
MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

AGENCY INSTRUCTION

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SUBJECT: Appeal and Settlement Processes for MIOSHA Enforcement Divisions

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Appeal and Settlement Processes for MIOSHA Enforcement Divisions

- I. Purpose. This instruction establishes policies, procedures, and guidelines to be followed to help ensure consistency among Michigan Occupational Safety and Health Administration (MIOSHA) enforcement programs in application of the appeals process.
- II. Scope. This instruction applies to the Construction Safety and Health Division (CSHD), the General Industry Safety and Health Division (GISHD), and the MIOSHA Appeals Division.
- III. References.
 - A. Agency Instruction, [MIOSHA-COM-11-2, Severe Violator Enforcement Program \(SVEP\)](#), as amended.
 - B. Agency Instruction, [MIOSHA-ADM-22-3, Whistleblower Investigations Manual](#), as amended.
 - C. [Contested Case Appeal Process Flow Chart](#).
 - D. [Late Appeal Process Flow Chart](#).
 - E. [MIOSHA Enforcement & Appeals Overview](#).
 - F. [MIOSHA Fact Sheet, Citation Hearings – What to Expect & How to Prepare](#).
 - G. [MIOSHA Fact Sheet, Late Appeals](#).
 - H. [MIOSHA Fact Sheet, Prehearing Conference – What to Expect & How to Prepare](#).
 - I. [Michigan Administrative Hearing System Uniform Hearing Rules](#), R792.10101 et seq.
 - J. [Michigan Administrative Procedures Act](#), MCL 24.201 et seq., P.A. 306 of 1969, as amended.
 - K. [Michigan Occupational Safety and Health Act](#), MCL 408.1001 et seq., P.A. 154 of 1974, as amended.
 - L. MIOSHA “Citation and Notification of Penalty” pages.
 - M. [Occupational Safety and Health Standards Part 4](#), R408.21401 et seq., Procedures.
 - N. [Occupational Safety and Health Standards Part 12](#), R408.22201 et seq., Variances.
 - O. [Occupational Safety and Health Standards Part 13](#), R408.22301 et seq., Inspections and Investigations, Citations and Proposed Penalties.
 - P. MIOSHA Online Penalty Reduction Agreement (PRA) Homepage, www.michigan.gov/mioshapra.
 - Q. [MIOSHA Online PRA System Manual](#) (internally accessible).
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; MIOSHA Messenger; and Internet Accessible.
- V. Cancellations. All previous versions of this agency instruction.

- VI. Next Review Date. This instruction will be reviewed three years from date of issuance.
- VII. History. History of previous versions includes:
 - MIOSHA-COM-04-2R3, February 20, 2020
 - MIOSHA-COM-04-2R2, July 11, 2016
 - MIOSHA-COM-04-2R1, November 30, 2011
 - MIOSHA-COM-04-2, November 5, 2004
- VIII. Contact. [Dawn C.M. Jack](#), Director, Appeals Division
- IX. Originator. Barton G. Pickelman, Director
- X. Significant Changes.
 - A. Added requirement for Manager-level review of first appeal decisions which would vacate, reclassify or regroup citations.
 - B. Changed standard format for prehearing conferences from in person to by telephone.
 - C. Modified prehearing conference format alternatives to include by videoconference and face-to-face.
 - D. Added guidance allowing electronic circulation and signing of settlement agreements.
 - E. Added guidance regarding the handling of discrimination appeals.
 - F. Updated Severe Violator Enforcement Program (SVEP) section to remove outdated settlement terms and conditions and refer to SVEP agency instruction for SVEP settlement guidelines.
 - G. Updated appendices A, B, and C.
- XI. Policies and Procedures. It is the goal of MIOSHA to ensure abatement of hazards at the earliest possible opportunity. Therefore, efforts are made to educate employers as to the appeal and settlement process and to equitably settle as many cases as possible early in the process through a PRA or in the first step of the appeal process.
 - A. Penalty Reduction Agreements (PRA). In addition to the appeal rights afforded by the MIOSH Act, MIOSHA has implemented a PRA program for negotiating settlement with the employer prior to the contest of the citations. This is a program designed to reach abatement of the hazard at the earliest possible opportunity and reduce the need for appeal.
 - 1. Terms. A PRA can result in a penalty reduction of 50% provided the employer pays all reduced penalties, or begins a payment plan, within 15 working days of MIOSHA's signing of the PRA, and the issuing division and the employer agree to several other specified conditions. These other conditions include an agreement by the employer to:
 - a) Waive the right to appeal and accept all citations issued.
 - b) Abate all items within the abatement period.

