

MINNEAPOLIS/ST. PAUL BUSINESS JOURNAL

COVER STORY

Violating safety regulations costs Minnesota employers millions in steep fines

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On Jan. 29, 2013, scalding-hot sugar-beet juice inflicted third-degree burns on more than half of a worker's body at the American Crystal Sugar Co. facility in East Grand Forks. After the incident, the Minnesota Occupational Safety and Health Administration investigated and issued fines against the company totaling \$20,200. After an appeal, the business ended up paying about half that amount.

American Crystal is hardly the only company with a presence in the state to be fined by OSHA. Going by closed OSHA cases between 2012 and 2016, thousands of companies – primarily in construction and manufacturing – were fined almost \$12.4 million. After appeals, they paid about \$8.4 million in penalties, according to an analysis by the Minneapolis/St. Paul Business Journal.

In fact, a half dozen other companies have been fined more than American Crystal over that time frame. They include Electrolux Home Products, Berwald Roofing Co., Federal Cartridge Co., JL Schwieters Construction Inc., Northland Constructors and Wilbert Plastic Services. The companies the Business Journal spoke with didn't dispute the figures, but most argued OSHA's communication and clarity of guidelines could be better. Some also think workers, and not companies, should be held liable in some cases.

While local workplace safety appears to be improving, some companies have had continuing problems that resulted in additional fines after followup inspections.

About two months after the American Crystal Sugar incident, OSHA went back to the plant and found more safety issues. That resulted in almost another \$30,000 in fines, with roughly \$13,000 ultimately being paid.

A representative for American Crystal Sug-

ar didn't dispute the burn incident was bad, but argued OSHA's poor communication led to confusion in some cases.

"We had one incident [where] we had an employee who was burned," said Paul Fernholz, a safety manager from American Crystal Sugar. "Some of [the fines] are legit."

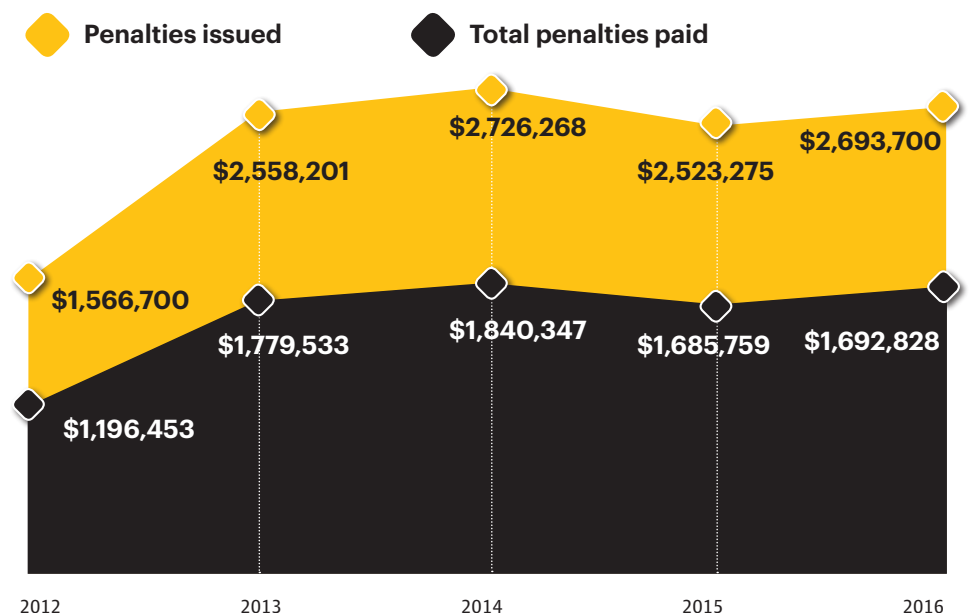
Fernholz was quick to add that getting clear answers or guidance from OSHA is frustrating and it takes too long. "It would be so much nicer if they ... right then and there take care of the issue."

American Crystal Sugar isn't the only employer where company officials felt that way about Minnesota OSHA. Aaron Dean, an attorney who has represented companies in dozens of lawsuits contesting fines, agreed that communication can be poor and also grumbled that responsibility should be on workers in some cases, since companies can only train and educate employees so much – and then it's up to them.

Minnesota OSHA, which develops and enforces safety regulations in the workplace,

MN OSHA PENALTIES STAY LEVEL

The state of Minnesota's Occupational Safety and Health Administration has issued almost \$12.4 million in fines from closed cases between 2012 and 2016. Of that, roughly \$8.4 million was paid after appeals and reductions. Here is a breakdown by year, the data includes fines issued to companies primarily in the construction and manufacturing industries in Minnesota (the companies may not be headquartered here, but do have a physical presence):



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doesn't see it that way. Neither do some in labor.

