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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

EMPLOYERS WITH REPORTED FATALITIES WERE NOT ALWAYS PROPERLY IDENTIFIED AND INSPECTED UNDER OSHA'S ENHANCED ENFORCEMENT PROGRAM

Date: March 31, 2009
Report Number: 02-09-203-10-105

U.S. Department of Labor
Office of Inspector General
Office of Audit

BRIEFLY…

Highlights of Report Number 02-09-203-10-105, to the Deputy Assistant Secretary for Occupational Safety and Health

WHY READ THE REPORT

The Office of Inspector General (OIG) conducted a performance audit of the Enhanced Enforcement Program (EEP) of the Occupational Safety and Health Administration (OSHA). In 2003, OSHA established EEP for employers indifferent to their obligations under the Occupational Safety and Health Act of 1970 thereby placing their employees at risk. In 2008, OSHA revised the EEP criteria to focus the program on employers with qualifying OSHA history, i.e., prior fatality and similar in-kind violations, which effectively reduced the number of EEP qualifying cases.

OSHA's mission is "… to promote the safety and health of America's working men and women…." With work-related fatalities averaging 5,680 annually, it is essential that OSHA target its limited resources to inspect workplaces with the highest risk of hazardous conditions. If fully implemented, EEP has the potential for achieving this purpose as it was designed to identify high-risk employers and target their worksites with increased enforcement attention.

WHY OIG CONDUCTED THE AUDIT

Our audit objectives were to analyze Federal inspections from October 1, 2003, through March 31, 2008, and answer the following:

1. Were establishments properly identified as EEP cases and were inspections conducted in accordance with OSHA's EEP Directives?

2. Does OSHA's January 2008 revised EEP Directive have an adverse impact on the EEP and its ability to protect the American worker?

The audit focused on EEP designation, enhanced follow-up inspections, inspections of related worksites, enhanced settlement provisions, and National Office coordination activities.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

http://www.oig.dol.gov/public/reports/oa/2009/02-09-203-10-105.pdf

March 2009

EMPLOYERS WITH REPORTED FATALITIES WERE NOT ALWAYS PROPERLY IDENTIFIED AND INSPECTED UNDER OSHA'S ENHANCED ENFORCEMENT PROGRAM

WHAT OIG FOUND

For EEP qualifying employers with fatalities, OSHA did not always properly identify and conduct cases according to EEP requirements. For 97 percent of sampled EEP qualifying cases, OSHA did not comply with EEP requirements for at least one of the following: designating EEP cases, inspections of related worksites, enhanced follow-up inspections, and enhanced settlement provisions. Moreover, OSHA designated 29 EEP cases, but did not take any of the appropriate enhanced enforcement actions. Sixteen of the 29 employers subsequently had 20 fatalities, of which 14 fatalities were in cases that shared similar violations as the EEP qualifying cases.

Furthermore, the qualifying history component of the 2008 revised directive reduced the number of cases; delayed designation; and increased the risk that employers with multiple EEP qualifying and/or fatality cases may not be properly designated due to the lack of quality history data. As a result, fewer employers may be subjected to EEP enhanced enforcement actions and may incur more fatalities before designation occurs.

OSHA has not placed the appropriate management emphasis and resources on this program to ensure indifferent employers were properly designated for EEP and subject to enhanced enforcement actions. By more effectively utilizing the EEP program, OSHA could potentially reduce the risk of future injuries, illnesses, and fatalities. While we cannot conclude that enhanced enforcement would prevent subsequent fatalities, full and proper application of EEP procedures may have deterred and abated workplace hazards at the worksites of 45 employers where 58 subsequent fatalities occurred.

WHAT OIG RECOMMENDED

The OIG made six recommendations to the Deputy Assistant Secretary for Occupational Safety and Health. Foremost among our recommendations were to form a task force to make recommendations to improve program efficiency and effectiveness, revise the EEP directive, and provide formal training.

In his response to the draft report, the Deputy Assistant Secretary generally agreed with the recommendations and believed they would allow OSHA to make important improvements to the program.

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U.S. Department of Labor

Office of Inspector General
Washington, DC 20210

March 31, 2009

Assistant Inspector General's Report

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On September 30, 2003, the Occupational Safety and Health Administration (OSHA) established the Enhanced Enforcement Program (EEP) for employers indifferent to their obligations under the Occupational Safety and Health Act of 1970 (OSH Act) thereby placing their employees at risk. These employers were identified from any type of inspection where cited violations were: serious and high gravity violations related to fatalities; willful and/or repeat violations; or failure-to-abate citations where the employer did not address previously cited hazards. Once identified, EEP cases receive additional enforcement efforts such as enhanced follow-up inspections, inspections of other workplaces of the employer, and more stringent settlement terms.

After four years of implementation, OSHA revised the program and issued OSHA Enforcement and Complaint Directive (CPL) 02-00-145, *Enhanced Enforcement Program (EEP)*, effective on January 1, 2008. Under the revised program, the purpose of EEP remained the same, but the targeting criteria incorporated a key component of qualifying OSHA history, i.e., prior fatality and similar in-kind violations, which effectively reduced the number of EEP qualifying cases.

OSHA's mission is "… to promote the safety and health of America's working men and women…." The Bureau of Labor Statistics (BLS) continues to report significant levels of work-related fatalities, averaging 5,680 for the last 5 years.[1] (OSHA stated that less than 20 percent of BLS reported fatalities occurred in Federal OSHA covered workplaces.) Therefore, it is essential that OSHA target its limited resources to inspect workplaces with the highest risk of hazardous conditions that have greater potential to cause injuries and fatalities. If fully implemented, EEP has the potential for achieving this purpose as it was designed to identify high-risk employers and target their worksites with increased enforcement attention.

[1] U.S. Department of Labor, BLS, National Census of Fatal Occupational Injuries, August 20, 2008

The objectives of this audit were to answer the following questions:

1. Were establishments properly identified as EEP cases and were inspections conducted in accordance with OSHA's EEP Directives?

2. Does OSHA's January 2008 revised EEP Directive have an adverse impact on the EEP and its ability to protect the American worker?

The scope of our audit was Federal inspections conducted between October 1, 2003, and March 31, 2008 for the Atlanta, Chicago, and Dallas regions. We sampled 325 inspections – 282 EEP qualifying inspections and 43 inspections that did not qualify under EEP. The samples included 75 employers with multiple EEP qualifying and/or fatality cases. Our analysis of OSHA's 2008 revised criteria covered the period January 1, 2008, through November 19, 2008.

We reviewed inspection case files, OSHA's Integrated Management Information System (IMIS) online data and EEP log entries. We evaluated OSHA internal controls pertaining to the classification and management of EEP cases, and assessed the reliability of inspection data maintained in IMIS. We reviewed OSHA policies and procedures; interviewed managers and staff at National, Regional and Area Offices; reviewed reports on IMIS controls; conducted tests of IMIS data accuracy; and reviewed internal monitoring reports.

We conducted our audit in accordance with generally accepted government auditing standards for performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a sufficient basis for our findings and conclusions based on our audit objectives. Our objectives, scope, methodology, and criteria are detailed in Appendix B.

RESULTS IN BRIEF

For EEP qualifying employers with fatalities, OSHA did not always properly identify and conduct cases according to EEP requirements. For 97 percent of sampled EEP qualifying cases, OSHA did not comply with EEP requirements for at least one of the following: designating EEP cases, inspections of related worksites, enhanced follow-up inspections, and enhanced settlement provisions. Moreover, OSHA designated 29 EEP cases, but did not take any of the appropriate enhanced enforcement actions. Sixteen of the 29 employers subsequently had 20 fatalities, of which 14 fatalities were in cases that shared similar violations.

Furthermore, the qualifying history component of the 2008 revised directive reduced the number of cases; delayed designation; and increased the risk that employers with multiple EEP qualifying and/or fatality cases may not be properly designated due to the lack of quality history data. As a result, fewer employers may be subjected to EEP enhanced enforcement actions and may incur more fatalities before designation occurs.

OSHA has not placed the appropriate management emphasis and resources on this program to ensure indifferent employers were properly designated for EEP and subject to enhanced enforcement actions. By more effectively utilizing the EEP program, OSHA could potentially reduce the risk of future injuries, illnesses, and fatalities. While we cannot conclude that enhanced enforcement would prevent subsequent fatalities, full and proper application of EEP procedures may have deterred and abated workplace hazards at the worksites of 45 employers where 58 subsequent fatalities occurred.

In his response to the draft report, the Deputy Assistant Secretary expressed concerns over the report conclusion that the program lacked appropriate management emphasis. He stated that OSHA EEP was a relatively new program, developed to supplement enforcement activity to focus on "recalcitrant employers," and that the Agency was aware that the program had shortcomings which it continues to address. He also expressed concern that the inclusion of subsequent fatalities in Findings 1 through 4 may lead to an inference that the lack of a workplace inspection resulted in a fatality, an inference that OSHA finds to be both misleading and unfair.

With regard to the specific report recommendations, OSHA generally agreed with the recommendations and believed they would allow OSHA to make important improvements to the program. OSHA's response to the draft report is included in its entirety in Appendix E.

RESULTS AND FINDINGS

Objective 1 – Were Establishments Properly Identified as EEP Cases and Were Inspections Conducted in Accordance With OSHA's EEP Directives?

OSHA did not always properly identify and conduct EEP inspections of qualifying employers with fatalities. For 97 percent of sampled EEP qualifying cases, OSHA did not comply with EEP requirements for at least one of the following: designating EEP cases, inspections of related worksites, enhanced follow-up inspections, and enhanced settlement provisions. Additionally, no specific criterion existed for the issuance of National Office EEP-Alert Memoranda on multi-state employers. The EEP-Alert Memoranda were issued when the National Office deemed it necessary to notify Regional Administrators and State Designees of the activity of a particular employer with many worksites across regions and/or states. This occurred because OSHA did not place the appropriate management emphasis on compliance, commit the necessary resources, and provide clear policy guidance. Full and proper application of EEP procedures may have deterred and abated workplace hazards at the worksites of 45 employers where 58 subsequent fatalities occurred.[2] See Exhibit 1 for details.

[2] The 58 subsequent fatalities may be presented in one or more findings as the cases had overlapping issues.

Finding 1 – OSHA Did Not Properly Designate 53 Percent of Sampled EEP Qualifying Cases and 24 Employers had 33 Subsequent Fatalities

The EEP program lacked management emphasis as OSHA management did not ensure indifferent employers were properly designated for the program. Specifically, OSHA did not properly designate 149 of 282 (53 percent) sampled EEP qualifying cases. This occurred due to Area Office staff misunderstanding EEP requirements and coding errors in OSHA's IMIS. According to the directive, any inspection meeting EEP criteria when citations were issued is considered an enhanced enforcement case. As a result, cases that were not properly designated were not subject to the full range of EEP actions, which may have provided the necessary deterrent and abatement to address violations at worksites of employers where subsequent fatalities occurred.

The 2003 criteria, *Priority Enforcement Case*,[3] and 2008 criteria, Section XI, *Criteria for an Enhanced Enforcement Case*,[4] define an EEP qualifying case as "…any inspection that meets one or more of the following criteria at the time the citation is issued."

2003 Criteria	2008 Criteria
A Fatality inspection in which OSHA finds a high gravity serious (or willful, or repeat) violation related to the death.	Fatality inspection with one or more willful or repeated (serious any gravity) violations related to the death.
(No similar provision in 2003.)	Fatality inspection with one or more serious (any gravity) violations related to the death; and the employer has an OSHA history of similar in-kind violations (serious, willful, or repeat) within the last three years.
(No similar provision in 2003.)	Fatality inspection with one or more serious violations related to the death; and the employer had another fatality within the last three years.
Inspection with three or more high gravity, willful and/or repeat violations.	Inspection with three or more willful and/or repeat violations (any gravity); and the employer has an OSHA history of similar in-kind violations within the last three years.
Inspection that results in two failure-to-abate notices where the underlying violations were classified as high gravity serious.	Inspection that results in one or more failure-to-abate notices where the underlying violations were classified as serious, any gravity.
(No similar provision in 2003.)	Any egregious case

Designation as EEP is the first step, accomplished by adding a code into OSHA's IMIS and an entry in the EEP log. The EEP log is used by OSHA as a management tool to coordinate National EEP activities. However, OSHA does not have controls to ensure

[3] Memorandum to Regional Administrators from R. Davis Layne, Deputy Assistant Secretary, Subject: *Interim Implementation of OSHA's Enhanced Enforcement Program (EEP)*, dated September 30, 2003
[4] OSHA Instruction CPL 02-00-145, *Enhanced Enforcement Program (EEP)*, effective January 1, 2008

EEP cases are designated in both IMIS and the EEP log. Specifically, 149 sampled EEP qualifying cases were not properly designated:

- 104 were not designated in either IMIS or the EEP log.
- 34 were in IMIS, but were missing from the EEP log.
- 11 were in the EEP log, but were missing from IMIS.