- c) Provide proof of abatement when required.
 - d) Abide by any other mutually agreed upon actions.
2. Eligibility. Fatality inspections, SVEP inspections, and inspections which contain willful violations are not eligible for a PRA. Citations for construction inspections must be abated prior to MIOSHA's approval of a PRA request.
 3. Time Limits. A request for a PRA can be made preferably within five (5) working days upon receipt of a citation(s), but no later than the 15th working day beyond receipt of the citation(s). A PRA must be completed by the employer and MIOSHA within 15 working days from the date the citations were received by the employer. Manual PRAs signed and returned by mail must contain a postmark date within the 15 working day time limit to be considered timely.
 4. Completion. A PRA submitted online by an employer is considered completed when the agreement has been approved and signed by the issuing division's PRA Coordinator. A PRA submitted online by MIOSHA and mailed to the employer is considered completed when the agreement has been signed by the employer and returned to the issuing division.
 5. Process. Each enforcement division shall be responsible for operating the PRA program for citations it has issued. A PRA Coordinator with authorization to approve PRAs will be assigned for each enforcement division.
 - a) If the employer wishes to accept the conditions stated above and the process can be completed within 15 working days from receipt of the citation, then no appeal need be filed. An employer interested in pursuing a PRA, can apply for a PRA electronically via MIOSHA's Online PRA System at www.michigan.gov/mioshapra. An employer without computer or internet access can contact the issuing division's PRA Coordinator by phone to request a PRA and a manual PRA will be processed.
 - b) Online. When a PRA is requested online, the employer will electronically review their eligibility and create, sign, and submit a draft PRA for review by the issuing division's PRA Coordinator. The issuing division's PRA Coordinator will review the draft PRA for accuracy, eligibility, and timeliness in accordance with this instruction and the MIOSHA Online PRA System Manual. Typographical errors in the agreement may be corrected prior to approval. Once the issuing division's PRA Coordinator has determined whether the PRA request will be approved or denied, the coordinator will use the online PRA system to send the employer a letter via email notifying them of the outcome of their

- PRA request. A sample letter is contained in Appendix A. Approved PRAs will include a copy of the approved PRA signed by the PRA Coordinator as contained in Appendix B. Notices of other activity or required action concerning the PRA will be sent to the employer via the email provided.
- c) **Manual.** When an employer contacts the issuing division to request a PRA due to lack of computer or internet access, the issuing division's PRA Coordinator will submit a PRA request on behalf of the employer via the online system. Once accuracy, eligibility, and timeliness have been verified, a hard copy of the PRA will be signed by the issuing division's PRA Coordinator and mailed or faxed to the employer for signing. The employer is required to sign the PRA and return it before the end of the 15 working day period. Notices of other activity or required action concerning the PRA will be sent to the employer by mail or fax.
6. **Payment.** The employer is entitled to pay the reduced penalty amount if paid as outlined in the agreement, or a payment plan is initiated, within 15 working days of MIOSHA's approval of the PRA. Failure to pay the reduced penalty, or begin a payment plan within the specified timeframe, will result in an Overdue Penalty letter being sent to the employer for the original penalty.
 7. **PRA Resources.** Employers inquiring how to request a PRA may be referred to:
 - a) The "Citation and Notification of Penalty" explanation pages the employer received, Section II, Penalty Reduction.
 - b) The MIOSHA PRA Homepage at www.michigan.gov/mioshapra
 - c) [Enforcement & Appeals Overview](#) brochure.
 - d) Note: In discussing a PRA with an employer, the issuing division should emphasize the PRA program requirements, including eligibility, time limits, and the requirement for a signed agreement. Employers expressing a desire or intent to have other citation modifications outside of a penalty reduction included in the PRA should be informed of the need to properly file a first appeal.
- B. **First Appeal.** Section 41 of the MIOSH Act sets forth the employer's right to file a petition for dismissal or modification of a citation or proposed penalty, also known as the first appeal.
1. **Process.** Within 15 working days of receipt of a citation, an employer may file a first appeal to the issuing division in writing, seeking modification or dismissal of a citation item and/or any proposed penalty, and/or an extension of time for abatement. The first appeal can also result in a penalty reduction of up to 50% providing the issuing division and the

