

**Testimony of Peg Seminario, Director Safety and Health, AFL-CIO**  
**Before the Senate Committee on Health, Education, Labor and Pensions Hearing on “Putting**  
**Safety First: Creating a Culture of Compliance at Mines**  
**and Other Dangerous Workplaces”**  
**April 27, 2010**

Senator Harkin, Ranking Member Enzi, and other members of the committee, my name is Peg Seminario. I am Safety and Health Director for the AFL-CIO. I appreciate the opportunity to testify today on making the safety and health of workers a higher priority and improving protections on the job.

Tomorrow - April 28<sup>th</sup> - 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 39<sup>th</sup> anniversary of when the Occupational Safety and Health Act went into effect.

Nearly four decades after the job safety law was passed we find that the promise of safe jobs for American workers is far from being fulfilled. Without question, progress has been made in improving protections and in reducing job fatalities, injuries and illnesses. But too many workers remain at serious risk of injury, illness or death. In the past few weeks and months there have been a series of workplace tragedies that have saddened and outraged us all - the coal mine disaster at the Massey Energy Upper Big Branch mine in West Virginia that killed 29 miners, an explosion a few days earlier at the Tesoro Refinery in Washington State that killed seven workers, and the explosion at the Kleen Energy Plant in Connecticut in February that also claimed the lives of six workers. And last week there was a catastrophic explosion that destroyed the Transocean oil rig off the Louisiana coast. Seventeen workers are known to have been injured in the blast, and eleven workers are still missing, with little hope of finding them alive.

In 2008, 5,214 workers were killed on the job—an average of 14 workers every day—and an estimated 50,000 died from occupational diseases. More than 4.6 million work-related injuries were reported, this number understates the problem due to limitations in the data collection and underreporting. The true toll of job injuries is two to three times greater—about 9 to 14 million job injuries each year.

The vast majority of workplace deaths and injuries could be prevented if protective safety and health measures were followed. But the fact is that for too many employers, the safety of workers is secondary, taking a back seat to production. For some employers, there is a total and blatant disregard for workers. Worker safety requirements and other worker protections are totally ignored.

Today’s hearing is examining the safety practices and protections at mines and other dangerous workplaces. As you have heard from other witnesses, clearly there were serious problems at the Massey mine and in the Mine Safety and Health Administration’s (MSHA) oversight and enforcement that need to be examined and addressed. Action should be taken to improve mine safety regulations, enforcement and legislation, just as was done in 2006 following the series of disasters at Sago and other mines.

My testimony today will focus on the adequacy of protections under the Occupational Safety and Health Act, the law that governs safety and health for the majority of America's workers. This job safety and health law is out of date and too weak to provide incentives for compliance, to deter violations or to protect workers from retaliation.

The Congress should act to strengthen the OSH Act to hold employers responsible for protecting workers and accountable when they fail to do so, to provide government the necessary authority and enforcement power to get hazards corrected and deter future violations, and to give workers and unions stronger rights and protections to have a voice in safety and health on the job.

### **Employers Have a Legal Responsibility to Protect Workers. But 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 limited 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. In FY 2009, there were approximately 2,200 federal and state OSHA inspectors combined. . 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 was diminished, as the number of inspectors declined at the same time the workforce increased. The FY 2010 appropriations provided for an increase in OSHA's enforcement staff and an increase in funding for OSHA state plans, and returned federal enforcement staffing levels back to their FY 2001 levels. Even with this recent increase, the number of federal OSHA enforcement staff today is 450 fewer than it was in FY 1980, while the size of the workforce is 40 percent larger than it was at that time.

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 40%. For OSHA penalties to have the same value as they did in 1990, they would have to be increased to \$11,600 for a serious violation and to \$116,000 for a willful violation of the law.

The maximum civil penalties provided for under the OSH Act are rarely assessed. Indeed, just the opposite is the case. In FY 2009, the average penalty for a serious violation of the law was \$965 for federal OSHA and \$781 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 and South Carolina had the lowest. Both of these are state plan states. California amended its OSHA law in 2000 to increase penalties, with the maximum penalty for a serious violation in that state set at \$25,000 compared to \$7,000 maximum penalty under federal OSHA and the other state plans.

For violations that are “other” than serious, which also carry a statutory maximum under the OSH Act of \$7,000, the average federal OSHA penalty was just \$234. 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 2009, the average federal OSHA penalty for a willful violation was \$34,271, and the average willful penalty for state plans was \$20,270. For repeat violations, the average federal OSHA penalty was only \$3,871 and for state plans the average was \$1,757, a fraction of the statutory maximum penalty for such violations.

