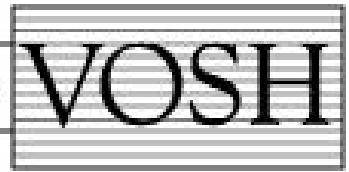


Virginia Occupational Safety and Health



VOSH PROGRAM DIRECTIVE: 01-017

ISSUED: March 1, 2005

SUBJECT: Expedited Informal Settlement Agreement (EISA) Program

A. Purpose.

This directive establishes procedures for a uniform statewide Expedited Informal Settlement Agreement (EISA) Program for VOSH. The program provides an incentive in the form of a penalty reduction for employers who agree to abate all violations by the date set out in the citation.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies VOSH-wide to all general industry, construction, and agricultural employers.

C. Reference.

Draft OSHA Instruction CPL 2.117 (September 4, 1996).

D. Cancellation.

Not Applicable.

E. Action.

The Directors and Managers shall ensure that field personnel understand the procedures included in this directive.

F. Effective Date.

March 1, 2005.

G. Expiration Date.

Not Applicable.

H. Background.

Informal conferences consume a considerable amount of VOSH resources. In many cases, the size of the proposed penalty is the only concern raised by the employer. A settlement agreement is generally reached in a majority of these cases in which a penalty reduction is negotiated. This has been effective in saving significant time and costs.

I. Summary.

1. **Goals.**

The use of the EISA is to provide:

- a. A means by which uncomplicated cases can be resolved expeditiously through the mail, thereby eliminating the need for time consuming and resource intensive face-to-face informal conferences.
- b. A financial incentive which encourages employers not to contest citations and to undertake prompt abatement action. Contested cases suspend an employer's obligation to abate violations, thus, under the EISA, the overall abatement lapse time will decrease.
- c. A decrease in debt collection activities because of the prompt payment of penalties.

2. **Guidelines.** This instruction provides guidelines to the field to ensure uniformity, consistency, and involvement by employee representatives. It also provides the regional office with flexibility to modify the penalty reductions that are typically offered, depending upon the circumstances.

J. Procedures.

The following steps are required in administering the EISA program.

1. **Employee representatives.** The employer shall attest to the involvement in the settlement process of the employee representative for those employees who are represented by a group or a union.
2. **Eligibility for EISA.** Every investigative file shall be reviewed prior to the issuance of citations to determine whether the employer meets the following eligibility requirements for an EISA:
 - a. The case is not an accident, fatality, or catastrophe investigation; and,

- b. The case does not include failure-to-abate, repeated, willful, or high gravity serious (high severity/greater probability) violations.
 - c. A delinquency in any prior penalty payments owed to VOSH by the employer may be an eligibility consideration; however, if the case meets the remaining criteria for an EISA and the employer is ready, willing, and able to pay the reduced penalty and abate the hazard to settle the matter expeditiously and informally, discretion should be exercised as to whether overdue payments on a previous final order should be used as a bar to an EISA.
 - d. The EISA cannot be used to modify or withdraw a citation, reclassify violations, or change abatement dates.
 - e. Any other factors which, would indicate that the case is not suitable for an EISA, for example, the lack of a safety and health program, lack of employer good faith during the inspection, or the potential for a high deterrent effect because of industry-wide implications or media interest.
3. Mandatory Mailings of the EISA. Employers who have been identified as being eligible for the EISA shall be mailed a letter explaining the EISA program (see Appendix A--sample letter) along with the citations and a fully prepared EISA (see Appendix B--sample EISA). A copy shall also be mailed along with a copy of the citations to the employee representative (see VOSH FOM). The EISA shall contain the following requirements:
4. Mandatory Provisions of the EISA.
- a. The employer must agree to abate all violations by the abatement dates set forth in the citations. The employer shall provide evidence of abatement, such as pictures, work orders, or purchase orders, and the employer shall also certify that abatement has been completed and the manner in which it has been accomplished for all items of the citations.
 - b. VOSH will agree to a significant reduction in the total penalty amount.
 - c. The employer must submit full payment for the reduced penalty amount with the return of the signed EISA. Because the penalty reduction under the EISA is an incentive for prompt abatement, no overdue payments are to be allowed.
 - d. The failure to abate, the failure to pay the reduced penalty within the allotted time period, or the failure to comply with any of the terms of the EISA will result in reinstatement of the original penalty amount.
 - e. A copy of the EISA must be provided to the employee representative.
 - f. The employer shall agree to waive its right to contest the amended citations and penalties, and abatement dates.

- g. The employer must acknowledge that the agreement is made solely for the purpose of an amicable settlement and that the terms of the agreement shall not be used for any other purpose, except for subsequent proceedings and matters brought by the Commissioner of Labor and Industry directly under the provisions of Title 40.1 of the *Code of Virginia*.

K. Follow-up Inspections. At the discretion of the Compliance Manager, follow-up inspections may be scheduled to insure compliance with the EISA.

L. Recording and Tracking. For the purposes of IMIS coding, EISAs shall be recorded under Item 42-Optional Information on the VOSH-1 form.

- 1. When an EISA is offered to an employer, enter the following codes:

<u>Type</u>	<u>ID</u>	<u>Value</u>
S	11	EISA

- 2. When an offered EISA is fully executed by the employer enter the following codes:

<u>Type</u>	<u>ID</u>	<u>Value</u>
S	12	XEISA

M. Program evaluation. Each regional office shall collect the number of fully executed EISAs and report annual totals beginning from 1 October of each year as directed by the Assistant Commissioner - Programs or the VOSH Director for Safety or Health.