employer agree to certain conditions (see Section [XI.A.1. a-d](#) above). An employee or employee representative may appeal in writing the reasonableness of the abatement date(s).

2. **Format.** A first appeal notice must be in writing and sent by mail or hand delivery. The appeal must specify the item(s) appealed and that portion of the item (e.g., violation, abatement date and penalty) which is being appealed and include a certification that the appeal has been posted or given to affected employees or their representatives.
3. **Time Limits.** An appeal sent by mail must be postmarked no later than the 15th working day following the employer's receipt of the citation. If a citation is not appealed within 15 working days of receipt, then the citation becomes a Final Order of the Board of Health and Safety Compliance and Appeals (Board). Final Order citations are not subject to review by the issuing division. First appeal notices that are not filed timely must be forwarded to the Michigan Office of Administrative Hearings and Rules (MOAHR) to determine whether there is good cause for the late appeal in accordance with the procedures in [Section XI. M. 1. Late First Appeal](#).
4. **Appeal Discussion.** The issuing division should make a reasonable effort to contact the employer to discuss the issues of their appeal unless the written appeal is sufficiently explanatory. When issues cited or raised by the employer warrant, the employer should be given the opportunity to meet with the issuing division if they so desire. If the issuing division meets with the employer to discuss an appeal, the issuing division will notify any employee representative and allow attendance at the meeting.
5. **First Appeal Decision.** A Decision in Response to Employer Petition will be sent within 15 working days of receipt of the employer's first appeal. The decision must be posted by the employer at or near the location of the subject citation.
6. **First Appeal Resources.** Employers inquiring how to file a first appeal may be referred to:
 - a) "Citation and Notification of Penalty" explanation pages in the citation packet received, Section III, Citation Appeal.
 - b) [Enforcement & Appeals Overview](#) brochure.
 - c) [Contested Case Appeal Process Flow Chart](#).
 - d) NOTE: These materials are consistent with the MIOSH Act and [Occupational Safety and Health Standard Part 13, R408.22301 et seq., Inspections and Investigations, Citations and Proposed Penalties](#).
7. **Settlement.** There are two approaches that can be used for settling a case at the first appeal step: settlement agreement or settlement via decision letter.

8. Settlement Agreement (SA). In the first approach, which is the most used, a settlement agreement granting up to a 50% reduction in penalty can accompany or follow the decision response. The decision response will only address the issues as stated in the employer's appeal. The SA would require the employer to agree to certain conditions agreed upon by the issuing division and the employer, by signing and returning the SA to the division. One of the conditions the employer would agree to, for the agreement and any penalty reductions in a SA to remain valid is to not appeal further. This gives the division the option of reverting the agreement and reinstating the original penalty if the employer files a second appeal or otherwise does not abide by all the conditions of the agreement. The SA may be sent and signed by the parties electronically via the State of Michigan's approved E-signature solution, or by hand.
 - a) Settlement via Decision. The second approach, less frequently used, allows a penalty reduction to be included in the Decision in Response to Employer Petition. This approach may be appropriate when it is apparent that the employer is interested in abating the violations in an expeditious manner but has issues they would like to have addressed (e.g., abatement date changes, appropriate changes to citation items), and the employer is interested in settling the case at the earliest possible opportunity. In this circumstance, the issuing division may grant up to a 50% penalty reduction along with other issues as delineated in the employer's appeal, in the decision response, settling the case with a decision response only (not accompanied by a SA). It is expected that granting penalty reductions in a decision response will be limited to only those cases where it is clear that an employer is bargaining in good faith and is taking positive action to abate the violation(s) to settle the case and pay the agreed upon penalty. This approach may only be used when:
 - (1) The issuing division believes that any other changes made to citations are reasonable and are consistent with MIOSHA policy.
 - (2) The employer indicates that they do not intend to file a second appeal.
 - b) The issuing division must consider all aspects of the case file and the employer's history with MIOSHA to exercise appropriate discretion when including a penalty reduction in a decision response, since the decision response is a final document that cannot be reverted later. Specific issues that must be considered include:
 - (1) The seriousness of the items cited.