"In my 20 years, that's the first time I've heard that," said Minnesota's OSHA Compliance Director James Krueger in reference to companies griping about guidance and communication issues. He also didn't buy the idea that workers should be held accountable instead of companies. "Who is in control of [a] worksite? It's the employer."

Labor unions tend to agree with OSHA on who's responsible for paying the fines.

"I think that's unbelievable that they'd recommend that," said Laborers Local 563 Director of Contractor Relations Tom Vevea about the idea workers should be on the hook for fines. "I strongly believe that it's up to the contractor to make sure [workers] have the necessary training and make the condition as safe as possible in the area they're working in."

Local 563 has roughly 13,000 members in Minnesota working on construction sites. Vevea said contractors have a good relationship with workers locally and workplaces here are safer than in other states he's worked in.

No company operating in Minnesota in the construction or manufacturing industry has been fined more, or paid more in fines, than

Electrolux Home Products Inc. The Stockholm, Sweden-based company has been fined \$237,800, of which it paid \$142,760 after reductions. The vast majority of the fines came from one inspection when OSHA found that new management at a St. Cloud plant had limited knowledge on best practices and communications to ensure safety. The total fine was slightly more than \$200,000. After an appeal, the company paid \$120,900.

"The safety and security of our employees is our top priority and we worked with Minnesota OSHA to resolve this matter, immediately strengthening the safety concerns they identified," a company spokesperson said. "We are proud of our St. Cloud team and are committed to ensuring their safety."

Berwald Roofing also has paid more than \$100,000 in fines. The company employed a worker who died after falling during construction of U.S. Bank Stadium. The accident was widely covered by the media when it occurred in August 2015.

The vast majority of fines levied against construction and manufacturing companies are small, and they're often reduced dramatically because Minnesota OSHA isn't looking to penalize companies or put them out of

WHAT RULES TRIP UP MINNESOTA EMPLOYERS?

Minnesota's Occupational Safety and Health Administration finds certain violations pop up more than others in the workplace. Here is a breakdown from fiscal year 2016 (Oct. 1, 2015, through Sept. 30, 2016) of the most frequently cited issues for all industries in Minnesota:



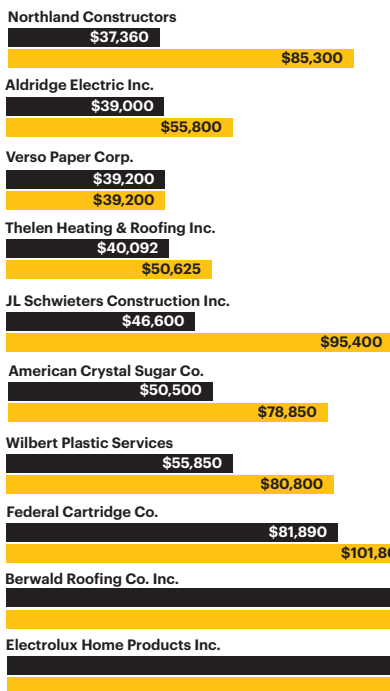
NOTES: * Employers with hazardous chemicals in their workplaces must prepare and implement a written hazard communication program, and must ensure that all containers are labeled, employees are provided access to material safety data sheets, and an effective training program is conducted for all potentially exposed employees.

** Workers have the right to know what hazards are present in the workplace and how to protect themselves. Many OSHA standards require various methods that employers must use to inform their employees, such as warning signs, color-coding, signals and training.

*** An employer covered by this section must establish a written program that includes the methods used to identify, analyze and control new or existing hazards, conditions and operations; how the plan will be communicated to all affected employees so they are informed of work-related hazards and controls; how workplace accidents will be investigated and corrective action implemented; and how safe work practices and rules will be enforced.

MINNESOTA'S MOST-FINED WORKPLACES

Often what companies actually pay compared to what they were originally fined by the state of Minnesota's Occupational Safety and Health Administration is dramatically lower. Here are the companies that have paid the most in fines from OSHA on cases closed between 2012 and 2016. Also included is what each company was originally fined. Companies in the data are primarily in the construction or manufacturing industries.

