from OSHA Directorate of Enforcement Programs. Compliance officer totals include safety and industrial hygiene CSHO's and supervisory safety and industrial hygiene CSHO's.

² Employment is an annual average of employed civilians 16 years of age and older from the Current Population Survey (CPS).

Average Total Penalty (\$) per OSHA Fatality Inspection, FY 2003 – 2008*

Fiscal Year	Number of Fatality Inspections Conducted	Total Penalties (\$)	Average Total Penalty Per Inspection (\$)
<u>FY 2003</u>			
Federal States	1,504	7,120,953	6,756
State Plan States	816	3,448,520	4,214
Nation Wide	1,870	10,559,473	5,647
<u>FY 2004</u>			
Federal States	1,115	7,502,645	6,729
State Plan States	890	4,557,757	5,121
Nation Wide	2,005	12,060,402	6,015
<u>FY 2005</u>			
Federal States	1,131	7,522,700	6,651
State Plan States	887	5,714,741	6,443
Nation Wide	2,018	13,237,441	6,560
<u>FY 2006</u>			
Federal States	1,106	7,133,639	6,450
State Plan States	950	5,391,602	5,675
Nation Wide	2,056	12,525,241	6,092
<u>FY 2007</u>			
Federal States	1,051	11,943,175	11,364
State Plan States	845	5,206,768	6,162
Nation Wide	1,896	17,149,943	9,045
<u>FY 2008</u>			
Federal States	981	13,206,691	13,462
State Plan States	783	6,745,272	8,615
Nation Wide	1,764	19,951,963	11,311

* All data from OSHA IMIS Fatality Inspection Reports, FY 2003-2008

Attachment 3

State By State OSHA Fatality Investigations, FY 2008

State	Number of OSHA Fatality Investigations Conducted, FY 2008 ¹	Total Penalties ¹ (\$)	Average Total Penalty Per Investigation (\$)	Rank of Average Penalty ²	State or Federal Program ³
Alabama	36	192,185	5,338	28	FEDERAL
Alaska	3	6,370	2,123	46	STATE
Arizona	28	385,647	13,773	10	STATE
Arkansas	26	82,565	3,176	39	FEDERAL
California	196	2,473,735	12,621	13	STATE
Colorado	33	1,006,149	30,489	6	FEDERAL
Connecticut	8	63,700	7,963	21	FEDERAL
Delaware	3	7,875	2,625	41	FEDERAL
Florida	113	912,729	8,077	20	FEDERAL
Georgia	56	5,485,909	97,963	1	FEDERAL
Hawaii	6	15,100	2,517	42	STATE
Idaho	13	47,900	3,685	35	FEDERAL
Illinois	49	520,800	10,629	18	FEDERAL
Indiana	43	181,567	4,222	31	STATE
Iowa	26	1,182,975	45,499	4	STATE
Kansas	12	68,975	5,748	26	FEDERAL
Kentucky	29	225,325	7,770	23	STATE
Louisiana	32	46,500	1,453	48	FEDERAL
Maine	1	50,780	50,780	3	FEDERAL
Maryland	27	79,005	2,926	40	STATE
Massachusetts	23	237,110	10,309	19	FEDERAL
Michigan	33	174,606	5,291	29	STATE
Minnesota	19	551,475	29,025	7	STATE
Mississippi	20	417,230	20,862	8	FEDERAL
Missouri	25	321,625	12,865	12	FEDERAL
Montana	6	82,200	13,700	11	FEDERAL
Nebraska	9	291,250	32,361	5	FEDERAL

Nevada	26	86,340	3,321	37	STATE
New Hampshire	4	217,325	54,331	2	FEDERAL
New Jersey	42	135,933	3,237	38	FEDERAL
New Mexico	14	239,150	17,082	9	STATE
New York	90	705,219	7,836	22	FEDERAL
North Carolina	49	163,623	3,339	36	STATE
North Dakota	8	35,312	4,414	30	FEDERAL
Ohio	43	486,249	11,308	15	FEDERAL
Oklahoma	31	73,100	2,358	45	FEDERAL
Oregon	28	68,925	2,462	43	STATE
Pennsylvania	75	457,418	6,099	25	FEDERAL
Rhode Island	1	10,800	10,800	16	FEDERAL
South Carolina	27	37,350	1,383	49	STATE
South Dakota	8	15,975	1,997	47	FEDERAL
Tennessee	45	173,095	3,847	33	STATE
Texas	149	841,598	5,648	27	FEDERAL
Utah	18	19,910	1,106	50	STATE
Vermont	1	3,750	3,750	34	STATE
Virginia	54	374,118	6,928	24	STATE
Washington	45	106,750	2,372	44	STATE
West Virginia	18	222,865	12,381	14	FEDERAL
Wisconsin	16	66,125	4,133	32	FEDERAL
Wyoming	9	96,994	10,777	17	STATE
Total or National Average	1,764	19,951,963	11,311⁴		

¹ OSHA IMIS Fatality Inspection Reports, FY 2008.

² Rankings are based on highest to lowest average total penalty (\$) per fatality inspection (1-highest, 50-lowest).

³ Under the OSHA Act, states may operate their own OSHA programs. Connecticut, New Jersey and New York have state programs covering state and local employees only. Twenty-one states and one territory have state OSHA programs covering both public and private sector workers.

⁴ National average is per fatality investigation for all federal OSHA and state OSHA plan states combined. Federal OSHA average is \$13,462 per fatality investigation; state plan OSHA states average is \$8,615 per fatality investigation.

Example of OSHA Informal Settlement Offer

IMPORTANT NOTICE

(READ THIS CAREFULLY)

The proposed penalties assessed for this inspection's citation(s) reflect reductions that have been granted for the size, good faith, and history of the employer.

ORIGINAL PENALTY	\$12,500.00
PROPOSED PENALTY	\$7,125.00

INFORMAL SETTLEMENT OFFER

An **additional 30% reduction in penalties** (rounded to the nearest dollar) will be granted if all citation items are abated and the **INFORMAL SETTLEMENT AGREEMENT** is signed.

However, full payment for the settlement amount must be paid to **OSHA** within 15 Federal working days (excluding weekends and Federal holidays) from the receipt of the citation. **In addition**, a detailed abatement plan **must** be submitted with the **INFORMAL SETTLEMENT AGREEMENT** for those items which have not been abated and for those requiring a longer abatement period.

REDUCED PENALTY AMOUNT FOR INFORMAL SETTLEMENT:	\$4,988.00
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Corrective Action, taken by you for each alleged violation should be submitted to this office on or about the abatement date(s) indicated on the Citation and Notification of Penalty and included with the submitted **INFORMAL SETTLEMENT AGREEMENT**. A work sheet has been provided to assist in submitting the required abatement information.

This is the only offer for penalty reductions that will be made.

Meetings may be held to discuss questions concerning citation/violation issues (other than the penalties) or dates and methods of abatement prior to the final contest date of the citation. Please contact the U.S. Department of Labor - OSHA at (419)259-7542 for an appointment.