- (2) The number of violations cited.
 - (3) Good faith efforts of the employer to abate items during or after the inspection.
 - (4) The employer's history of settling cases and abating hazards.
 - c) The employer cannot be asked to waive their right to appeal as a condition in a decision response.
 - d) When it is not possible to make a satisfactory determination based on the criteria stated under this section, a SA requiring signature for penalty reduction must accompany the decision response if the issuing division believes that a settlement is warranted.
 - e) If a decision response that contains a penalty reduction is appealed to the second step and settlement is possible, the employer and the MIOSHA Appeals Division must settle it with a SA that is signed.
 - f) Settlement Review by Manager
 - (1) When a 14- level supervisor upholds the citations and is only offering a penalty reduction as settlement of the appeal, there is no need for 15-level manager approval.
 - (2) When a 14-level supervisor proposes to vacate, reclassify, or regroup a citation(s), the supervisor must consult with a 15-level manager and an entry on the Case File Diary Sheet will be entered as "Discussed first appeal with {initials of 15-level manager}."
9. Justification. The reason(s) for changes made to the citation(s) in a decision response or settlement agreement must be documented in the case file.
- C. Second Appeal. Per Section 41 of the MIOSH Act, an employer, employee, or employee representative who is not satisfied with the issuing division's decision regarding a first appeal, can file an appeal with the Board. This is called a second or formal appeal.
 1. Notice of Appeal. A second appeal is a formal appeal to the Board in accordance with Section 41 of the MIOSH Act. The second appeal must be in writing. An employer must deliver a second appeal notice to the issuing division in accordance with Rule 413 of [Occupational Safety and Health Standard Part 4, R408.21401 et seq., Procedures](#). The notice of a second appeal shall be handled by MIOSHA in accordance with Rule 1354 of [Occupational Safety and Health Standard Part 13](#). All second appeals must be forwarded to the Board through the Appeals Division.
 2. Time Limits. The envelope containing the second appeal must be postmarked within 15 working days of the employer's receipt of the

issuing division's decision in response to the first appeal. If the issuing division's decision is not appealed within this timeframe, the citation becomes a final order of the Board.

3. Waiver. Items and issues that were not included in the first appeal and decision response are deemed waived and may not be the subject of a second appeal.
4. Processing. All second appeals received relative to a decision response are considered "formal" and are forwarded to the Board through the Appeals Division for scheduling of a prehearing conference.
5. Prehearing Conference. A prehearing conference is to be held to afford the Appeals Division staff, issuing enforcement officer, employer, and any employee representative with party status, the opportunity to discuss the citation(s) and to determine if a settlement can be reached. The Board shall be responsible for notifying the Appeals Division, employer, and any employee or employee representative with party status of the prehearing conference through a Notice of Prehearing Conference and Notice to Employees of Your Right to Participate as Parties to a Proceeding, [Appendix C](#). The Appeals Division shall be responsible for notifying MIOSHA enforcement staff required to attend the prehearing conference.
 - a) Prehearing Conference Alternatives. Prehearing conferences will generally be held by telephone. The participants must exchange documents intended to be discussed prior to the telephone prehearing conference date. The MIOSHA Appeals Division has three alternatives to the telephone prehearing conference. A prehearing conference may be conducted in an alternative method if adequate notice to all participants has been given and all required participants to the prehearing conference agree to the alternative format. The interplay between the parties is an important component of a meeting, thus, on a file where it appears that the use of any of these alternate methods would be counter-productive, the MIOSHA Appeals Division will proceed with a telephone meeting.
 - b) The acceptable prehearing conference alternatives and conditions for their use are:
 - (1) Videoconference.