Several Regional and Area Office staff indicated that there was no formal training on EEP, which led to misunderstandings of its requirements. For example, one area office missed designating 11 of 12 sampled EEP qualifying cases. The Area Office Director stated staff mistakenly believed that EEP cases were not designated until the final order of settlement. As a result, several cases went undesignated as the office was focused on current inspections when final orders were received, which occurred on average 6 months after the case was contested. Other cases incorrectly went undesignated because staff expected a case to be contested when it was not. The Area Office Director claimed he instructed the staff on proper designation.

Furthermore, OSHA does not have overall controls to ensure EEP cases are properly coded in IMIS and entered in the EEP log. Some Regional Offices instituted localized controls with some success. For example, Chicago used an IMIS coding table and correctly designated 73 percent of the region's sampled EEP qualifying cases in IMIS.

The effect of not designating an EEP case is compounded when the case involved an employer with multiple EEP qualifying and/or fatality cases as EEP actions may have provided the necessary deterrent and abatement to address violations and possibly prevent subsequent fatalities. Of 75 employers with multiple EEP qualifying and/or fatality cases, 51 employers (68 percent) had at least one case that was not properly designated as EEP, and 24 of the employers (32 percent) had 33 fatalities subsequent to the case that was not properly designated. For the 24 employers with subsequent fatalities, 3 (13 percent) did not have proper follow up and 17 (71 percent) did not have proper consideration of related worksite inspections.

An example of the effect of not designating the first EEP qualifying case was the Tennessee Valley Authority (TVA). TVA had two fatality inspections that were not properly designated in IMIS and the EEP log. The fatalities occurred in different locations and shared similar violations. OSHA rated TVA's safety and health plan as less than average, yet it did not properly perform follow up or consider related worksite inspections. If the first case had been properly designated, the resulting EEP actions may have deterred and abated hazards at a TVA worksite where a subsequent fatality occurred.

Finding 2 – OSHA Generally Did Not Inspect Related Worksites for Sampled EEP Qualifying Cases and 34 Employers had 47 Subsequent Fatalities at Other Worksites

OSHA generally did not inspect related worksites when company-wide safety and health issues indicated workers at other employer worksites were at risk for serious injury or death. OSHA did not properly consider related worksite inspections for 226 of 282 (80 percent) sampled EEP qualifying inspections. In our sampled cases, 34 employers had 47 additional fatalities at related worksites. Inspections may have deterred and abated hazards at these worksites. Under EEP directives, related worksite inspections were to be used to determine whether compliance problems in the EEP case were indicative of a company-wide problem. OSHA either did not commit the necessary resources or lacked information on other worksites needed to perform the inspections. If used proactively, alternate worksite inspections could be effective in protecting employees.

Related worksite inspections can include both comprehensive inspections under OSHA's Site Specific Targeting (SST) program and the less comprehensive, alternate worksite inspections which focus mainly on hazards related to those identified in the EEP case.

- SST Program Inspections - Under the 2003 EEP criteria, section B.1, "… any related establishments of the same employer that are on that year's SST secondary list will be moved to the primary list." Under the 2008 criteria, section XII.B.1 and XII.B.2, "All related establishments of the same employer that are on the current year's SST primary or secondary lists … will be moved … to the current inspection cycle …" Area Offices are required to complete all SST inspections in the current inspection cycle. Therefore, a comprehensive SST inspection would be conducted under the 2008 EEP criteria, where as it only may have been conducted under the 2003 EEP criteria if the Area Office opened the specific cycle with the EEP employer's related establishments.[5]

- Alternate Worksite Inspections – The criteria was substantially similar for 2003 (section B.2 and B.3) as it was for 2008 (section XII.B.3 and XII.B.4). Other related sites of the same employer (those not on the current SST inspection lists) may be inspected if the Regional Administrator determines that there are reasonable grounds to believe problems similar to those found in the enhanced enforcement case may exist at the other worksites. OSHA must first determine whether compliance problems and issues found during the initial EEP case are localized or are likely to exist at other, similar facilities owned and operated by that employer. Alternate worksite inspections may then be conducted.

[5] SST program groups the planned inspections by primary and secondary lists, and further by cycles (groups of specific worksites). When the Area Office opens a cycle, it is called the current cycle.

Site Specific Targeting Program Inspections

Only 40 sampled EEP qualifying employers were also targeted under SST, the program which focuses on industries and employers with high rates of injuries and illnesses. EEP requirements (2003 criteria, section B.1, and 2008 criteria, section XII.B.2) state all related establishments of the EEP employer on the current year's SST lists will be identified and moved up in priority for inspection. Eight EEP qualifying employers were concurrently on SST lists, but did not receive the required comprehensive SST safety inspection. Two employers without SST inspections had fatalities before and after they were on SST lists.

- Central Industries had two fatality cases which were not properly designated as EEP. OSHA rated the company's safety and health plan as "inadequate," but did not consider related worksite inspections. Central Industries was on the secondary SST lists for 2006 and 2007, but OSHA did not perform the required comprehensive SST inspection. A comprehensive SST inspection after the first fatality may have deterred and abated hazards at the same Central Industries worksite where a subsequent fatality occurred.

- Saw Pipes and its related company Jindal Enterprises had three fatalities that all occurred in 2007 at the same worksite. The first and second cases were properly designated as EEP while the third case was not. OSHA rated Saw Pipes' safety and health plan as inadequate, but did not consider related worksite inspections. Jindal Enterprises was on the SST secondary list for 2006 and 2007, but no SST inspection was performed. A comprehensive SST inspection after the first fatality may have deterred and abated hazards at the same worksite where two subsequent fatalities occurred. OSHA indicated there were jurisdictional issues between two area offices – Saw Pipes and Jindal Enterprises were on the Houston North SST listings, but the companies are located in Houston South's jurisdiction.

Alternate Worksite Inspections (Non-SST Employers)

For employers not on SST lists, the EEP directive (2003, section B.2 and B.3, and 2008, section XII.B.3 and XII.B.4) allows other related worksites inspections if there are reasonable grounds to believe problems similar to those found in the EEP case may exist at other worksites. Determining reasonable grounds includes an assessment of the employer's safety and health plan. For 80 percent of EEP cases with less than average or unrated employer safety and health plans, there was no documentation that OSHA determined if there were reasonable grounds to inspect other related worksites. Three examples where alternate worksite inspections may have identified the violations causing subsequent fatalities are presented below.

- Patterson-UTI Drilling had 12 fatalities under 11 EEP qualifying cases, which all shared similar violations. However, OSHA did not properly consider alternate worksite inspections for 9 of 11 cases. OSHA generally rated the employer's

safety and health plan as less than average. For the fifth EEP qualifying case, OSHA conducted four alternate worksite inspections in the same area office that the EEP qualifying case occurred. OSHA did not consider alternate worksites outside that area, and Patterson-UTI Drilling had six subsequent fatalities that occurred in three other area offices.

- TK Stanley had three EEP qualifying cases where the second and third case shared similar violations. However, OSHA did not properly consider alternate worksite inspections. OSHA rated the employer's safety and health plan as less than average for the second case and average for the third case, but did not provide documentation that it rated the plan on the first case.

- Haines Industries had two EEP qualifying cases, which occurred in different locations and shared similar violations. Employees at both worksites were struck by and killed by a "goat" truck. However, OSHA did not properly consider alternate worksite inspections. OSHA rated the employer's safety and health plan as "nonexistent" on the first case and "inadequate" on the second case.

If used proactively, alternate worksite inspections could be effective in protecting employees. For one sampled employer, OSHA considered related worksite inspections before the original case qualified as EEP. In this case, Imperial Sugar received high profile media attention for a dust explosion with 13 fatalities. Before OSHA issued citations on the first case, it performed an alternate worksite inspection and posted that worksite with an imminent danger notice, effectively shutting down plant operations. For the related worksite inspection, the company was cited with 49 willful violations that were similar in-kind to the violations in the initial fatality case.

Finding 3 – OSHA Did Not Conduct Proper Follow Up on 52 Percent of Sampled EEP Qualifying Cases and 5 Subsequent Fatalities Occurred at the Same Worksite

OSHA did not comply with requirements for EEP follow-up inspections to ensure abatement and determine whether employers were committing similar violations. Specifically, OSHA did not conduct proper follow up for 146 of 282 (52 percent) sampled EEP qualifying inspections, or provide a compelling reason to not perform the follow-up inspections. Of the sampled employers with multiple EEP qualifying and/or fatality cases, 54 did not have proper EEP follow up, and 5 of the 54 employers had subsequent fatalities at the same worksite. EEP requirements (section A for 2003 and section XII.A for 2008) state that a follow-up inspection must be conducted to assess not only whether the cited violation(s) were abated but also whether the employer was committing similar violations. However, this EEP action was not done for one or more of the following reasons: follow ups were low priority assignments; the EEP case was designated too late so follow up could not be conducted; lack of tracking contested cases so that follow up could be done after settlement; and misunderstanding EEP requirements.

To illustrate, Saw Pipes had two EEP qualifying fatality cases; the first was properly designated while the latter was not. Both cases occurred at the same worksite with similar violations of lockout/tagout standards, with the second case occurring three months after the first case qualified as EEP. OSHA did not perform follow up on either case and did not provide a compelling reason to not perform follow up. Manual records indicated abatement and the cases were approved for closure. However, EEP directives state "… a follow-up inspection must be conducted even if verification of abatement of the cited violations has been received."

Finding 4 – OSHA Generally Did Not Utilize Enhanced Settlement Provisions Effectively for Sampled EEP Qualifying Cases and 45 Employers had 32 Subsequent Fatalities

OSHA generally did not utilize enhanced settlement provisions to maximize the deterrent value of EEP actions and ensure future compliance with OSH Act. Settlement agreement can occur through informal negotiations directly with OSHA, or as the result of formal negotiations during contest and case review/adjudication. Both the 2003 (section D) and 2008 (section XII.D) criteria state:

> Most settlement agreements require the employer to abate all violations and pay a penalty. In some settlements, however, particularly those in egregious cases and other significant enforcement actions, OSHA has insisted that employers take steps to address systemic compliance problems or to provide OSHA with information that will enable it to take follow-up action.

However, we found enhanced settlement provisions were not included in 153 of 188 (81 percent) EEP qualifying cases with settlement agreements. Under EEP requirements, enhanced provisions were to be used for all settlements with an EEP employer. Examples of enhanced settlement provisions included hiring a safety and health consultant, applying the agreement company-wide, and requiring employers to list other job worksites. However, OSHA management did not incorporate these provisions in its informal settlement template, which could have encouraged the consistent use of the provisions in final agreements.

Of the sampled employers with multiple EEP qualifying and/or fatality cases, 60 employers had a total of 108 settlement agreements, and enhanced provisions were not included in 89 of those agreements. For 45 of the 60 employers, none of their settlement agreements contained enhanced provisions, and the employers had 32 fatalities subsequent to the settlement agreement dates. For example, Globe Metallurgical had two EEP qualifying fatality cases in different worksites that shared similar violations. The use of enhanced provisions such as a safety consultant or company-wide training may have provided the necessary deterrent and abatement for the employer to address violations resulting in the subsequent fatality.

Seven employers had settlement agreements with enhanced provisions, but the provisions generally were not effectively utilized. The provisions were not of sufficient duration, or were written as worksite specific and subsequent fatalities occurred at alternate worksites. For example, Patterson-UTI had 11 EEP qualifying fatality cases with similar violations and settlement agreements, but only 2 used enhanced settlement provisions. The provisions used did not have company-wide implications. One was site-specific and the other was limited to Oklahoma drilling worksites. However, Patterson-UTI had drilling operations in two other states which incurred six subsequent fatalities.

Finding 5 – OSHA Has No Specific Criteria for Issuing National Office EEP-Alert Memorandum on Employers with Worksites Across Regions and/or States

EEP-Alert Memoranda were issued when the National Office deemed it necessary to notify Regional Administrators and State Designees of the activity of a particular employer with many worksites across regions and/or states. However, OSHA has no specific criteria on when to issue an EEP-Alert Memorandum and, nationally, has only issued memoranda on nine employers. Our sample contained 22 employers where multiple EEP qualifying and/or fatality cases (totaling 87 fatalities) occurred in more than one region. EEP-Alert Memoranda were issued on only 5 of the employers and only after the majority of the fatalities had occurred.

Employer Name	Fatalities in Sampled Cases	Fatalities Prior to Issuance	Date Issued
BP Products of North America	18	17	July 11, 2005
Patterson-UTI Energy, Inc.	12	11	August 9, 2006
Davis H. Elliot Company, Inc.	2	2	August 24, 2006
Par Electrical Contractors, Inc.	2	2	August 30, 2007
Fru-Con Construction Corp	5	5	February 29, 2008

According to OSHA officials, EEP-Alert Memoranda were issued on “gut reaction” based on information provided to the National Office. However, that information was incomplete because EEP cases were not properly designated in IMIS and EEP log. (See Finding 1.)