Even in cases of worker fatalities, OSHA enforcement is appallingly weak. In FY 2009, the average total penalty in a fatality case was just \$7,668 for federal and state OSHA plans combined, according to OSHA inspection data. The median penalty – which reflects the mid-point of the penalties assessed in fatality cases – is even lower, currently \$5,000 for both federal OSHA and the state OSHA plans. These data, both averages and median penalties, include enforcement cases that still are under contest, and it is likely that after settlements and final resolution these penalty levels will be much lower.

A state-by-state analysis of fatality investigations shows penalties in cases involving worker deaths vary widely from state to state. In FY 2009, Utah had the lowest median penalty for fatality investigations, with a paltry \$1,250 in penalties assessed, followed by Washington (\$1,600) and Kentucky (\$2,000). Minnesota had the highest median penalty (\$26,200), followed by New Hampshire (\$17,000) and Colorado (\$12,000).

So what kinds of cases are resulting in such low penalties when workers are killed? Many are for deaths from well recognized hazards – trench cave-ins, failure to lock-out dangerous equipment, and lack of machine guarding. They include:

A January 2009 trench cave-in in Freyburg, Ohio. The victim Andrew Keller was 22 years old. The company, Tumbusch Construction, was cited for 3 serious violations and penalized \$6,300. The penalties were reduced to \$4,500. Six months later, in June 2009, OSHA found similar violations at another jobsite of Tumbusch Construction. This time the company was cited for both serious and willful violations with a total of \$53,800 in penalties proposed. The company has contested the violations.

A July 2009 fatality case in Batesville, Texas, one worker was killed and two workers injured when natural gas was ignited during oxygen/acetylene cutting on a natural gas pipeline. The

employer – L&J Roustabout, Inc. was cited for 3 serious violations with \$3,000 in penalties. The case was settled for \$1,500.

A fatality in August 2009, in Lamar, South Carolina. Andrea Taylor, 28, an employee of Affordable Electric was killed on the job. South Carolina OSHA cited the company for 5 serious violations of electrical and lock-out standards with a proposed penalty of \$6,600. In an October 2009 settlement, 3 of the violations were dropped and the penalties reduced to \$1,400.

In August 2009, at SMC, Inc. in Odessa, Texas, a worker was caught in the shaft of milling machine and killed. The company was cited for 1 serious violation. The \$2,500 proposed penalty was reduced at settlement to \$2,000.

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 thousand 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, clearly not a deterrent for many companies. For example, in 2008, a Walmart store employee in Valley Stream, New York was trampled to death, when the company failed to provide for crowd control at a post-Thanksgiving sale. The company was cited for one serious violation and penalized \$7,000, the maximum amount for a serious violation.

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 adjusted by specified percentages for each of the other 3 factors (except in certain circumstances). For high gravity serious violations, the current OSHA penalty policy 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. These reductions vary by the size of employer, with smaller employers eligible for much larger reductions. 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.

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. Moreover, under the OSH Act there is no requirement for employers to abate violations while a challenge to a citation or penalty is pending. Thus to secure abatement of the hazards, OSHA has a great incentive to settle cases. The result of these settlements is generally a large reduction in proposed penalties – often 30 – 50 percent.

Last Friday OSHA announced two major enforcement initiatives – the Severe Violators Enforcement Program (SVEP) and a revamping of the formulas for assessing penalties for violations. The SVEP program calls for enhanced follow-up and enforcement for the most persistent and egregious violators who have a history of willful, repeated or failure to abate violations, particularly related to fatalities, major occupational safety and health hazards or underreporting of injuries or illnesses. The new penalty policy which will become effective over the next several months will result in an increase in the average penalty for serious violations from the current average of \$1,000 to an average of \$3,000 or \$4,000, according to OSHA.

These enhancements in OSHA's enforcement program are welcome. But they still do not change the fact that there are significant limitations in the OSH Act itself – including a maximum penalty of \$7,000 for a serious violation and no authority to require abatement of serious hazards while a contest of a citation is pending – that can only be addressed by changes in the law.

### **OSHA Criminal Penalties Are Weak and Do Not Hold Employers Accountable**

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 all the other federal safety and environmental laws, which have 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.