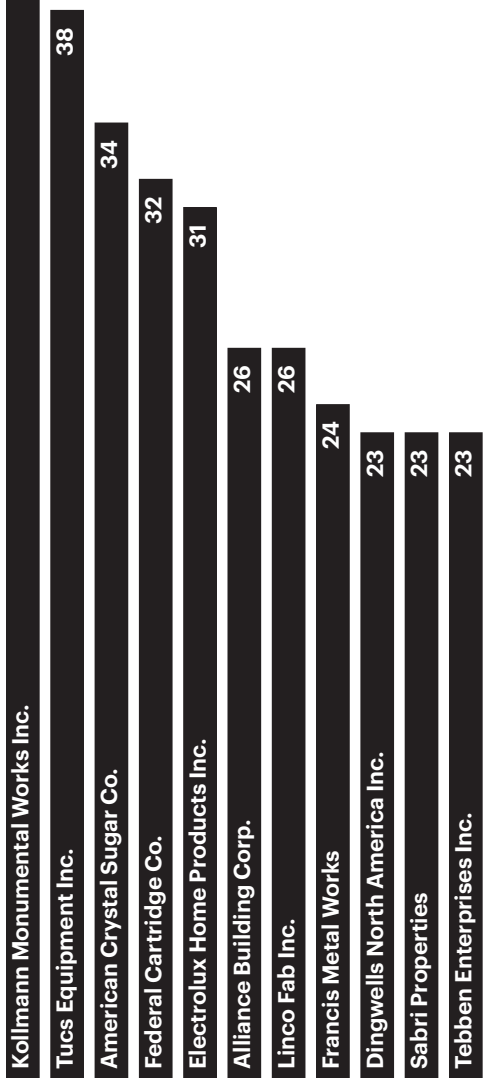


◆ Amount paid
◆ Amount originally fined

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53 **MOST VIOLATIONS**

Companies primarily in the manufacturing and construction industries that have been fined or paid the most aren't always the companies that have received the most violations. Here is a breakdown of companies that have received the most violations from cases closed between 2012 and 2016 from the state of Minnesota's Occupational Safety and Health Administration:



TRUMP CUTS REGS, BUT NOT ON WORKER SAFETY

President Donald Trump has been pretty clear from early on that he wants to slash regulations on businesses.

One area remaining status quo — at least from a funding standpoint — is worker safety, at least for now. The White House is recommending only about a 2 percent cut for fiscal year 2017 for the U.S. Department of Labor's Occupational Safety and Health Administration, according to Bloomberg BNA.

The state of Minnesota has its own OSHA Administration, part of the Minnesota Department of Labor and Industry, so it relies even less on federal funding for its operation since state dollars fund a large portion of its operating budget. Some states rely solely on the federal office for workplace safety.

"We don't know of any impacts," said James Honerman, spokesman for Minnesota OSHA, when asked about any effects from the Trump Administration.

- Patrick Rehkamp

business, it's trying to keep employees safe, Krueger said. If it's clear a company accidentally violated rules or has a good track record, the fines in many cases are reduced.

The median amount companies were fined in total is \$1,050. The median amount paid by each company is less than \$800. If a worker dies from an accident at a job site, it can be a \$25,000 fine and possibly as much as \$50,000 if the death happened from willful negligence.

At least one industry professional thinks some companies' totals are so high because repeat violations are astronomically higher than the first offense — especially if the first offense isn't contested.

"I think there's a lot of contractors who did nothing wrong [but] pay the fine to avoid the distraction," said Aaron Dean, an attorney for Minneapolis-based Moss & Barnett who represents construction companies over OSHA disputes. "And that's really unfortunate. Paying the fine to avoid the fight just causes a bigger fight in the future."

Dean has represented Maple Lake-based LaTour Construction, which paid more than \$27,000 in OSHA fines, down from \$53,000 it was originally fined on closed cases from 2012 through 2016.

While the dollar amount fined and paid has stayed relatively consistent on an annual basis over the past five years, OSHA is attempting to reduce the number of safety accidents statewide. It appears to be hitting most of its goals.

From the years 2007 through 2011, Minnesota OSHA investigated an average of 18 worker deaths annually — not including deaths from traffic accidents, farming accidents, mining accidents and the like. For the five years following, the average dropped to 17.

It also appears that construction and manufacturing jobs are getting safer in the state. In 2011, workers in Minnesota on construction jobs were injured at a rate of 6.5 per every 100 full-time workers. That figure dropped to 5.3 in 2015 for an 18 percent reduction. Over that same time, manufacturing workers had a 12 percent drop, according to Minnesota's Bureau of Labor Statistics. Those industries are still dangerous compared to the state average for all private industries of 3.5 injuries for every 100 full-time equivalent employee.

While companies in Minnesota are still annually paying more than \$1 million in fines, everyone the *Business Journal* talked to agreed that worker safety conditions have improved, sometimes dramatically, compared to a few decades ago. Most think that companies, workers, labor unions and OSHA are all working together to create safer work environments. Plus, it's just good business to keep employees safe.

"Generally speaking, for all the investment that [all parties have done, it] has resulted in a relatively safe workplace," said Peter Hilger, faculty director for the University of Minnesota's Construction Management Program. "That's the important back-story here."