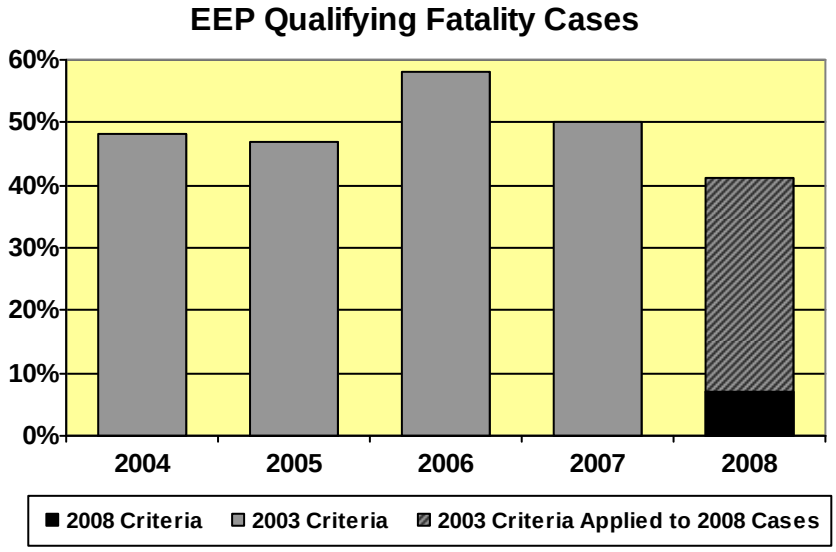
Objective 2 – Does OSHA’s January 2008 Revised EEP Directive Have an Adverse Impact on the EEP and Its Ability to Protect the American Worker?

With the 2008 revised EEP directive, OSHA still did not focus EEP enforcement actions on qualifying employers with company-wide safety and health issues to protect workers from subsequent injuries or fatalities. Over the last five years, the purpose of EEP remained the same, to target employers who are indifferent to their OSH Act obligations. However, the revised directive incorporated a component of qualifying history (i.e., prior fatality and similar in-kind violations) which effectively reduced the number of EEP qualifying cases; delayed designation; and increased the risk that employers with multiple EEP qualifying and/or fatality cases may not be properly designated due to the lack of quality history data. Furthermore, OSHA continued to not properly designate and conduct EEP cases. As a result, fewer employers may be

subjected to EEP enhanced enforcement actions and may incur more fatalities before designation occurs.

Finding 6 – Less EEP Qualifying Cases Means Fewer Employers Subject to EEP Activities and Greater Risk for Subsequent Fatalities

Using the 2008 criteria, the number of EEP qualifying cases was reduced significantly. In 2008, OSHA designated 7 percent of all fatality cases for enhanced enforcement, whereas OSHA designated an average of 50 percent between 2003 and 2007. Analysis of 2008 fatalities revealed 260 cases would not have been designated under the 2008 criteria, but would have qualified under the original EEP criteria. Because the fatalities occurred in 2008, 260 employers would not be subject to EEP activities and their employees may be at risk for injury or death before company-wide safety and health issues are addressed through OSHA enforcement.



Finding 7– Issues in Determining Employer History Delayed Designation and Increased Risk That Employers May Not Be Properly Designated

Under section XI, *Criteria for an Enhanced Enforcement Case*, the revised directive incorporated a key component of qualifying history of violations with OSHA (including history with the State Plans). History determination is a manual search process, which can be affected by final order status of prior inspections, differences in standards cited for state cases, and lack of quality data for history searches due to employer-related companies and name variations. Issues in determining employer history delayed designation and increased the risk that employers with multiple EEP qualifying and/or fatality cases may not be properly designated.

Final Order Status of Prior Inspections

History searches were complicated by the status of prior cases. Similar in-kind violations cannot be determined until there is a final order of settlement, which takes on average 6 months from the contest date. If violations are deleted, vacated or changed to other than serious, they are not relevant for determining similar in-kind history under EEP 2008 criteria.

Differences in Standards Cited For State Cases

Another challenge of history searches is determining similar in-kind violations when using State inspection data. There were 26 states and territories which operate their own safety and health programs under an OSHA approved state plan. Although these state-plan states enter violations into the IMIS, the states' coding may be different from OSHA's Federal standards. OSHA does not have a crosswalk between state and Federal codes to assist in determining similar in-kind history. Of the 26 state-plan states, 5 states use different coding for most, if not all, of their safety and health standards: California, Washington, Michigan, Hawaii, and Oregon. Another 17 states have a few unique codes because Federal equivalent codes do not exist. Four states use coding identical to Federal OSHA.

Lack of Quality Data

OSHA officials indicated that history searches are subject to errors due to the lack of quality information on the employer in IMIS. Employers could have several different names in IMIS due to spelling errors; abbreviations; punctuation; name variations; and different divisions, operating units or physical locale. History searches may also omit events of related companies such as parent and subsidiary, because the names are not linked in IMIS. OSHA officials stated that they plan to address naming issues in the new OSHA Information System, which is currently under development with a roll-out date in the fall of 2010.

Examples of spelling errors, name variations, and related companies are presented below.

- Millennium Forming had two fatality cases and the name was misspelled as "Millenium Forming" on the second case. For the second case, the company erroneously received a good history discount on the penalty because OSHA did not associate that case with the prior case due to the spelling error.

- Patterson-UTI had several name variations in the 11 sampled EEP qualifying cases. For example, a history search on the employer since October 1, 2003, would return a list of 129 cases using the name "Patterson-UTI," but would only list 2 cases using the name variation "Patterson-UTI Energy."

- Companies with common ownership such as Saw Pipes and Jindal Enterprises are not linked in IMIS so that a history search on one company would include cases for the related company. Under EEP, OSHA's Office of Statistical Analysis (OSA) could – on request – provide other related worksites of the employer. However, OSA did not associate Saw Pipes with Jindal Enterprises when compiling the SST lists. Jindal Enterprises was on the SST lists from 2003 through 2007; and in 2005, Saw Pipes was on the primary list while Jindal Enterprises was on the secondary list. The Houston South Area Director was aware of the relationship between the companies as they were in his local area, but he was not aware the companies were on the SST lists and did not inform OSA the companies were related.

Finding 8 – OSHA Continued to Not Properly Designate and Conduct EEP Cases

OSHA continued having issues with designating and conducting EEP cases under the 2008 criteria. Out of 708 fatality cases, OSHA designated 50 fatality cases as EEP, but did not designate other cases that met the criteria and improperly designated cases which did not meet the criteria. See Exhibit 2 for details.

- Another 32 fatality cases met the criteria for EEP, but were not properly designated. For example, TK Stanley had a serious violation related to the fatality and three prior fatality cases in its qualifying history. Also, Corrosion Control Corporation had three repeat violations and similar in-kind history in its qualifying history.

- Of the 50 designated EEP fatality cases, 16 did not meet the 2008 criteria based on IMIS data. Specifically:

    - 12 cases had serious violations that related to the fatality, but did not have qualifying similar in-kind history.

    - 3 cases did not have violations related to the fatality, and the violations that were cited did not have any qualifying similar in-kind history.

    - 1 case did not have any cited violations on the EEP-designated case.

Furthermore, OSHA did not comply with 2008 requirements in conducting EEP cases. Our sampling included 11 EEP cases from 2008, of which 7 had no documentation that OSHA considered related worksite inspections; 4 did not have proper follow up; and 3 with settlement agreements did not include enhanced provisions.

Finding 9 – Criteria Gaps May Mean Delayed EEP Designation and Additional Fatalities

There are gaps in the 2008 criteria which may mean delays and additional fatalities before an employer is designated as an EEP case. The revised directive has six criteria

for becoming an EEP case, of which three require prior history of another fatality or similar in-kind violations within three years to qualify for the program. However, the criteria leave gaps where employers would not qualify for EEP without an additional fatality or non-fatality case. Two gaps were when (1) the employer's history included fatality and non-fatality cases; and (2) the EEP qualifying case occurred in a state that did not adopt an EEP plan.

Employer's History Included Fatality and Non-Fatality Cases

One gap occurred when the employer's history included both fatality and non-fatality cases. The non-fatality criterion does not consider prior fatalities as relevant history for EEP designation, unless the fatality cases have similar in-kind violations. This gap also applies in the inverse as the fatality criteria do not consider prior non-fatality cases unless the cases have similar in-kind violations. The employer would need an additional qualifying event before designation as EEP.

The 2008 criteria, section XI.A *Fatality Criterion* and XI.B, *Non-fatality Criterion*, require similar in-kind history or another fatality, as stated below.

- A fatality inspection with one or more serious violations related to the death, and similar in-kind history of serious, willful, or repeat violations within three years.

- A fatality inspection with one or more serious violations related to the death and another fatality within three years.

- An inspection with three or more serious willful or repeat violations; and the similar in-kind history of serious, willful, or repeat violation within three years.

Using a 2005 case as an example, Homrich Incorporated had a non-fatality case that had three serious, willful violations cited. Homrich Incorporated had prior fatalities, but none of those cases had similar violations to the non-fatality case. Using the 2008 EEP criteria, the prior fatalities would not have been considered as relevant history for EEP designation. As such, Homrich Incorporated incurred an additional fatality, and only then would qualify for EEP under the 2008 criteria.

EEP Qualifying Case Occurred in a State That Did Not Adopt An EEP Plan

Another gap occurs when the employer's history includes Federal and state OSHA cases. When the EEP qualifying event occurs at a state that has not adopted EEP,[6] there has to be an additional fatality or serious case before EEP designation. The criterion is silent on how OSHA will address EEP qualifying employers when the case occurs in states that have not adopted EEP.

[6] Only 6 of 26 states and territories operating under a state plan intended to adopt an EEP-type program. Four states provided implementation dates in 2008, while two states had no implementation date.

To illustrate, Arcelor Mittal had three fatalities cases in the first four months of 2008, the second of which occurred in a state-plan state. The first fatality did not qualify for EEP. The second qualified based on the first, but the fatality occurred in a state which had not adopted EEP. Therefore, the case was not designated as EEP and no enhanced enforcement was taken. A third fatality occurred in a Federal OSHA state and qualified for EEP based on the first two cases.

CONCLUSION

OSHA management has not placed the appropriate management emphasis and resources on this program to ensure indifferent employers were properly designated for this program and subject to EEP actions. It is essential that OSHA target its limited resources to inspect workplaces with the highest risk of hazardous conditions that have greater potential to cause injuries and fatalities. By analyzing inspection information, OSHA can identify worksites with known hazardous conditions to target under EEP. By effectively utilizing EEP activities, OSHA could reduce the risk of future catastrophes including injuries, illnesses, and fatalities.

Moreover, OSHA designated 29 EEP cases, but did not take any of the appropriate enhanced enforcement actions. Sixteen employers subsequently had 20 fatalities, of which 14 fatalities were in cases that shared similar violations. This lack of any EEP action is a clear indication that this vital program to address indifferent employers lacked sufficient management emphasis to achieve its potential to safeguard American workers.

Recommendations

We recommend the Assistant Secretary for Occupational Safety and Health:

1. Form an EEP Task Force to make recommendations to improve program efficiency and effectiveness in the following areas:

    a. Targeting indifferent employers most likely to have unabated hazards and/or company-wide safety and health issues at multiple worksites.

    b. Ensuring appropriate actions (i.e., follow-up and related worksite inspections) are taken on indifferent employers and related companies.

    c. Centralizing data analysis to identify employers with multiple EEP qualifying and/or fatality cases that occur across Regions.

    d. Identifying and sharing Regional and Area Offices' "best practices" to improve compliance with EEP requirements.

2. Revise EEP directive to address issues with prior qualifying history and designation, and to provide specific criteria when National Office EEP-Alert Memoranda are to be issued.

3. Provide formal training on EEP requirements including designation, consideration of related worksite inspections, enhanced enforcement follow up, and enhanced settlement provisions to ensure consistent application of EEP requirements.

4. Incorporate enhanced settlement provisions in OSHA's informal settlement template.

5. Establish controls for periodic reconciliation of the EEP log to OSHA's data system (currently IMIS).

6. Develop and distribute a crosswalk to Federal OSHA citations for state standards that have a different coding than Federal OSHA standards.