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. Unlike the OSH Act, these criminal penalties are not limited to cases involving a worker's death. But like the OSH Act for the first offense, the penalty is only a misdemeanor with up to one year in jail.

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 79 cases have been prosecuted under the Act, with defendants serving a total of 89 months in jail. During this time, there were more than 360,000 workplace fatalities according to National Safety Council and BLS data, about 20 percent of which were investigated by federal OSHA. In FY 2009, according to information provided by OSHA, there were 11 cases referred by DOL for possible criminal prosecution. The Department of Justice (DOJ) has declined to prosecute 2 of these cases; the other 9 are still under review by DOJ.

The bottom line is that there is no real accountability for employers or corporate officials who knowingly violate the law and put workers in danger

By comparison, according to EPA in FY 2009 there were 387 criminal enforcement cases initiated under federal environmental laws and 200 defendants charged resulting in 76 years of jail time and \$96 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 in 2005, 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. Instead, BP paid \$21 million in civil penalties in a settlement reached with OSHA. These civil penalties issued by OSHA were not sufficient to change BP's practices. In October, 2009, OSHA found that BP had failed to abate the hazardous conditions that caused the 2005 explosion. OSHA issued 270 notices of failure to abate previous hazards, cited the company for 439 new willful violations and proposed \$87.4 million in fines – the largest in OSHA's history. But under the OSH Act, OSHA has no authority to take criminal action against BP for these latest violations.

### **Worker and Union Rights Under the OSH Act are Limited and Protections Against Employer Retaliation Are Weak**

Workers and unions play an important role in improving conditions in the nation's workplaces. Workers have first-hand knowledge of conditions that create hazards and the changes that are needed to address them. The importance of worker and union participation in worksite safety and health programs and activities is widely recognized and recommended. But the rights workers have under the OSH Act to be involved are very limited. At present there is no federal OSHA mandatory safety and health program standard that requires that workers and their representatives be involved in efforts to identify and correct workplace hazards, although a number of state OSHA plans have standards that provide for worker and union participation. And many unions have secured these rights through their collective bargaining agreements.

In the OSHA enforcement process, workers and unions have the right to file a complaint, receive an inspection, and to participate in the OSHA inspection by exercising the right to walk around or talk privately to inspectors. But once the inspection is completed, workers' and unions' rights are quite limited. They can contest the abatement date, but not the proposed penalties or classification of violations, and only have very limited rights to object to settlements that are reached between OSHA and employers. The result often is weak enforcement actions and settlements by OSHA.

But many workers simply are in no position to exercise any safety and health rights, fearing employer retaliation if they raise safety and health concerns or even report injuries. While the OSH Act includes provisions under section 11(c) that prohibit employers from discriminating against workers for exercising their rights, the measures are so weak that in practice they provide little protection.

Section 11(c) requires that all discrimination complaints be filed within 30 days which gives little time for action. Cases can only be prosecuted by the Secretary of Labor, and must be brought in federal court. There are no provisions for preliminary reinstatement while employer challenges are pending.

The anti-discrimination provisions of the OSH Act were adopted in 1970. Since that time more than a two dozen other laws that provide anti-discrimination or whistleblower protections have been enacted, all of which provide stronger protections and more effective enforcement mechanisms. Many of these (16 laws) are enforced by OSHA under agreements with other agencies.

These include the Surface Transportation Assistance Act, the Federal Railroad Safety Act, the Toxic Substances Control Act and the Sarbanes-Oxley Act all of which provide for administrative process for an individual to seek review of the Secretary's decision, including the right of a complainant to seek review in the case where the Secretary finds no violation. A number of these statutes provide individuals the right to pursue the case on their own if the Secretary fails to act. And some of these statutes provide for preliminary reinstatement of the individual based on the initial investigation, so a worker is not adversely affected while the case and possible employer challenges are being resolved.

The OSHA whistleblower program is a small program with a small staff. In FY 2009, the program had 73 staff responsible for investigating complaints in the field. (For FY 2011, the President's Budget requests an additional 25 investigators). As noted above, in addition to administering section 11(c) of OSH Act, the office investigates discrimination complaints under 16 other statutes, under agreements with other agencies. As the GAO noted in a 2009 report on the whistleblower program, even though the number of statutes the office is responsible for enforcing has grown, the number staff has remained the same, making it more difficult for the office to meet its responsibilities.