Appendices: A -- Sample cover letter to employer

B -- Sample EISA

C. Ray Davenport
Commissioner

Attachments: Appendices A and B

Distribution: Commissioner of Labor and Industry
Assistant Commissioner - Programs
Directors and Managers
VOSH Compliance Staff
Cooperative Programs Staff
Legal Support Staff
OSHA Regional Administrator, Region III
OSHA Area Office, Norfolk

APPENDIX A

Sample Form Letter to Employer

Dear Employer:

The enclosed Citation and Notification of Penalty describes violations of Virginia Occupational Safety and Health Program (VOSH) standards pursuant to Title 40.1 of the *Code of Virginia* which were issued as a result of a recent inspection of your workplace. The following letter provides a description of the Expedited Informal Settlement Agreement (EISA) Program and your eligibility to participate.

Under the EISA Program, an employer can agree to settle the matter without a meeting at the Department of Labor and Industry regional office. Because the inspection of your workplace revealed no instances of repeated, willful, failure to abate or high gravity serious violations, you are eligible to participate. VOSH will agree to a significant reduction in the total proposed penalty provided that the employer agrees to the following:

1. Correct the violations by the abatement date on the Citation and Notification of Penalty, provide evidence of abatement, certify that abatement has been completed and the manner in which it has been accomplished for all citation items, and provide payment, by check or money order, within 15 working days of the receipt of the Citations (the contest period); and,
2. Waive its right to contest any part of the Citation and Notification of Penalty.

To take advantage of this offer of settlement, you must **submit the signed EISA to the (name of the office) office within 15 working days** of the date of issuance of the citations.

Please note that the EISA is not available where there is a dispute regarding the inspection or the citation. Under those circumstances, or in the event that the employer declines this EISA, the employer may contact the regional office and request an Informal Conference. The employer may also elect to file a Notice of Contest according to the instructions contained on the Citation and Notification of Penalty. A failure to comply with any of the terms of the EISA will constitute a breach of the agreement and the original penalty will be imposed.

Please direct questions concerning this matter to (*office, person, and phone number*).

Sincerely,

Compliance Manager

APPENDIX B

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY OCCUPATIONAL SAFETY AND HEALTH PROGRAM EXPEDITED INFORMAL SETTLEMENT AGREEMENT

In the Matter of: VARIABLE(establishment_name)
VOSH No.(s): VARIABLE(inspect_number)

The undersigned representatives of the Employer and the Occupational Safety and Health Program of the Virginia Department of Labor and Industry have reached agreement on a full and complete settlement and disposition of the attached citation(s) and penalties which were issued on VARIABLE(issued_date).

It is hereby stipulated and agreed between (*name of company*), hereafter referred to as the “Employer”, and the Virginia Occupational Safety and Health Program, hereafter referred to as “VOSH” that:

1. The Employer agrees to correct the violations as cited in the attached citations on or before the abatement dates set out in the citations.
2. The Employer, upon completion of abatement, agrees to provide (*name of the regional compliance manager*), Compliance Manager for the (*name of the region*) Region of the Department of Labor and Industry, with written verification and evidence that abatement has been completed and the manner in which it had been accomplished for all items of the attached citations.
3. The Employer agrees to comply with the provisions of Title 40.1 of the *Code of Virginia* and the applicable occupational safety and health standards promulgated pursuant to Title 40.1.
4. The Employer agrees to immediately post a copy of this Expedited Informal Settlement Agreement (EISA) in a prominent place at or near the location of the violation(s) referred to in the attached citation. This Settlement Agreement must remain posted until the violations cited have been corrected, or for 3 working days (excluding weekends and State Holidays), whichever is longer.
5. The Employer acknowledges that the authorized employee representative, if any, has been informed of this Settlement Agreement.
6. The Employer agrees to **submit the signed EISA to the (*name of the office*) office** within 15 working days of the issuance of the citations.
7. The penalty has been amended by agreement between the Employer and Commissioner of Labor and Industry. The Employer, by signing this Expedited Informal Settlement Agreement, hereby waives its rights to file a notice of contest to the citation(s). The Employer also hereby waives its right to contest both the penalties as originally issued or as amended by the Agreement and the associated abatement dates. Therefore, the citation and amended penalties pursuant to this Agreement shall be deemed a final order of the Commissioner. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the Commissioner.

8. The Employer agrees to pay the reduced penalties, amended by this Agreement, and to submit those funds in the amount of:

\$FIELD(REduced_PENALTY)

as full and complete payment within 15 working days of the issuance of the citations. The Employer will make the check or money order payable to the "Treasurer of Virginia" and also write the VOSH Inspection number from the citation on the check or money order. Mail penalty payment to:

Accounting Office
Department of Labor and Industry
Powers-Taylor Building
13 South Thirteenth Street
Richmond, VA 23219-4104

9. The Employer agrees that its failure to comply with any of the terms of this Agreement shall void this Agreement in its entirety and cause to become due to VOSH the original penalty amount of:

\$FIELD(ORIGINAL_PENALTY)

10. The agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and amicably and they shall not be used for any other purpose, except for subsequent proceedings and matters brought by VOSH directly under the provisions of Title 40.1 of the Code of Virginia.

Compliance Manager

date

Employer

date

NOTE: Please send this Agreement with your signature **WITHIN 15 WORKING DAYS OF RECEIPT OF THESE CITATIONS** to the Compliance Manager at the *(insert name of office)* Office. A copy of the agreement also signed by the Compliance Manager will then be returned to the employer which completes the agreement.

PLEASE SEND YOUR PAYMENT SEPARATELY TO THE ADDRESS GIVEN IN ITEM 8 ABOVE.