Elliot P. Lewis

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Exhibits

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Exhibit 1

Sampled Federal Inspections
For the Period October 1, 2003, through March 31, 2008

Seq.	Establishment Name	Inspection Number	Case Qualified as EEP	Subsequent Fatalities		Finding 1	Finding 2	Finding 3	Finding 4
				Same Site	Other Sites	EEP Designated Properly	Related Worksites Considered	Proper Follow Up	Enhanced Settlement Provisions
1	AAA Roofing Company	310407150	No	----	----	N/A	N/A	N/A	N/A
2	ABC Professional Tree Services	310075387	Yes	----	----	Yes	**No**	Yes	**No**
3	ABC Professional Tree Services	311078679	Yes	----	1	**No**	**No**	**No**	**No**
4	Acme Energy Services, Inc.	307005751	Yes	----	----	**No**	**No**	N/A	N/A
5	Acme Energy Services, Inc.	307006999	Yes	----	----	**No**	**No**	N/A	N/A
6	Acme Energy Services, Inc.	311130579	Yes	----	1	**No**	**No**	N/A	N/A
7	Advanced Organics, Inc.	307231068	Yes	----	----	Yes	**No**	**No**	Yes
8	Alexander Lumber Co.	308568062	No	----	----	N/A	N/A	N/A	N/A
9	Allen Co. Recyclers Inc.	307231845	Yes	----	----	Yes	**No**	Yes	Yes
10	Alliance Pro Electric	308646587	Yes	----	----	**No**	**No**	Yes	**No**
11	A-Mac Pipe Company	306644691	Yes	----	----	**No**	**No**	**No**	N/A
12	Andres Narvaez Masonry	309539922	Yes	----	----	**No**	**No**	**No**	**No**
13	Apac,Southeast, Inc., Alabama	307832691	Yes	----	----	Yes	Yes	**No**	**No**
14	Apac-Southeast, Inc.- First Coast	308429752	Yes	----	1	**No**	Yes	**No**	**No**
15	Aqua Power Electric	307491571	Yes	----	----	**No**	**No**	**No**	N/A
16	Arborcare Inc.	307302331	Yes	----	----	Yes	**No**	Yes	N/A
17	Ardis Roofing LLC	311159735	Yes	----	----	**No**	**No**	**No**	**No**
18	Asplundh Tree Expert Company	306753260	Yes	----	----	Yes	**No**	Yes	**No**
19	Asplundh Tree Company, Region 68	310729645	Yes	----	1	**No**	**No**	**No**	**No**
20	Asplundh Tree Expert Co.	311245088	Yes	----	1	**No**	**No**	**No**	**No**
21	Astec, Inc.	309754406	Yes	----	----	**No**	**No**	**No**	N/A
22	Auto Electronic America Corp.	311612048	Yes	----	----	**No**	**No**	**No**	**No**
23	Beelman River Terminals, Inc	309284909	Yes	----	----	Yes	**No**	Yes	**No**
24	Beelman Truck Company	309289262	Yes	----	1	Yes	**No**	**No**	Yes
25	BFI Waste Systems of N. A.	306069931	Yes	----	----	Yes	**No**	Yes	N/A
26	Big Warrior Corporation	308770585	Yes	----	----	**No**	**No**	**No**	**No**
27	Bosque Valley Construction	310223979	Yes	----	----	**No**	**No**	**No**	**No**
28	Bowers Demo	309836716	Yes	----	----	Yes	**No**	Yes	N/A
29	Bp Products North America, Inc	306482266	Yes	----	----	Yes	**No**	Yes	**No**
30	Bp Products North America, Inc	308314640	Yes	----	----	Yes	Yes	Yes	Yes
31	Bp Products North America, Inc	310266085	Yes (1)	----	----	**No**	**No**	**No**	**No**
32	Brocks Welding	309179117	Yes	----	----	Yes	**No**	**No**	Yes
33	Broughton Food Service, Inc.	112528740	No	----	----	N/A	N/A	N/A	N/A
34	Browning Ferris Industries	307832972	No	----	----	N/A	N/A	N/A	N/A
35	Browning Ferris Industries	310208863	Yes	----	----	**No**	Yes	**No**	**No**
36	Brunner Manufacturing Co., Inc	310763529	Yes	----	----	**No**	**No**	Yes	N/A
37	Capstar Drilling, L.P.	311130751	Yes	----	----	**No**	**No**	**No**	**No**
38	Care Sheet Metal & Roofing, Inc	308406255	Yes	----	----	**No**	**No**	Yes	**No**
39	Carson Line Service, Inc.	308775998	Yes	----	----	**No**	**No**	**No**	**No**
40	Case Atlantic Company	308326644	Yes	----	----	**No**	Yes	Yes	N/A
41	Casio, Inc.	309771962	Yes	----	----	**No**	**No**	**No**	N/A
42	Catalina Design, Inc.	310446521	Yes (1)	----	----	**No**	**No**	**No**	N/A
43	Catalina Martinez	123398232	Yes	----	----	**No**	**No**	Yes	**No**
44	Centerpoint Energy Houston Texas	308586445	No	----	----	N/A	N/A	N/A	N/A
45	Centerpoint Energy Inc.	311661094	Yes (1)	----	----	**No**	**No**	N/A	N/A
46	Central Industries Inc.	308769025	Yes	----	----	**No**	**No**	**No**	**No**
47	Central Industries, Inc.	308771617	Yes	1	----	**No**	**No**	**No**	**No**
48	Charley Puckett	307142166	Yes	----	----	**No**	**No**	**No**	N/A
49	Chicago Castings Company, LLC	309026979	N/A (2)	----	----	N/A	N/A	N/A	N/A

Notes for EEP Qualifying Cases:

(1) – 2008 criteria was used to determine whether the sampled case qualified as EEP.

(2) – Sampled case was EEP related follow-up inspection that was appropriately coded as EEP according to the criteria, but was not applicable (N/A) for the sample objectives.

Seq.	Establishment Name	Inspection Number	Case Qualified as EEP	Subsequent Fatalities: Same Site	Subsequent Fatalities: Other Sites	Finding 1 EEP Designated Properly	Finding 2 Related Worksites Considered	Finding 3 Proper Follow Up	Finding 4 Enhanced Settlement Provisions
50	Chisholm Backhoe Service & Co.	308469048	Yes	----	----	**No**	**No**	**No**	**No**
51	Cleveland Granite & Marble	309846079	N/A (2)	----	----	N/A	N/A	N/A	N/A
52	Colehour Elevator, Inc.	308149780	Yes	----	----	Yes	**No**	Yes	N/A
53	Commercial Brick Corp	308065234	Yes	----	----	Yes	**No**	Yes	**No**
54	Conair Corporation	308567619	Yes	----	----	**No**	**No**	**No**	N/A
55	Conair Corporation	308570100	No	1	----	N/A	N/A	N/A	N/A
56	Continental Structural Plastic	309087377	Yes	----	----	Yes	**No**	**No**	**No**
57	Continental Structural Plastic	309443174	Yes	----	----	Yes	**No**	N/A	N/A
58	Corey Sedlar,Dba Corey Sedlar	306480625	Yes	----	----	**No**	**No**	**No**	**No**
59	Dal-Tile Corporation	308058858	Yes	----	----	Yes	**No**	Yes	**No**
60	Dal-Tile International	307490151	Yes	----	1	**No**	**No**	**No**	**No**
61	Daniel Tong & Associates, Inc.	306070400	Yes	----	----	**No**	**No**	Yes	N/A
62	Darrell Goines Logging	307832931	Yes	----	----	Yes	**No**	**No**	N/A
63	Davis H. Elliot Construction Co	307013607	Yes	----	----	Yes	Yes	N/A	N/A
64	Davis H. Elliot Construction Co	309184422	Yes	----	----	Yes	**No**	N/A	N/A
65	Deltic Timber Corporation	307893347	Yes	----	----	**No**	**No**	**No**	**No**
66	Deltic Timber Corporation	311127906	Yes	----	1	**No**	Yes	**No**	**No**
67	Derouen Electrical Service, Inc	310244843	Yes	----	----	Yes	**No**	**No**	**No**
68	Don Mccoy & Son Inc.	309155513	Yes	----	----	Yes	**No**	**No**	**No**
69	Eastex Forest Products	306570169	Yes	----	----	**No**	**No**	Yes	**No**
70	Eilers Steel Erection, Inc.	306068131	Yes	----	----	Yes	**No**	Yes	**No**
71	Eilers Steel Inc	311308399	Yes	----	1	**No**	**No**	**No**	**No**
72	Elite Gutter Services, Inc.	309772499	Yes	----	----	**No**	**No**	**No**	**No**
73	Eller-Ito Stevedoring Company	308404664	Yes	----	----	**No**	**No**	**No**	**No**
74	Eller-I.T.O Stevedoring Company	310215884	Yes	----	1	**No**	**No**	N/A	N/A
75	Empire Stevedoring (Houston) I	310261110	Yes	----	----	**No**	**No**	Yes	**No**
76	Empire Stevedoring (Houston) I	310261789	No	----	----	N/A	N/A	N/A	N/A
77	Entergy Arkansas, Inc.	309222164	Yes	----	----	**No**	**No**	**No**	N/A
78	F & P Georgia Mfg., Inc.	307347674	Yes	----	----	Yes	**No**	**No**	**No**
79	F & P Georgia Mfg., Inc.	309256659	Yes	1	----	Yes	Yes	N/A	N/A
80	Fairweather Roofing Inc.	307847814	Yes	----	----	Yes	**No**	**No**	Yes
81	Formosa Plastics Corporation	305893679	Yes	----	----	**No**	Yes	Yes	Yes
82	Freedom Pipeline Corp.	307150953	No	----	----	N/A	N/A	N/A	N/A
83	Freedom Pipeline Corp.	309575009	Yes	----	----	Yes	Yes	Yes	**No**
84	French'S Welding & Maintenance	305962326	Yes	----	----	Yes	**No**	Yes	**No**
85	Fru-Con Construction Corp.	307231381	Yes	----	----	Yes	**No**	Yes	Yes
86	Fru-Con Construction	307238774	No	----	----	N/A	N/A	N/A	N/A
87	Fru-Con Construction Corp.	309446219	Yes	---	----	Yes	**No**	N/A	N/A
88	G.D. Edgar Lumber Company, Inc	306568577	Yes	----	----	**No**	**No**	Yes	**No**
89	Garcia Masonry	306482548	Yes	----	----	**No**	**No**	N/A	N/A
90	Gencor Industries, Inc.	309526937	Yes	----	----	Yes	**No**	Yes	Yes
91	Georgia Pacific Corporation	307241067	Yes	----	----	Yes	**No**	**No**	**No**
92	Georgia-Pacific Corp. - Cedar	307411389	Yes	----	1	Yes	**No**	Yes	Yes
93	Georgia-Pacific Corporation	310988134	Yes	----	1	**No**	Yes	N/A	N/A
94	Gilmore Brothers Inc.	305121899	Yes	----	----	Yes	**No**	**No**	Yes
95	Globe Metallurgical Inc.	307554394	Yes	----	----	Yes	**No**	**No**	**No**
96	Globe Metallurgical, Inc.	112531280	Yes	----	1	Yes	**No**	Yes	**No**
97	Goober Drilling Corp - Rig #20	309783884	Yes	----	----	Yes	**No**	**No**	**No**
98	Grand Isle Shipyard, Inc.	307153635	Yes	----	----	Yes	**No**	**No**	**No**
99	Grand Isle Shipyard, Inc.	311520431	Yes	----	2	**No**	**No**	**No**	**No**
100	Grey Wolf Drilling	307486985	Yes	----	----	**No**	**No**	**No**	**No**
101	Grey Wolf Drilling Co.	310440649	Yes	----	1	Yes	**No**	**No**	**No**
102	Gulf Stream Marine, Inc.	310895644	Yes	----	----	**No**	Yes	N/A	N/A
103	Gulf Stream Marine, Inc.	311719488	Yes (1)	----	----	**No**	Yes	N/A	N/A

Notes for EEP Qualifying Cases:

(1) – 2008 criteria was used to determine whether the sampled case qualified as EEP.

(2) – Sampled case was EEP related follow-up inspection that was appropriately coded as EEP according to the criteria, but was not applicable (N/A) for the sample objectives.