According to data provided by OSHA, in FY 2009, federal OSHA received 1280 section 11(c) discrimination complaints, and completed action on 1173 cases. Only 15 of these cases were recommended for litigation and another 246 settled. Eight hundred thirty-four of these cases were dismissed by the agency, of which 104 were appealed by complainants to the OSHA National Office. Of these 10 were remanded back to the regions for rehearing.

Of the cases that are found meritorious by investigators, few are actually litigated by the Solicitor of Labor (SOL). In FY 2009, four of the cases recommended went to court. Since FY 1996, out of the 467 cases referred by OSHA to SOL, only 32 lawsuits in 11(c) cases were filed.

The outcomes of the cases brought under the other statutes, (901 cases in FY 2009), is similar. However, under most of these other statutes, unlike under section 11(c), the individual has the right to pursue the case on their own or to seek independent review of the Secretary's decision in an administrative process or in court. But under the current provisions of the OSH Act, an individual complainant has no rights independent of the Secretary, and cannot pursue the case independently or seek review outside the agency.

Workers who raise safety and health concerns or report injuries should be protected against employer retaliation. The best protection comes by having a collective bargaining agreement and union representation. But for those who are not represented, protection under the Occupational Safety and Health Act is critical. The Congress should strengthen the OSH Act to provide workers the same kind of rights and protection against discrimination that have been provided under the Surface Transportation Assistance Act, the Mine Safety and Health Act and other laws.

## **Congress Should Act to Strengthen the Job Safety Laws**

The recent disasters at the Massey Upper Big Branch coal mine, Tesoro refinery, Kleen Energy plant and Transocean oil rig have highlighted the serious dangers too many workers face on the job and the importance of strong safety and health protections. While each of these tragedies is still under investigation, we know that in these four cases there were catastrophic failures and as a result 42 men and women are dead, and another 11 men have likely perished. And we also know that these kinds of tragedies are not isolated or new, as evidenced by the Imperial Sugar Refinery fire in 2008 that killed 14 workers, the 2005 BP Texas City Refinery blast that killed 15, the dozens of miners killed in 2006 and 2007 at the Sago mine, the Crandall Canyon mine and other mines, and the daily toll of 14 workers who lose their lives on the job each day.

As a nation we must not only mourn their loss, but take action to prevent these tragedies from continuing to occur.

This Occupational Safety and Health Act is out of date and too weak to provide meaningful incentives for employers to address job hazards or to deter violations. The levels of penalties for serious violations, even in cases of worker deaths are little more than a slap on the wrist, and there is no accountability for employers who put workers in grave danger.

The Congress must act.

This committee should start by taking up the Protecting America's Workers Act (PAWA – S.1580) legislation to strengthen the Occupational Safety and Health Act. The bill was introduced by Senator Harry Reid on behalf of the late Senator Edward Kennedy last August with the co-sponsorship of many on this committee.

PAWA would address many of the core deficiencies in the current OSH Act. It would extend coverage to public sector and other workers who lack protection. It would increase civil and criminal penalties to provide more meaningful penalties for those who violate the law and provide a greater deterrent to prevent future violations that put workers in danger. And it would strengthen 11(c) anti-retaliation protections and expand workers', unions' and victims' rights in the enforcement process.

Specifically, on enforcement, the bill changes the law to require that employers abate serious hazards even if they contest citations, similar to the requirement in the Mine Safety and Health Act. Currently under the OSH Act, there is no requirement to correct violations until a contest is resolved, which can sometimes take years. The legislation would update the base penalties amounts in the OSH Act to adjust for inflationary increases since 1990 when the penalties were last raised. The bill would increase the penalties for serious violations to \$12,000 from \$7,000 and those for repeat and willful violations to \$120,000 from \$70,000, and provide for inflationary adjustments in the future.

To ensure that penalties for violations that result in worker deaths are more than a slap on the wrist, the bill sets higher penalties for such violations. For serious violations that result in a worker death a maximum penalty of \$50,000 and a minimum penalty of \$20,000 is provided, with a minimum of \$10,000 for smaller employers. For willful and repeat violations related to

worker deaths, a maximum penalty of \$250,000 and minimum of \$50,000 is provided, with a minimum of \$25,000 for small employers.