An appeal coordinator may conduct a prehearing conference by videoconference using a State of Michigan approved web conferencing service provider. This method may be used on cases of various complexity where visibility of the participants is preferred but would otherwise require travel and expense for any participant, or when participants desire to share visual content in real-time

during the prehearing conference. This method may only be used when all participants possess the technical ability to participate via videoconference. A revised Notice of Prehearing Conference containing the videoconference link and login instructions may be sent to the participants if time permits.

(2) In Person.

An appeal coordinator may conduct a prehearing conference in person in the Lansing office with all participants face-to-face when the appeal issues are significant or undefined, or where a face-to-face discussion is necessary to manage the discussion amongst a large number of participants. The participants must bring documents intended to be discussed on the prehearing conference date or forward them to the participants in advance.

(3) Alternate Location.

An appeal coordinator may travel outside of the Lansing office to conduct a prehearing conference when a suitable alternate location can be arranged, such as a state or county facility, or public library. An alternate location may be selected when the appeal coordinator's existing workload and schedule can be arranged to allow for the travel time and there is some offsetting savings to the state, such as reduced travel for the enforcement officer. A revised Notice of Prehearing Conference may be sent to the participants if time permits.

c) The employer, issuing enforcement officer, or employee representative with party status may request one of the above alternatives by contacting the Board Clerk for the Board of Health and Safety Compliance and Appeals, or the MIOSHA Appeals Division, by mail, phone, or fax. Requests for an alternative prehearing method should be made at least five (5) business days before the prehearing conference date to allow sufficient notice to all parties and time for necessary preparations. The appeal coordinator assigned to the case and/or the Clerk for the Board of Health and Safety Compliance and Appeals will determine if the request will be granted. If all parties are not agreeable to the alternative prehearing method, the prehearing conference will be held by telephone.

d) The appeal coordinator may also initiate a request for an alternative prehearing conference by contacting the other parties. If

- the parties agree with the method proposed by the coordinator, the coordinator may proceed with conducting the prehearing conference in the alternative format, provided the clerk of the Board of Health and Safety Compliance and Appeals has been notified of the change in format.
- e) If upon review of the file, or pursuant to a phone call from the employer's representative, the appeal coordinator believes the appeal can be resolved prior to the scheduled prehearing conference date, the appeal coordinator has the options of discussing the case right then, waiting until the scheduled date, or selecting another mutually agreeable time. In any case, if an employee or employee representative has elected party status, arrangements must be made to include them in the discussion.
 - f) Prehearing Settlement Offer. The Appeals Division staff shall make an offer to the employer which it adjudges to be a fair resolution of the contested citation(s) based upon review of the case file, employer defenses, applicable law, and/or prehearing conference discussions. A prehearing settlement offer may be revoked upon transfer of the case to formal hearing, or at any time prior to the employer's acceptance of the offer, at the discretion of the Appeals Division. Employers should be advised during the prehearing conference that a prehearing offer is revocable and is not guaranteed to be extended through the hearing phase of the appeals process.
6. Settlement Agreement (SA). The Appeals Division will routinely be responsible for handling second appeals and will be responsible for completing second appeal SAs. For cases settled in the second appeal step of the process, a SA signed by the employer and MIOSHA is required. A SA may be signed by the parties electronically via the State of Michigan's approved E-signature solution, or by hand.
- a) Penalty Reductions. An employer who files a second appeal will typically not be granted reductions in penalty at the same level available in the first appeal, or at the same level as the prehearing stage for formal hearings, at the discretion of the Appeals Division Director. Penalty reductions equivalent to the level available at first appeal or prehearing may be granted for citations which were abated prior to the filing of the second appeal or prior to making the prehearing offer.
 - b) Consultation with Issuing Division. Representatives of the Appeals Division will routinely consult with representatives of the enforcement divisions prior to finalizing a SA.