Seq.	Establishment Name	Inspection Number	Case Qualified as EEP	Subsequent Fatalities		Finding 1	Finding 2	Finding 3	Finding 4
				Same Site	Other Sites	EEP Designated Properly	Related Worksites Considered	Proper Follow Up	Enhanced Settlement Provisions
104	Gulfstream Aerospace Corporation	306795279	Yes	----	----	Yes	**No**	Yes	N/A
105	Gulfstream Aerospace Corporation	307411116	Yes	----	1	Yes	Yes	Yes	Yes
106	Haines City Industries, Inc.	307846642	Yes	----	----	**No**	**No**	**No**	**No**
107	Haines City Industries, Inc.	310050307	Yes	----	1	Yes	**No**	Yes	**No**
108	Henkels & Mccoy, Inc.	309349413	Yes	----	----	Yes	**No**	**No**	**No**
120	Imperial Heating & Cooling Inc	307400853	Yes	----	----	Yes	**No**	**No**	**No**
121	Imperial Sugar Company	310988712	Yes (1)	----	----	**No**	Yes	N/A	N/A
122	Imperial Sugar Company	311522858	Yes (1)	----	----	**No**	Yes	N/A	N/A
123	Ims Division, Tube City Ims	310166095	Yes	----	----	Yes	**No**	**No**	**No**
124	Infrastructure Services, Inc.	308319755	Yes	----	----	**No**	Yes	**No**	**No**
125	Infrastructure Services, Inc.	311472906	Yes	----	1	**No**	**No**	**No**	**No**
126	International Paper Courtland	307013409	Yes	----	----	Yes	Yes	Yes	**No**
127	International Paper Company	307223040	Yes	----	----	**No**	Yes	**No**	N/A
128	International Paper Courtland	307672766	N/A (2)	----	----	N/A	N/A	N/A	N/A
129	International Paper Company	309603132	Yes	----	1	Yes	**No**	**No**	N/A
130	Interstate Grain Port Terminal	308530682	Yes	----	----	**No**	Yes	**No**	**No**
131	Isaac'S Construction LLC	309081057	Yes	----	----	**No**	**No**	Yes	Yes
132	J. D. Parker And Sons, Inc.	311129761	Yes	----	----	Yes	**No**	Yes	**No**
133	J.A. Riggs Tractor Company	309946234	Yes	----	----	Yes	**No**	N/A	N/A
134	J.A. Riggs Tractor Company	310355839	Yes	----	----	**No**	**No**	N/A	N/A
135	J.P.R.S./New Way, Inc.	309357044	Yes	----	----	Yes	**No**	Yes	**No**
136	J.V Industrial Companies, Inc	308322452	Yes	----	----	**No**	**No**	N/A	N/A
137	Jeff Mercer LLC	310250428	Yes	----	----	**No**	**No**	**No**	N/A
138	Jj Finley Construction	306203639	Yes	----	----	**No**	**No**	**No**	**No**
139	John Carlo, Inc.	306750035	Yes	----	----	Yes	**No**	Yes	**No**
140	John Carlo, Inc.	311084495	No	----	----	N/A	N/A	N/A	N/A
141	Jose Garcia Dba J.I. Framing	310445036	Yes (1)	----	----	**No**	**No**	**No**	N/A
142	Jose Jimenez	123398349	Yes	----	----	**No**	**No**	Yes	N/A
143	Jozef Stoch	311852446	Yes (1)	----	----	**No**	**No**	Yes	**No**
144	JS Fabrications Inc.	309452738	Yes	----	----	**No**	**No**	**No**	**No**
145	King Motor Company	308402833	Yes	----	----	**No**	Yes	**No**	**No**
146	Klosterman Baking Co.	308043850	Yes	----	----	Yes	Yes	**No**	Yes
147	Knight Sign Industries, Inc.	307013581	Yes	----	----	Yes	**No**	Yes	**No**
148	Kollmann Trucking	309354256	Yes	----	----	Yes	**No**	**No**	**No**
149	Koswire, Inc.	311032353	Yes	----	----	**No**	Yes	Yes	N/A
150	Kuehn Brothers Trucking	307062398	Yes	----	----	**No**	**No**	**No**	N/A
151	Lake Michigan Contractors, Inc	307303362	Yes	----	----	**No**	**No**	**No**	**No**
152	Lapham-Hickey Steel Corp	309836658	Yes	----	----	**No**	**No**	Yes	Yes
153	Leeland Bakery Co LLC	310260880	Yes	----	----	**No**	**No**	**No**	**No**
154	Leonel Rubio Masonry	306479874	Yes	----	----	Yes	Yes	Yes	Yes
155	Lone Star Infrastructure	307953877	Yes	----	----	**No**	Yes	**No**	N/A
156	Lone Star Infrastructure	309751212	Yes	----	1	**No**	**No**	**No**	**No**
157	Longianese	307300327	Yes	----	----	**No**	**No**	**No**	N/A
158	Lott Sheet Metal Contractors,	307352682	Yes	----	----	Yes	**No**	**No**	Yes
159	Malcolm Powell Logging	307407221	N/A (2)	----	----	N/A	N/A	N/A	N/A
160	Mansfield Plumbing Products LLC	307232181	Yes	----	----	Yes	**No**	Yes	**No**
161	Mastec North America, Inc.	309429967	Yes	----	----	Yes	**No**	N/A	N/A
162	Mastec North America Energy	310030564	Yes	----	1	Yes	**No**	N/A	N/A
163	Mcarthur Dairy, Inc.	309430932	No	----	----	N/A	N/A	N/A	N/A
164	Mckenzie Tank Lines	305962938	Yes	----	----	Yes	**No**	Yes	Yes
165	Mckenzie Tank Lines	310207162	Yes	----	1	Yes	**No**	**No**	**No**
171	Metropolitan Hustlers, Inc	308407097	Yes	----	----	**No**	**No**	Yes	**No**
172	Middle South Construction Co	308776582	Yes	----	----	Yes	**No**	Yes	**No**
173	Mill Creek	307149047	Yes	----	----	**No**	**No**	**No**	**No**

Notes for EEP Qualifying Cases:

(1) – 2008 criteria was used to determine whether the sampled case qualified as EEP.

(2) – Sampled case was EEP related follow-up inspection that was appropriately coded as EEP according to the criteria, but was not applicable (N/A) for the sample objectives.

Seq.	Establishment Name	Inspection Number	Case Qualified as EEP	Subsequent Fatalities		Finding 1	Finding 2	Finding 3	Finding 4
				Same Site	Other Sites	EEP Designated Properly	Related Worksites Considered	Proper Follow Up	Enhanced Settlement Provisions
174	Millennium Forming, Inc.	308436625	Yes	----	----	Yes	Yes	**No**	**No**
175	Millenium Forming, Inc.	310953328	Yes	----	1	**No**	**No**	**No**	**No**
176	Milwaukee Valve Company, Inc.	310763610	Yes	----	----	**No**	**No**	Yes	**No**
177	Modern Printing Colors, Inc.	307367177	Yes	----	----	Yes	**No**	Yes	**No**
178	Moeves Plumbing Inc.	307961987	Yes	----	----	Yes	Yes	Yes	**No**
179	Multiquip, Inc	307041277	Yes	----	----	**No**	**No**	**No**	**No**
180	Mustang Rentals Services	306476615	Yes	----	----	Yes	**No**	Yes	N/A
181	Nabors Drilling Usa, Lp	309141190	Yes	----	----	**No**	**No**	N/A	N/A
182	Nabors Drilling Usa, Inc.	311899249	Yes (1)	----	1	**No**	**No**	N/A	N/A
183	Newpage Corporation	310019617	Yes	----	----	**No**	**No**	**No**	**No**
184	North American Fly, Ltd.	307043240	Yes	----	----	**No**	**No**	**No**	**No**
185	Northwest Pipe Company	306203548	No	----	----	N/A	N/A	N/A	N/A
186	Northwest Pipe Company	306572694	No	----	----	N/A	N/A	N/A	N/A
187	Northwest Pipe Company	306572728	No	----	----	N/A	N/A	N/A	N/A
188	Northwest Pipe Company	308590074	Yes	----	----	Yes	**No**	**No**	**No**
189	Northwest Pipe Company	308656677	No	----	----	N/A	N/A	N/A	N/A
190	Northwest Steel Corporation	311353874	No	----	----	N/A	N/A	N/A	N/A
191	Nunn Constructors	310895610	Yes	----	----	**No**	**No**	**No**	N/A
192	Ohio Valley Electrical Service	308425339	Yes	----	----	Yes	**No**	**No**	**No**
193	Oklahoma Roof Truss Co., Inc.	308067115	Yes	----	----	Yes	Yes	Yes	**No**
194	Orlowski Construction, Inc.	307107144	Yes	----	----	Yes	**No**	N/A	N/A
195	Par Electrical Contractors, Inc.	305121618	Yes	----	----	Yes	**No**	**No**	**No**
196	Par Electrical Contractors, Inc.	309080661	Yes	----	1	**No**	**No**	N/A	N/A
197	Patterson-Uti Drilling Company	307002824	Yes	----	----	Yes	**No**	**No**	**No**
198	Patterson-Uti Drilling Company	307003038	Yes	----	----	**No**	**No**	N/A	N/A
199	Patterson-Uti Drilling Company	307003541	Yes	----	----	Yes	**No**	**No**	Yes
200	Patterson Drilling - Uti Rig # 99	306207366	Yes	----	1	Yes	Yes	Yes	**No**
201	Patterson-Uti Drilling Company	306646639	Yes	----	1	Yes	Yes	**No**	Yes
202	Patterson-Uti Energy, Inc.	308646165	Yes	----	1	**No**	**No**	**No**	**No**
203	Patterson-Uti Drilling Co., Rig	309671857	Yes	----	1	Yes	**No**	Yes	**No**
204	Patterson-Uti Drilling Co Lp	310035555	Yes	----	1	**No**	**No**	N/A	N/A
205	Patterson-Uti Drilling Company	309786689	Yes	----	1	Yes	**No**	**No**	**No**
206	Patterson-Uti Drilling Company	310017249	Yes	----	2	**No**	**No**	N/A	N/A
207	Patterson-Uti Drilling Co Lp	310138656	No	----	----	N/A	N/A	N/A	N/A
208	Patterson-Uti Drilling Co Lp	310138813	No	----	----	N/A	N/A	N/A	N/A
209	Patterson-Uti Drilling Co Lp	310223128	No	----	----	N/A	N/A	N/A	N/A
210	Patterson-Uti Drilling Co Lp	310223342	No	----	----	N/A	N/A	N/A	N/A
211	Patterson-Uti Drilling Co Lp	310794482	No	----	----	N/A	N/A	N/A	N/A
212	Patterson-Uti Drilling Company	310690417	Yes	----	1	**No**	**No**	**No**	**No**
213	Pepsi-Cola General Bottlers, Inc.	310571005	Yes	----	----	Yes	**No**	Yes	**No**
214	Picerne Development Corporation	309780971	Yes	----	----	Yes	**No**	Yes	Yes
215	Pike Electric, Inc.	309139798	Yes	----	----	Yes	Yes	**No**	**No**
216	Pike Electric, Inc.	309252898	Yes	----	----	Yes	**No**	N/A	N/A
217	Pike Electric Inc.	310474473	Yes	----	1	Yes	**No**	**No**	**No**
218	Pike Electric Inc.	310479985	Yes	----	1	Yes	**No**	**No**	**No**
219	Pilkington North America Inc.	309448280	Yes	----	----	**No**	**No**	Yes	**No**
220	Premium Well Drilling Inc	308530690	Yes	----	----	**No**	**No**	**No**	**No**
221	Premium Well Drilling	310446828	Yes (1)	----	1	**No**	**No**	**No**	**No**
222	Primary Structures, Inc.	307519710	Yes	----	----	Yes	Yes	Yes	**No**
223	Primary Structures, Inc.	310511225	Yes	----	----	**No**	Yes	**No**	Yes
224	Pumpco	309674224	Yes	----	----	Yes	**No**	Yes	**No**
225	Pumpco, Inc.	310441621	Yes	----	1	**No**	**No**	N/A	N/A
226	Quad Graphics, Inc.	307054080	Yes	----	----	Yes	Yes	Yes	**No**

Notes for EEP Qualifying Cases:

(1) – 2008 criteria was used to determine whether the sampled case qualified as EEP.

(2) – Sampled case was EEP related follow-up inspection that was appropriately coded as EEP according to the criteria, but was not applicable (N/A) for the sample objectives.

