

*Congress of the United States
Washington, D. C. 20510*

March 28, 2003

John L. Henshaw
U.S. Department of Labor
Office of the Assistant Secretary
Occupational Safety and Health Administration - Room: S2315
200 Constitution Avenue
Washington, D.C. 20210

Dear Secretary Henshaw,

Earlier this month, the Occupational Safety and Health Administration (OSHA) announced that it had come to an agreement with the Motiva Oil Refinery in Delaware City, to reduce penalties the refinery will pay related to the July 21, 2001 aboveground storage tank explosion that occurred at the plant. You are aware that Jeffrey Davis, a father of five was killed during the explosion, and eight others were injured. We are writing today to express our concern with this action and voice our opposition to the reduction in penalties.

In January 2002, OSHA initially proposed fines totaling \$259,000. These fines covered two classifications of violations, referred to as either willful or serious. It is our understanding that willful violations are defined as acts that show an intentional disregard or indifference to regulations, while serious violations involve acts that increase the probability that death or serious physical harm could result, and that the employer knew or should have known about the hazard. At the time the proposed fines were released, OSHA charged Motiva with three alleged willful violations and seven serious violations. Quite recently, however, OSHA dropped all but two of these charges and reduced penalties by one third to \$175,000.

Due to the seriousness of the accident and the blatant disregard to safety issues Motiva displayed leading up to the event, it is hard for us to imagine why any of these charges were dropped or penalties reduced. You already know that the U.S. Chemical Safety and Hazard Investigation Board issued a report in October 2002, summarizing its own investigation of the July 2001 accident. The findings of that report made clear that had the refinery practiced basic maintenance and safe work standards, this accident would not have occurred.

OSHA's decision to reduce by one-third the fines against Motiva is troubling. At a minimum, it ignores the message this decision sends to Motiva, as the offending party, and to the families and victims of this tragedy. Accordingly, please respond promptly and thoroughly to the following questions:

1. What statutory or regulatory authority provided the basis for OSHA's reduction in fines?
2. What factors informed OSHA's decision to reduce the fines?
3. What percent of OSHA's civil enforcement actions result in a reduction of fines?
4. Has OSHA previously reduced fines in a civil enforcement action involving an incident in which OSHA violations by the defendant resulted in death or serious injury?
5. Did OSHA consult with the families of the victims of the July 21, 2001 tank explosion prior to agreeing to reduce the fines?

In conclusion, we cannot stress strongly enough our concern with OSHA's inexplicable decision to reduce penalties in the case of such egregious OSHA violations. OSHA's decision, unfortunately, only compounds the emotional trauma of the families and victims of this tragic accident. While the proposed penalties cannot compensate for the loss of life or injuries suffered by the victims, they create a powerful incentive for companies like Motiva to comply fully with OSHA safety standards. Your actions in this case call into question OSHA's commitment to employ all available sanctions to combat and deter flagrant OSHA violations to protect the safety of workers in Delaware. Our dismay is only heightened by your decision to cut penalties in a case where death and serious injury resulted from Motiva's failure to comply with OSHA regulations.

Given the seriousness of OSHA's actions, please respond to our questions no later than Friday, April 4, 2003.

Sincerely,

Joseph R. Biden, Jr.
United States Senator

Thomas R. Carper
United States Senator

Michael N. Castle
Member of Congress