PAWA also properly strengthens the criminal provisions of the Occupational Safety and Health Act, which have not been modified since the Act's passage in 1970. The bill would make criminal violations a felony, instead of a misdemeanor as is now the case, making it more worthwhile for prosecutors to pursue these violations. PAWA also expands the criminal provisions to cases where violations cause serious injury to workers. And it expands the criminal provisions to apply to all responsible corporate officers, not just the top officer or corporation itself. These enhanced criminal provisions will provide a greater incentive for management officials to exercise management responsibility over job safety and health, and give OSHA and the Department of Justice the tools needed to prosecute corporations and officials who cause the injury or death of workers.

The legislation would strengthen the OSH Act's whistleblower provisions to protect workers from retaliation for raising job safety and health concerns, exercising their rights or reporting injuries, by bringing the law into conformity with other whistleblower laws. It extends the time period for filing complaints, provides an administrative process for review, and gives the complainant the right to proceed with a case if the Secretary fails to act and to seek an administrative review of the Secretary's decision. The legislation also codifies the right of a worker to refuse to perform work that poses a serious danger and provides for reinstatement of a worker who has been terminated, while legal challenges are pending.

The legislation also expands the rights of workers, unions and victims to be involved in the enforcement process. It gives workers and unions the right to contest proposed penalties and the characterization of violations, not just the period for abatement, and the right to seek review of settlements reached by employers and the government. Victims of workplace injuries and the family members and representatives of workers killed or incapacitated are given the right to receive copies of citations and documents, to meet with Secretary or representative of the Secretary, to be informed of contests and settlements and to have the opportunity to make a statement before the parties before any settlement is finalized.

This committee and the Congress cannot bring back the 29 miners who died in West Virginia, the seven workers who died in the Tesoro Refinery explosion in Washington, the six workers killed at the Kleen Energy plant in Connecticut, and the thousands of others who lost their lives on the job in just the last year. But the committee and the Congress have the responsibility and the duty to do everything in their power to prevent similar tragedies and unnecessary deaths from occurring in the future.

It has been four decades since the Congress enacted the Occupational Safety and Health Act. It's time for the Congress and the nation to make the protection of America's workers a high priority. It's time for the Congress to renew the commitment to safe jobs for American workers and to strengthen the job safety and health law by passing the Protecting America's Workers Act.

**Federal OSHA and State OSHA Plan Inspection/Enforcement Activity, FY 2009**

	<u>FEDERAL</u> <u>OSHA</u>	<u>STATE PLAN</u> <u>OSHA</u>
<b>Inspections</b>	39,057	61,310
Safety	33,256	48,221
Health	5,801	13,089
Complaints	6,675	8,612
Programmed	24,336	39,676
Construction	23,952	26,245
Maritime	338	47
Manufacturing	7,312	9,998
Other	7,455	25,020
<b>Employees Covered by Inspections</b>	1,332,583	3,011,179
<b>Average Case Hours/Inspection</b>		
Safety	18.5	16.1
Health	34.8	27.0
<b>Violations - Total</b>	87,491	129,289
Willful	395	171
Repeat	2,750	2,046
Serious	67,439	55,090
Unclassified	10	14
Other	16,697	71,456
FTA	200	512
<b>Penalties - Total (\$)</b>	94,981,842	59,778,046
Willful	13,537,230	3,466,130
Repeat	10,644,022	3,594,205
Serious	65,072,944	43,018,854
Unclassified	128,000	131,500
Other	3,907,648	7,390,658
FTA	1,691,998	2,176,699
<b>Average Penalty/Violation (\$)</b>	1,086	462
Willful	34,271	20,270
Repeat	3,871	1,757
Serious	965	781
Unclassified	12,800	9,393
Other	234	103
FTA	8,460	4,251
<b>Percent Inspections with Citations Contested</b>	7.1%	13.1%