Seq.	Establishment Name	Inspection Number	Case Qualified as EEP	Subsequent Fatalities		Finding 1 EEP Designated Properly	Finding 2 Related Worksites Considered	Finding 3 Proper Follow Up	Finding 4 Enhanced Settlement Provisions
				Same Site	Other Sites				
227	R & R Construction Services	307297507	Yes	----	----	Yes	**No**	Yes	N/A
228	R&R Metalcraft, Inc.	309771269	Yes	----	----	Yes	**No**	**No**	**No**
229	R. Popernik Company, Inc.	310177126	Yes	----	----	**No**	**No**	**No**	N/A
230	Republic Engineered Products	309445112	Yes	----	----	**No**	**No**	N/A	N/A
231	Republic Waste Service Of Texas	306569666	No	----	----	N/A	N/A	N/A	N/A
232	Republic Waste Services Of Texas	310633474	Yes	----	----	**No**	**No**	**No**	**No**
233	Rexnord Industries LLC	309357812	Yes	----	----	Yes	**No**	**No**	Yes
234	Rexnord Industries, LLC	309357648	Yes	----	----	Yes	Yes	Yes	**No**
235	Rolando Magana	310208798	Yes	----	----	Yes	**No**	**No**	N/A
236	Rotonics Manufacturing Inc.	307999227	Yes	----	----	**No**	Yes	**No**	**No**
237	Rotonics Manufacturing Inc.	311730618	Yes	1	----	**No**	Yes	**No**	**No**
238	San Antonio Lath & Plaster, Inc.	311311401	No (1)	----	----	N/A	N/A	N/A	N/A
239	Sanderson Farms Inc, Processing	307951350	Yes	----	----	**No**	**No**	**No**	Yes
240	Sanderson Farms Inc	308775626	Yes	----	1	Yes	**No**	N/A	N/A
241	Savage Grain Co., Inc.	306652520	Yes	----	----	**No**	**No**	Yes	N/A
242	Saw Pipes Usa Inc	310260310	Yes	----	----	Yes	**No**	**No**	N/A
243	Saw Pipes Usa Inc	310264304	Yes	1	----	**No**	**No**	**No**	N/A
244	Schindler Elevator Corporation	309254282	No	----	----	N/A	N/A	N/A	N/A
245	Schindler Elevator Corporation	308319524	Yes	----	----	**No**	**No**	N/A	N/A
246	Schindler Elevator Corporation	310214358	Yes	----	1	Yes	Yes	N/A	N/A
247	Ser Construction Partners, Ltd	311491591	Yes	----	----	**No**	Yes	**No**	N/A
248	Shamrock Drilling Company, Inc	307598268	Yes	----	----	Yes	**No**	**No**	**No**
249	Shamrock Drilling Inc.	311411524	No	----	1	N/A	N/A	N/A	N/A
250	Site Concrete, Inc.	307487793	Yes	----	----	**No**	**No**	N/A	N/A
251	Snider Industries, LLP	309545382	Yes	----	----	**No**	**No**	**No**	**No**
252	Solar Shield Urethane Roof Syst.	309020782	Yes	----	----	Yes	**No**	Yes	N/A
253	Southern Pan Services Company	310954581	Yes	----	----	Yes	**No**	**No**	**No**
254	Southern Pan Services Company	310034319	Yes	----	1	**No**	**No**	N/A	N/A
255	St. Marys Foundry Inc.	309442572	Yes	----	----	Yes	**No**	**No**	**No**
256	Standard Concrete Products, Inc.	307414797	Yes	----	----	Yes	Yes	**No**	Yes
257	Standard Concrete Products	311031298	Yes	----	----	Yes	**No**	**No**	**No**
258	Sugar Farms Co-Op	310216171	Yes	----	----	**No**	**No**	**No**	**No**
259	Sugarcane Harvesting Inc.	311087944	Yes	----	----	**No**	**No**	Yes	N/A
260	Sunesis Construction Co.	309263119	Yes	----	----	Yes	**No**	**No**	**No**
261	Sunesis Construction Co.	309266864	No	----	----	N/A	N/A	N/A	N/A
262	Sunesis Construction Co.	309414100	Yes	----	----	Yes	**No**	Yes	Yes
263	Superior Rigging & Erecting Co.	310958046	Yes (1)	----	----	**No**	Yes	N/A	N/A
264	Susan Lynn Furniture Restoration	307366401	No	----	----	N/A	N/A	N/A	N/A
265	Suwanee Lumber Company	310027420	Yes	----	----	Yes	Yes	Yes	Yes
266	Synergy Management Group	307004838	Yes	----	----	**No**	**No**	**No**	**No**
267	T K Stanley, Inc.	307489435	Yes	----	----	**No**	**No**	Yes	N/A
268	T.K. Stanley, Inc.	308768357	Yes	----	----	Yes	**No**	Yes	Yes
269	T.K. Stanley, Inc.	308651959	Yes	----	1	Yes	Yes	Yes	**No**
270	Tampa Enterprises Inc.	307063776	Yes	----	----	Yes	Yes	**No**	Yes
271	Tarmac America Llc	307302851	Yes	----	----	**No**	Yes	Yes	**No**
272	Temple-Inland, Inc.	307352708	Yes	----	----	**No**	**No**	Yes	**No**
273	Temple-Inland Trading Company	310248646	Yes	----	1	**No**	Yes	**No**	**No**
274	Temple-Inland, Inc.	311179279	No	----	----	N/A	N/A	N/A	N/A
275	Tennessee Valley Authority	106962020	Yes	----	----	**No**	**No**	**No**	N/A
276	Tennessee Valley Authority	306658436	Yes	----	1	**No**	Yes	**No**	N/A
277	Tetra Applied Technologies, LP	307004259	Yes	----	----	**No**	**No**	**No**	**No**
278	Tetra Applied Technologies, LP	307708479	Yes	----	----	Yes	**No**	Yes	**No**
279	Tetra Applied Technologies, LP	309524379	N/A (2)	----	----	N/A	N/A	N/A	N/A
280	Texfire Fire Sprinklers LLC	307484816	Yes	----	----	**No**	**No**	**No**	**No**

Notes for EEP Qualifying Cases:

(1) – 2008 criteria was used to determine whether the sampled case qualified as EEP.

(2) – Sampled case was EEP related follow-up inspection that was appropriately coded as EEP according to the criteria, but was not applicable (N/A) for the sample objectives.

Seq.	Establishment Name	Inspection Number	Case Qualified as EEP	Subsequent Fatalities		Finding 1 EEP Designated Properly	Finding 2 Related Worksites Considered	Finding 3 Proper Follow Up	Finding 4 Enhanced Settlement Provisions
				Same Site	Other Sites				
281	The Ashland Rubber Mat Co.	309449221	Yes	----	----	**No**	**No**	N/A	N/A
282	The Beaulieu Group, LLC	307352773	Yes	----	----	Yes	Yes	**No**	**No**
283	The Griffin Wheel Company	121914428	No	----	----	N/A	N/A	N/A	N/A
284	The Griffin Wheel Company	306539016	Yes	----	----	Yes	**No**	Yes	**No**
285	Thornton Drilling Co.	308462571	Yes	----	----	**No**	**No**	**No**	**No**
286	Tnt Logistics North America Inc.	305897118	No	----	----	N/A	N/A	N/A	N/A
287	Tnt Logistics North America Inc.	309119683	No	----	----	N/A	N/A	N/A	N/A
288	Tnt Logistics North America, Inc.	309434199	Yes	----	----	Yes	**No**	**No**	Yes
289	Top Flight Steel	307489286	Yes	----	----	**No**	**No**	**No**	**No**
290	Top Flight Steel, Inc.	308646256	Yes	----	----	**No**	**No**	N/A	N/A
291	Tri-City Demolition Services	307999458	Yes	----	----	**No**	**No**	**No**	N/A
292	Tyson Foods, Inc.	307100172	Yes	----	----	Yes	Yes	N/A	N/A
293	Tyson Foods, Inc.	308063387	No	----	---	N/A	N/A	N/A	N/A
294	Tyson Foods, Inc.	310355664	Yes	----	----	**No**	**No**	N/A	N/A
295	Tyson Foods, Inc.	310355813	Yes	----	1	**No**	**No**	**No**	**No**
296	Tyson Chick N Quick	311363048	Yes	----	1	**No**	**No**	**No**	**No**
297	United Forming Inc	311309165	Yes	----	----	**No**	**No**	N/A	N/A
298	United Forming Inc	311365092	Yes	----	----	**No**	**No**	**No**	**No**
299	United States Pipe And Foundry	308058510	Yes	----	----	Yes	Yes	Yes	**No**
300	United States Pipe And Foundry	309247898	Yes	----	----	Yes	**No**	Yes	**No**
301	Utility & Environmental Servic	307491258	Yes	----	----	**No**	**No**	Yes	**No**
302	Valley Cabinet Inc.	122016389	Yes	----	----	Yes	**No**	Yes	N/A
303	Victory Signs And Lighting, Inc.	309962330	Yes	----	----	Yes	**No**	Yes	**No**
304	Vonroll America Corp.	307441790	No	----	----	N/A	N/A	N/A	N/A
305	W.G. Yates & Sons Construction	303776181	No	----	----	N/A	N/A	N/A	N/A
306	W.G. Yates & Sons Construction	303776249	Yes	----	----	Yes	**No**	Yes	**No**
307	W.G. Yates & Sons Construction	303776736	Yes	----	----	Yes	Yes	**No**	**No**
308	W.G. Yates & Sons Construction	307350553	No	----	----	N/A	N/A	N/A	N/A
309	Walt Disney Entertainment, Inc.	307495846	No	----	----	N/A	N/A	N/A	N/A
310	Walt Disney World Co.	311730675	Yes	----	----	**No**	**No**	N/A	N/A
311	Wayne Farms, LLC	306445495	Yes	----	----	Yes	**No**	Yes	**No**
312	Wayne Farms, LLC	307640094	Yes	----	----	Yes	**No**	N/A	N/A
313	Wheeling Pittsburgh Steel Corp	307884023	Yes	----	----	Yes	**No**	N/A	N/A
314	Wheeling Pittsburgh Steel Corp	309182095	Yes	----	----	Yes	**No**	Yes	**No**
315	Wheeling Pittsburgh Steel Corp	112528757	Yes	----	----	Yes	**No**	**No**	Yes
316	Wheeling Pittsburgh Steel Corp	309186369	Yes	----	1	Yes	**No**	**No**	Yes
317	Wheeling Pittsburgh Steel Corp	310479670	Yes	----	----	Yes	**No**	**No**	Yes
318	Williams Brothers Construction	308315795	Yes	----	----	**No**	**No**	**No**	**No**
319	Williams Brothers Construction	308591437	Yes	----	1	**No**	Yes	**No**	**No**
320	Winner Aviation	310569991	Yes	----	----	**No**	**No**	**No**	**No**
321	Wittwer Construction Company	306643974	Yes	----	----	**No**	Yes	**No**	**No**
322	Wittwer Construction Company	306645433	Yes	----	1	**No**	Yes	**No**	**No**
323	Young Contractors, Inc.	307957324	N/A (2)	----	----	N/A	N/A	N/A	N/A
324	Youngquist Brothers, Inc.	310208855	Yes	----	----	Yes	**No**	**No**	**No**
325	Youngquist Brothers, Inc.	311087308	Yes	----	1	**No**	**No**	Yes	N/A
	Count of EEP Qualifying Cases		**282**			**149**	**226**	**146**	**153**
	Total Subsequent Fatalities			**5**	**53**				

Notes for EEP Qualifying Cases:

(1) – 2008 criteria was used to determine whether the sampled case qualified as EEP.

(2) – Sampled case was EEP related follow-up inspection that was appropriately coded as EEP according to the criteria, but was not applicable (N/A) for the sample objectives.

Exhibit 2

2008 Fatality Cases With EEP Designation Issues

A. Fatality cases that were not designated as EEP, but had related serious violations and/or qualifying prior history based on IMIS data. Based on OSHA's 2008 criteria, these cases should have been designated as EEP.

SEQ	INSPECTION	ESTABLISHMENT NAME	QUALIFYING FACTOR
1	112984919	Arcelor Mittal	Prior Fatalities – 311268650; 311263362; 311259402; and 310373246
2	116022708	Corrosion Control Corporation	Non-Fatality criteria - 3 Repeats similar in-kind to 116204751
3	309578417	Pioneer Drilling Rig #22	Prior Fatalities – 308307891 and 309494078
4	309729762	Newport News Shipbuilding	Prior Fatality – 300199221
5	310160429	The Sherwin Williams Company	Prior Fatality – 310778154
6	310447032	Sam's Club	Prior Fatalities – 309056026 and 310560941
7	310721634	In and Out Plumbing	Willful related to fatality in current inspection
8	310988712	Imperial Sugar Company	Willful related to fatality in current inspection
9	310990205	Georgia-Pacific Corporation	Prior Fatality – 310988134
10	311006225	Heller Construction Company	Willful related to fatality in current inspection
11	311088033	Waste Management Inc of Florida	Prior Fatality – 309068864
12	311325161	Kusler Masonry Inc.	Similar in-kind violation – 309471175
13	311444988	U.S. Pipe & Foundry LLC.	Prior Fatality – 307342105
14	311474456	Timken Co.	Prior Fatality – 310970173
15	311577456	United Team Mechanical, LLC	Prior Fatality – 309165967 (state-plan state)
16	311677306	Whipstock National Gas Service	Prior Fatality – 308010628
17	311678676	S.W. Jack Drilling Company	Prior Fatality – 307073395
18	311731129	Brasfield & Gorrie, LLC	Prior Fatality – 310706783
19	311755094	The Davey Tree Expert Company	Prior Fatalities – 308853811; 311377675; 310642046; 310331392; 308240175; and 119647154
20	311787444	Murfin Drilling Company, Inc.	Similar in-kind violation – 307655340
21	311803746	T. K. Stanley, Inc.	Prior Fatalities – 308651959; 308590801; and 308768357
22	311903694	Harvest Meat Company, Inc	Willful violation related to fatality in current inspection
23	311969307	Premium Well Drilling Inc, Rig	Prior Fatalities – 310446828 and 308530690
24	312135320	Gruma Corp. dba Mission Foods	Prior Fatalities – 307183939 and 310055249
25	312146871	Southern Lights Electrical Con	Prior Fatality – 312240559
26	312174360	Cyclone Drilling, Inc.	Prior Fatalities – 309913580; 307818575; and 307811638
27	312238629	Unit Drilling Co.	Prior Fatalities – 311001341 and 309165587
28	312283047	Master Boat Builders, Inc.	Similar in-kind violation – 311969570
29	312376288	Becco Contractors, Inc.	Prior Fatality – 308066893
30	312386220	Gorman-Phillips Construction	Prior Fatality – 307011411
31	312403926	Jelly Belly Candy Co.	Prior Fatality - 301127064
32	312545213	T&F Systems Inc.	Prior Fatality – 310219589

B. Fatality cases that were designated as EEP, but were without related serious violations and/or qualifying prior history based on IMIS data. Based on OSHA's 2008 criteria, these cases should not have been designated as EEP.

SEQ	INSPECTION	ESTABLISHMENT NAME	DISQUALIFYING FACTOR(S)
1	312187446	Brox Industries	No qualifying prior history
2	311520753	Prime Coatings	No qualifying prior history
3	312216823	Weber Concrete and Construction	No qualifying prior history
4	311832703	AK Steel Corporation	No qualifying prior history
5	311612840	D.W. White Construction	No qualifying prior history
6	311090948	E & M Hi-Rise Railing & Glass	No qualifying prior history & Not coded as related to fatality
7	310621396	Eagle Geophysical Onshore	No qualifying prior history
8	122018435	Greenheck Fan Corporation	No qualifying prior history
9	310840681	Kingsley Group	No qualifying prior history & Not coded as related to fatality
10	309841773	Luvata Appleton	No qualifying prior history
11	310937412	Northwest Missouri Biofuels	No qualifying prior history & Not coded as related to fatality
12	311526693	Ogle Engineering And Construction	No qualifying prior history & Not coded as related to fatality
13	312187347	Peabody Supply Company	No qualifying prior history
14	311931968	Suburban Farmer Company	No qualifying prior history
15	311088629	Sugar Cane Growers Cooperative	No citations in this inspection
16	312147192	U.S. Xpress Enterprises	No qualifying prior history

Appendices

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Appendix A

Background

Under the OSH Act of 1970, employers are responsible for providing a safe and healthy workplace for their employees. OSHA's mission is "… to promote the safety and health of America's working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health."

EEP was first implemented in a September 30, 2003, memorandum to Regional Administrators, and focused on employers who were indifferent to their obligations under the OSH Act. These employers were identified based on cited violations from any type of inspection where the violations were: serious and high gravity violations related to fatalities; willful and/or repeat violations; or failure-to-abate citations where the employer did not address previously cited hazards.

After four years of implementation, OSHA revised the program and issued OSHA Enforcement and Complaint Directive (CPL) 02-00-145, *Enhanced Enforcement Program (EEP),* effective on January 1, 2008. Under the revised program, the purpose of EEP remained the same, but the targeting criteria incorporated a key component of qualifying OSHA history, i.e., prior fatality and similar in-kind violations, which effectively reduced the number of EEP qualifying cases.

EEP inspections represent a small percentage (1 percent) of total programmed inspections, but the targeted employers pose the highest risk to employee safety. Companies that fall under EEP are considered high risk offenders that place their employees at risk. OSHA's role is to promote the safety and health of America's working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health. However, BLS continues to report significant levels of work-related fatalities.[7]

Year	Fatalities
2003	5,575
2004	5,764
2005	5,734
2006	5,840
2007	5,488

OSHA stated that less than 20 percent of BLS reported fatalities occurred in Federal OSHA covered workplaces.

[7] U.S. Department of Labor, BLS, National Census of Fatal Occupational Injuries, August 20, 2008. Reported fatalities for 2007 are preliminary figures.

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Appendix B

Objectives, Scope, Methodology, and Criteria

Objectives

The objectives of the audit were to answer the following questions:

1. Were establishments properly identified as EEP cases and were inspections conducted in accordance with OSHA's EEP Directives?

2. Does OSHA's January 2008 revised EEP Directive have an adverse impact on the EEP and its ability to protect the American worker?

Scope

The audit scope was Federal inspections conducted between October 1, 2003, and March 31, 2008, that were either designated as EEP or qualified under EEP criteria but were not designated as such by OSHA for the Atlanta, Chicago, and Dallas regions. The audit focus was on EEP designation, three EEP elements (enhanced follow-up inspections, inspections of related worksites and enhanced settlement provisions), and coordination activities through the National Office EEP log and EEP-Alert Memorandum. Our analysis of OSHA's 2008 revised criteria covered the period January 1, 2008, through November 19, 2008.

We conducted our audit in accordance with generally accepted government auditing standards for performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a sufficient basis for our findings and conclusions based on our audit objectives.

A performance audit includes an understanding of internal controls considered significant to the audit objectives and testing compliance with significant laws, regulations, and other compliance requirements. In order to plan our performance audit, we considered whether internal controls significant to the audit were properly designed and placed in operation. However, we did not assess overall internal controls.

Methodology

In planning and performing our audit, we considered OSHA internal controls by obtaining an understanding of the program's internal controls, determining whether internal controls had been placed in operation, assessing control risk, and performing tests of controls in order to determine our auditing procedures for the purpose of achieving our objectives. Therefore, we evaluated OSHA internal controls pertaining to the classification and management of EEP cases, and assessed the reliability of inspection data maintained in IMIS. We reviewed OSHA policies and procedures;

reviewed reports on IMIS controls; conducted tests of IMIS data accuracy; and reviewed internal monitoring reports. We interviewed OSHA officials at six Area and four Regional Offices; and officials at the National Office Directorate of Enforcement, Directorate of Information Technology, Directorate of Construction, Directorate of Evaluations and Audit Analysis, Directorate of Cooperative and State Programs, and the Office of Statistical Analysis. Our consideration of internal controls would not necessarily disclose all matters that might be reportable conditions. Because of inherent limitations in internal controls, misstatements or noncompliance may nevertheless occur and may not be detected.

Three OSHA Regions (Boston, New York, and Denver) conducted EEP-focused monitoring reviews and found issues with designation and follow up. We reviewed the monitoring review reports, and interviewed New York Regional staff to identify potential best practices.

Fieldwork was conducted at OSHA National Office; 3 Regional Offices (Atlanta, Chicago and Dallas) which had 59 percent of EEP qualifying cases, and 6 Area Offices (Chicago North, Fort Lauderdale, Fort Worth, Houston North, Houston South, and Tampa).

Assessing the Reliability of Computer Based Data

In planning and performing the audit, we relied on computer-generated data maintained in IMIS which was designed as an information resource and management tool for in-house use by OSHA staff and management, and by state agencies that carry out Federally-approved OSHA programs. Information is entered in the IMIS by the local Federal or state offices as events occur in the course of agency activities.

We determined that the data were sufficiently reliable through review of prior OIG's audits of OSHA's IMIS under Federal Information Security Management Act and Federal Information System Controls Audit Manual, discussion with participating auditors the scope and findings related to IMIS, and obtaining information on the status of recommendations from the OIG audit tracking system. We tested the data for completeness through analytical tests to verify that all EEP and potential EEP cases were identified. Finally, the EEP and violation coding elements were traced to source documents for sampled cases.

Analytical Tests and Sampling

For the audit period, we sampled a total of 325 inspections from the Atlanta, Chicago and Dallas Regional Offices – 282 EEP qualifying inspections and 43 inspections that did not qualify under EEP. We reviewed the inspection case files, OSHA's IMIS online data and EEP log entries. For 7 of the 325 inspections, OSHA did not provide the inspection case files because the files were missing in the Area Office or archives, or in one 2003 case, had been destroyed by archives. For these seven inspections, we relied on IMIS on-line data and EEP log entries for our analyses.

Our samples included stratified random samples of 80 EEP designated inspections and 65 undesignated EEP-qualified inspections, and judgmentally selected 180 additional inspections for 75 employers with multiple EEP inspections or fatalities.

For random sampling purposes, we obtained extract reports of OSHA's IMIS for the period October 1, 2003 through March 31, 2008, and performed analytical tests before sampling cases. The extract reports included:

1. EEP Identified Cases – Inspections coded in IMIS as EEP as of August 14, 2008 (totaling 2,986 inspections).

2. EEP "Should Be" Cases - Inspections which may meet EEP criteria:

    a. 4,866 cases with one or more fatality (as of July 14, 2008).
    b. 44,447 cases with three or more serious violations (as of July 17, 2008).
    c. 315 cases with one or more failure to abate violations (as of August 8, 2008).

The second set of extract reports were filtered down to a total of 537 "Should Be" inspections using the specific criteria and on-line IMIS data to identify cases which met the criteria for EEP (as fatality, non-fatality, and failure-to-abate), and removing duplicative cases.

- Fatality cases were filtered by whether the case had a serious violation related to the fatality, and removing cases which had been designated as EEP. For 2008, fatality cases were also filtered by whether the case had qualifying history or willful and/or repeat violations. From 4,866 inspections with one or more fatality, 447 qualified as EEP and were not designated in IMIS.

- Non-fatality cases with three or more serious violations were filtered by whether the case had three or more willful and/or repeat violations, and for 2008, if the case had qualifying similar in-kind history. From 44,447 inspections with three or more serious violations, 72 qualified as EEP and were not designated in IMIS.

- Failure-to-abate cases were filtered by whether the underlying violation was coded as serious. From 315 inspections with one or more failure to abate violations, 18 qualified as EEP and were not designated in IMIS.

Cases in the EEP extract and the "Should Be" filtered extracts were stratified by OSHA Regional Office. Three Regions (Atlanta, Chicago and Dallas) accounted for 59 percent of the such cases -- 56 percent of the EEP extract cases and 77 percent of the "Should Be" filtered extract. We selected stratified random samples of 80 EEP and 65 "Should Be" cases from the three regions. Results were not projected.

To illustrate the impact of EEP on specific employers, we identified employers with multiple fatality and/or EEP qualifying inspections. This was done by initially combining the EEP and the unfiltered Fatality extract reports for inspections in Atlanta, Chicago,

and Dallas Regions. Duplicative entries were removed based on comparison of inspection numbers. Due to name variations in IMIS, cases were matched to employers based on the similarity of the establishment names and the mailing address. We judgmentally selected 75 employers with 192 inspections in the three regions. As 12 of the 192 inspections were already selected as part of the random samples, the judgment sample totaled 180 inspections.

Other Analytical Tests of IMIS Data

1. To determine the impact of the 2008 criteria on EEP, we obtained and analyzed an extract of IMIS data for the period January 1, 2008, through November 19, 2008, for all inspections with one or more fatalities, and all inspections coded as EEP. The data was analyzed to determine: (a) the number of EEP designated fatality cases for 2008 period; (b) the number of fatality inspections not designated as EEP, but met the criteria; and (c) the number of EEP designated fatality cases that do not meet EEP criteria (missing related event codes and/or qualifying history).

2. The EEP log was obtained from OSHA's Directorate of Enforcement Programs on June 18, 2008, and was compared to the EEP extract report obtained on August 14, 2008. In total, 679 EEP coded cases (of which 394 were fatality inspections) were in the IMIS report and not in the EEP log. For sampling purposes, we relied on IMIS data as those reports were more current and complete.

3. To determine whether employers were on the SST lists when they were designated for EEP, and whether SST inspections were performed subsequent to the EEP case, we obtained and compared (a) the SST primary and secondary lists; and (b) SST program inspections for Fiscal Years 2003 through 2008. The SST program inspections list was an extract from IMIS obtained from OSHA's Directorate of Information Technology on January 8, 2009.

Criteria

We used the following criteria to perform this audit:

- OSH Act of 1970 and OSH regulations, 29 CFR 1902, et seq.

- OSHA Instruction CPL 02-00-145, Enhanced Enforcement Program (EEP), January 1, 2008

- EEP Interim Implementation Criteria

    - Memorandum to Regional Administrators from R. Davis Layne, Deputy Assistant Secretary, September 30, 2003, Subject: Interim Implementation of OSHA's Enhanced Enforcement Program (EEP)

- o Memorandum to Regional Administrators from Richard E. Fairfax, Director, Directorate of Enforcement Programs, October 16, 2003, Subject: Enhanced Enforcement Program (EEP) IMIS Coding

- OSHA Instruction CPL 02-00-103, Field Inspection Reference Manual (FIRM), September 26, 1994

- OSHA Instruction CPL 02-00-137, Fatality/Catastrophe Investigation Procedures, April 14, 2005

- OSHA Notice 06-01, Site-Specific Targeting 2006 (SST-06), June 12, 2006

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Appendix C

Acronyms and Abbreviations

ALJ	Administrative Law Judge
BLS	Bureau of Labor Statistics
CPL	Enforcement and Complaint Directive
DOL	Department of Labor
EEP	Enhanced Enforcement Program
EEP Log	National Office EEP Log
IMIS	Integrated Management Information System
OIG	Office of Inspector General
OSA	OSHA's Office of Statistical Analysis
OSHA	Occupational Safety and Health Administration
OSH Act	Occupational Safety and Health Act of 1970
SST	Site Specific Targeting Program

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Appendix D

Glossary of Terms

1. **Abatement -** Action by an employer to comply with a cited standard or to eliminate a recognized hazard identified by OSHA during an inspection. [29 CFR 1903.19(b)(1)]

2. **Alternate Worksite Inspection -** Other related worksites of the same employer (those not on the current SST inspection lists) may be inspected if there are reasonable grounds to believe problems similar to those found in the EEP case may exist at the other worksite. The scope of inspection will mainly focus on hazards that are the same as or similar to those found in the EEP case.