Source: OSHA IMIS Inspection Reports, FY 2009

## State By State OSHA Fatality Investigations and Penalties, FY 2009

State	Number of OSHA Fatality Investigations Conducted, FY 2009 <sup>1</sup>	Total Penalties <sup>1</sup> (\$)	Average Total Penalty Per Investigation (\$)	Median Initial Penalty <sup>2</sup> (\$)	Median Current Penalty <sup>2</sup> (\$)	State or Federal Program <sup>3</sup>
Alabama	20	298,010	14,901	12,250	6,900	FEDERAL
Alaska	5	21,900	4,380	4,200	2,975	STATE
Arizona	17	164,995	9,706	16,500	10,500	STATE
Arkansas	15	166,675	11,112	5,500	5,500	FEDERAL
California	160	1,640,385	10,253	11,655	9,260	STATE
Colorado	11	278,400	25,309	15,000	12,000	FEDERAL
Connecticut	8	42,475	5,309	10,000	6,300	FEDERAL
Delaware	3	42,040	14,013	4,000	2,520	FEDERAL
Florida	81	643,166	7,940	7,500	6,400	FEDERAL
Georgia	43	376,205	8,749	11,300	7,000	FEDERAL
Hawaii	6	28,625	4,771	2,938	2,938	STATE
Idaho	5	54,350	10,870	7,500	7,500	FEDERAL
Illinois	52	129,315	2,487	4,625	4,500	FEDERAL
Indiana	42	172,913	4,117	6,000	5,250	STATE
Iowa	21	246,900	11,757	5,175	3,000	STATE
Kansas	12	178,550	14,879	7,400	7,000	FEDERAL
Kentucky	31	125,275	4,041	3,250	2,000	STATE
Louisiana	48	99,215	2,067	3,625	2,750	FEDERAL
Maine	6	14,160	2,360	3,750	2,500	FEDERAL
Maryland	20	90,676	4,534	6,763	4,073	STATE

## State By State OSHA Fatality Investigations and Penalties, FY 2009

Massachusetts	23	148,200	6,444	11,750	7,000	FEDERAL
Michigan	28	142,090	5,075	6,300	5,400	STATE
Minnesota	14	260,600	18,614	26,600	26,200	STATE
Mississippi	14	106,360	7,597	10,150	6,780	FEDERAL
Missouri	20	117,125	5,856	8,838	5,250	FEDERAL
Montana	5	13,000	2,600	2,500	2,500	FEDERAL
Nebraska	16	312,737	19,546	12,550	7,875	FEDERAL
Nevada	11	93,100	8,464	9,100	5,950	STATE
New Hampshire	3	3,500	1,167	17,000	17,000	FEDERAL
New Jersey	39	201,567	5,168	3,000	3,000	FEDERAL
New Mexico	6	23,200	3,867	7,800	7,800	STATE
New York	53	625,632	11,804	5,400	4,800	FEDERAL
North Carolina	54	171,245	3,171	4,650	4,063	STATE
North Dakota	4	27,962	6,991	5,825	5,063	FEDERAL
Ohio	39	134,895	3,459	7,000	5,175	FEDERAL
Oklahoma	25	281,150	11,246	10,000	6,000	FEDERAL
Oregon	25	79,250	3,170	5,000	5,000	STATE
Pennsylvania	43	262,315	6,100	5,850	4,888	FEDERAL
Rhode Island	4	7,900	1,975	11,025	10,075	FEDERAL
South Carolina	17	13,745	809	3,000	2,375	STATE
South Dakota	3	7,605	2,535	4,200	2,730	FEDERAL
Tennessee	42	195,920	4,665	5,400	5,400	STATE
Texas	167	1,562,851	9,358	6,000	5,000	FEDERAL

## State By State OSHA Fatality Investigations and Penalties, FY 2009

Utah	14	21,600	1,543	2,750	1,250	STATE
Vermont	2	5,250	2,625	5,250	5,250	STATE
Virginia	36	678,652	18,851	14,000	10,000	STATE
Washington	32	77,625	2,426	1,600	1,600	STATE
West Virginia	10	242,880	24,288	5,400	4,450	FEDERAL
Wisconsin	23	110,045	4,785	5,550	3,820	FEDERAL
Wyoming	8	33,156	4,145	4,625	4,250	STATE
<b>National Median State Plan States</b>				<b>6,338</b>	<b>5,000</b>	
<b>National Median Federal States</b>				<b>6,750</b>	<b>5,000</b>	
<b>Total or National Average<sup>4</sup></b>	<b>1,450</b>	<b>11,118,267</b>	<b>7,668</b>			

<sup>1</sup>OSHA IMIS Fatality Inspection Reports, FY 2009. Report was issued on January 7, 2010.

<sup>2</sup>Median initial and median current penalties on FY 2009 fatality investigations provided by OSHA on April 14, 2010<sup>1</sup>

<sup>3</sup>Under the OSHAct, states may operate their own OSHA programs. Connecticut, Illinois, 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.

<sup>4</sup>National average is per fatality investigation for all federal OSHA and state OSHA plan states combined. Federal OSHA average is \$8,152 per fatality investigation; state plan OSHA states average is \$7,032 per fatality investigation.