3. **Contest** – Any employer, to whom a citation or notice of proposed penalty is issued, may contest or dispute such citation and/or proposed penalty before the Review Commission.

4. **Enhanced Follow-up Inspection** - The primary purposes of follow-up inspections in EEP cases are to assess whether the cited violation(s) were abated **and** whether the employer is committing similar violations. Compelling reason not to conduct a follow-up inspection shall be documented in the file and include: worksite closed, out of business, operation cited has been discontinued at the worksite, worksite moved out of Area Office jurisdiction, case no longer meets any of the EEP criteria because citation has been withdrawn/vacated, or EEP violation(s) currently under contest.

5. **Enhanced Settlement Agreement -** Settlement agreements where OSHA has insisted that employers take steps to address systemic compliance problems or to provide OSHA with information that will enable it to take follow-up action. Specific provisions include some or all of the following.

    a. Requiring the employer to hire a qualified consultant to develop an effective and comprehensive safety and health program with management support in the establishment and assist the company in implementing such a program;

    b. Applying the agreement company-wide;

    c. Using settlement agreements to obtain from employers a list of their current jobsites, or future jobsites within a specified time period;

    d. Requiring the employer to submit to OSHA its Log of Work-related Injuries and Illnesses on a quarterly basis, and to consent to OSHA's conducting an inspection based on the report;

    e. Requiring the employer to notify the Area Office of any serious injury or illness requiring medical attention and to consent to an inspection; and

f. Obtaining employer consent to entry of a court enforcement order under Section 11(b) of the Act.

6. **Final Order** – The citation/notice of proposed penalty and abatement date becomes a final order after the contest and appeal process has been completed. Final order occurs at the end of the 15-day contest period if no contest was filed, or 15 working days after signing an Informal Settlement Agreement. Otherwise, final order occurs when the case has reached the highest level of review: 30 days after docketing of the Administrative Law Judge's (ALJ) order for Formal Settlement Agreements, and ALJ decisions/reports; 60 days after the Notice of Commission Decision; or 90 days after entry of the judgment by the U.S. Court of Appeals unless appealed to the U.S. Supreme Court.

7. **Imminent Danger** - Section 13(a) of the Act defines imminent danger as ". . . any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act."

8. **Related Event Code** - The OSHA-1B form provides specific supplemental information documenting hazards and violations. If any item cited is directly related to the occurrence of the fatality or catastrophe, the related event code **"A"** shall be entered. If multiple related event codes apply, the only code that has priority over relation to a fatality/catastrophe (**"A"**) is the relation to an imminent danger (**"I"**).

9. **Related Worksite Inspections -** Establishments are related when there is common ownership. Related establishments include establishments of corporations that are in the same corporate family, such as a parent corporation and all subsidiary corporations, in which the parent has an ownership share of greater than 50 percent.

10. **Similar in-kind history** – "Similar in-kind" is broader than the "substantial" similarity that is required for a repeat citation. The 2008 EEP criteria provided the following examples for similar in-kind history.

    a. A prior fall from a scaffold is considered similar in-kind to a current fall through a floor opening, or a fall from a roof.

    b. A prior failure to provide hard hats is considered similar in-kind to a current failure to ensure respirator use, or a failure to train regarding personal protective equipment.

    c. A prior exposure to lead is considered similar in-kind to a current exposure to chemicals of a dipping/coating operation, or a failure to train on the hazards of the chemicals.

11. **Site Specific Targeting (SST) –** OSHA's main programmed inspection plan for non-construction workplaces that have 40 or more employees. The SST plan is based on the data received from the prior year's OSHA Data Initiative survey. The Data Initiative survey and the SST program help OSHA achieve its goal of reducing the number of injuries and illnesses that occur at individual workplaces by directing enforcement resources to those workplaces where the highest rate of injuries and illness have occurred.

12. **State Plan State -** Section 18(b) provides that any State that desires to assume responsibility for the development and enforcement therein of occupational safety and health standards relating to issues covered by corresponding standards promulgated under section 6 of the Act shall submit a plan for doing so to the Assistant Secretary.

13. **Violation Types –**

    a. **Serious Violation -** Section 17(k) of the Act provides "... a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

    b. **Willful violation -** A willful violation exists under the Act where the evidence shows either an intentional violation of the Act or plain indifference to its requirements. The employer committed an intentional and knowing violation if: (1) An employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements, and did not abate the hazard. (2) An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement, and did not abate the hazard.

    c. **Repeat Violation** - An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition and the citation has become a final order.

    d. **Failure to Abate Violation** - Failure to abate exists when the employer has not corrected a violation for which a citation has been issued and abatement date has passed or which is covered under a settlement agreement, or has not complied with interim measures involved in a long-term abatement within the time given.

e. **Other than Serious Violation** - This type of violation shall be cited in situations where the most serious injury or illness that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate relationship to their safety and health.

Appendix E

OSHA Response to Draft Report

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:

MAR 3 0 2009

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: DONALD G. SHALHOUB
Deputy Assistant Secretary

SUBJECT: Response to OIG's Draft Audit Report
No. 02-09-203-10-105
"Employers With Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program"

This memorandum is in response to your March 13, 2009, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 02-09-203-10-105, "Employers With Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program." OSHA appreciates the time, thought, and effort expended by the OIG in conducting the audit of the Enhanced Enforcement Program (EEP). Additionally, the Agency appreciates the opportunity to respond to the findings and recommendations of the audit report. While we agree with many of the recommendations and believe they will allow the Agency to make important improvements to the program, we also want to convey some reservations and concerns we have related to several of the audit findings and the implications of those findings.

As recognized by the OIG, the OSHA EEP is a relatively new program. The Agency is aware of its value and also understands that the program has shortcomings that we have continued to address. After three years of EEP implementation, OSHA acknowledged that the program may not have been consistently accomplishing its purpose and intent to focus on "recalcitrant employers." In an effort to address this situation, the Agency adjusted the program in January 2008 and issued a new EEP directive that modified the policies for its administration. Shortly after the policy revision, the Agency realized that even more program modifications were needed to better direct resources and to add a more stringent follow-up inspection criteria to the program. The Agency planned to create a task group to evaluate and work on EEP improvements. Before that group could be constituted, OSHA received notification from the OIG that this current audit would be conducted. After discussions with the

OIG, the Agency postponed its plans until after the completion of the OIG audit. We now look forward to using the insights from this audit and our own experience to address and correct recognized issues with the EEP.

EEP was developed by the Agency to supplement enforcement activity to focus on "recalcitrant employers." It is important to note that the EEP works in concert with several other Agency enforcement programs designed to target and direct resources as efficiently as possible to make the greatest impact on the reduction of workplace injuries, illness, and fatalities. This fact is acknowledged in the audit with the recognition that EEP inspections constitute approximately 1 percent of all programmed inspections conducted by OSHA. This is also indicative of the fact that EEP is not designed as a major enforcement program of OSHA nor meant to be a stand-alone Agency program or strategy in dealing with these types of employers. Rather, it was specifically designed to focus on the recalcitrant employer and to supplement the major enforcement initiatives of the Agency. The report concludes that the Agency did not place the "appropriate management emphasis and resources on this program to ensure indifferent employers were properly designated for this program and subject to EEP actions." Based on the size and purpose of this program, we do not fully accept the implication of that conclusion since we believe that our resource allocation was consistent and balanced with the many other Agency targeting programs and strategies we employ.

The draft audit report findings subtly imply that inadequacies in the EEP have resulted in additional workplace fatalities. While we appreciate the OIG's attempt to carefully word the report to avoid a direct cause and effect relationship, the pairing of Findings #1-4 with subsequent fatalities is a matter of deep concern. We fear this may lead to an inference that the lack of a workplace inspection resulted in a fatality, an inference that we find to be both misleading and unfair. We also believe it to be an inappropriate and unsupported assumption to suggest that a fatality did or did not occur because a given workplace did not receive an inspection. The Occupational Safety and Health Act recognizes workplace safety and health as the responsibility of employers. OSHA's mission is to assure safe and healthful working conditions for working men and women which we accomplish through a variety of mechanisms including enforcement, regulation, and training. It has never been within the reach of the Agency's resources to provide absolute safety and health protection for all workplaces.

Before responding specifically to the recommendations made by the OIG, we would also like to draw your attention to the information cited from the Bureau of Labor Statistics (BLS) that on average 5,680 workplace fatalities were recorded over each of the last five years. It should be noted that most of those fatalities occurred in workplaces not covered under Federal OSHA jurisdiction and thus not subject to protections afforded under the EEP. In fact, in each of the last four years, less than 20 percent of those workplace fatalities identified by BLS were subject to Federal OSHA coverage.

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Over the years, there has been a steady decline in the number of workplace fatalities which serves as a good indicator that the Agency's programs and strategies are achieving some notable success. Still, even a single fatality is one too many. Agency programs are designed with that in mind as we continue to make improvements in our programs to provide greater protections for worker safety and health.

The insights of this current audit report and the importance of ongoing improvements in OSHA programs such as the EEP enable the Agency to better address workplace safety and health. OSHA will evaluate and implement the OIG recommendations as follows:

Recommendation 1: Form an EEP Task Force to make recommendations to improve program efficiency and effectiveness in the following areas.

a. Targeting indifferent employers most likely to have unabated hazards and/or company-wide safety and health issues at multiple worksites.
b. Ensuring appropriate actions (i.e. follow up and related worksite inspections) are taken on indifferent employers and related companies.
c. Centralizing data analysis to identify employers with multiple EEP qualifying and/or fatality cases that occur across regions.
d. Making use of different enhanced enforcement approaches, as appropriate, based on employer industry or the type of worksite.
e. Identifying and sharing Regional and Area Offices' "best practices" to improve compliance with EEP requirements.

OSHA Response: The Agency agrees with this recommendation. As previously indicated, OSHA had always intended to constitute an Agency Task Force to review and strengthen the EEP. The findings and recommendations contained in this audit will serve as a basis for the work of the Task Force. The Agency agrees that recommendations a. through e. above provide a well-considered starting blueprint for the evaluation of the EEP.

Recommendation 2: Revise the EEP directive to address issues with prior qualifying history and designation, and to provide specific criteria when National Office EEP-Alert Memoranda are to be issued.

OSHA Response: The Agency agrees with the OIG that once constituted, OSHA's EEP Task Force should evaluate the issue of prior qualifying history and designation and the need for specific criteria when National Office EEP-Alert Memorandum are to be issued.

Recommendation 3: Provide formal training on the EEP requirements including designation, consideration of related worksite inspections, enhanced enforcement

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follow-up, and enhanced settlement provisions to ensure consistent application of EEP requirements.

OSHA Response: The Agency agrees with this recommendation. When the revised EEP directive is completed, the Agency is committed to providing formal training on its provisions. At this time, we expect that OSHA would provide Webinar training for all OSHA field personnel to assure understanding of the directive, including the elements specifically raised in Recommendation #3.

Recommendation 4: Incorporate enhanced settlement provisions in OSHA's informal settlement template.

OSHA Response: The Agency agrees with this recommendation to the extent that we will raise the issue of incorporating enhanced settlement provisions in our informal settlement template. However, since the Agency works in conjunction with the Office of the Solicitor and settlement provisions are subject to their input on the matter, we cannot definitively commit that such provisions will be incorporated.

Recommendation 5: Establish controls for periodic reconciliation of the EEP log to OSHA's data system (currently IMIS).

OSHA Response: The Agency believes that it has already complied with this recommendation. OSHA previously established a separate data base with biweekly reporting by the Regional Offices. We are convinced that any concerns raised by the OIG about periodic reconciliation of the EEP log will be resolved with the roll-out of the new OSHA Information System (OIS). In addition, the EEP Task Group will be charged with reviewing the subject of data reconciliation and making any recommendations for interim remedial action that might be reasonable and appropriate to address any concerns prior to the implementation of the OIS.

Recommendation 6: Develop and distribute a crosswalk to Federal OSHA citations for state standards that have different coding than Federal OSHA Standards.

OSHA Response: Although the Agency agrees with this recommendation in principle, this would be a very resource intensive project that would require the expenditure of funds for which the Agency has neither budgeted nor requested. However, OSHA does commit to undertake an effort, in conjunction with the States, to have the States provide crosswalk information for the Agency's data system that will link different State citable standards to its Federal equivalent. The availability of IT resources and competing priorities for those funds will determine the Agency's ability and timetable in completing this task.

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