7. Formal Hearing. If no agreement can be reached during the prehearing conference, the Appeals Division shall notify the Board and request the matter be scheduled for a hearing before an Administrative Law Judge (ALJ).
 - a) Division Responsibilities. The Appeals Division shall coordinate representation of the agency at hearing by the Michigan Department of Attorney General. The Appeals Division shall also be responsible for notifying MIOSHA staff of scheduled hearings and assist the Attorney General's Office in hearing preparation as requested.
 - b) Hearing Procedure. Hearings will be conducted in accordance with Parts 1 and 11 of the [Michigan Administrative Hearing System Uniform Hearing Rules](#), R792.10101 et seq.
 - c) Hearing Decision. Following hearing, the ALJ will prepare a written decision on the contested violations. The decision of an ALJ may be appealed to the Board for review as described in Section 42 of the MIOSH Act. Requests for Board review of an ALJ decision, also called "Exceptions," shall be filed in accordance with Rule 432 of [Occupational Safety and Health Standard Part 4](#), Procedures, Board of Appeal. Upon receipt of an adverse ALJ decision from MOAHR, the Appeals Division shall notify the issuing division to permit evaluation of whether a request for Board review should be filed and to ensure timely filing.
 - d) Board Decision. A final order by the Board may be appealed to the Circuit Court.
 - e) Settlement. If agreement is reached at any point in the hearing process, a settlement agreement will be prepared.
8. Second Appeal Inquiries. Employers seeking more information about the second appeal process may be referred to:
 - a) "Citation and Notification of Penalty" explanation pages in the citation packet, Section III, Citation Appeal.
 - b) [Enforcement & Appeals Overview](#) brochure.
 - c) [Contested Case Appeal Process Flow Chart](#).
 - d) [MIOSHA Fact Sheet, Prehearing Conference – What to Expect & How to Prepare](#).
 - e) [MIOSHA Fact Sheet, Citation Hearings – What to Expect & How to Prepare](#).
 - f) Note: These materials are consistent with the MIOSH Act and [Occupational Safety and Health Standard Part 13](#).

- D. **Payment Plans.** Where an employer indicates their financial condition could make paying the penalty and expending funds to make needed corrections prohibitive, an extended payment plan may be appropriate. Normally this would occur at the request of the employer. An acceptable payment plan would:
1. Require approximately equal payments.
 2. Require payments on a monthly or quarterly basis.
 3. Spell out the number of payments, when the first payment is due, and the dates the remaining payments are due.
 4. Contain a clearly stated date by which the entire amount must be paid.
 5. Contain language clearly stating that failure to abide by the plan could result in the entire remaining balance due being sent to the Department of Treasury for collection.

The person negotiating the payment plan for an approved PRA or settlement agreement may include, on their own authority, a plan of up to twelve (12) months duration. The division director may authorize a plan of up to twenty-four (24) months duration. Any request beyond that requires consultation with the MIOSHA Director.

The MIOSHA Director, in consultation with the directors of the GISHD, CSHD, and Appeals Division, will assess the need for use of payment plans. Use of payment plans shall be consistent among the divisions.

MIOSHA is under no obligation to utilize a payment plan. When, in the opinion of agency management, the use of a payment plan is no longer necessary, or is not furthering the goals of the program, it may be discontinued from future use without notice.

- E. **Partial Settlement Agreements (PSA).** The agency may enter a PSA at the first or the second step of the appeal process. The PSA will be used only in those cases where benefit to the agency can be shown. The purpose of the PSA is to reduce the volume of routine appeals so that the Appeals Division can focus their resources on issues that are deemed to be of greater importance to the agency. A PSA must be consistent with the following parameters:
1. **Usage.** Typically, the employer and the issuing division will agree on settlement of all but one item of a multi-item citation. More than one item may remain contested where there are unusual circumstances to consider, e.g., multiple items related to a single issue. The Division Director must approve a PSA with more than one item remaining contested.
 2. **Limits.** The issuing division or the Appeals Division must believe that there is some merit to issues raised by the employer on item(s) that remain contested, or that there is good reason to take the contested item(s) to a higher level of discussion. For example, the agency may believe there is benefit to the agency in having an adjudicated decision on an issue.

3. **Penalty Reductions.** Penalty reductions granted under a PSA will typically be less than 50% on settled items. At the discretion of the Division Manager involved in the case, penalty reductions of up to 50% may be granted on settled items when new information and/or additional review indicate that such reduction in penalty is appropriate.
 4. **Abatement.** The employer must provide documentation to the issuing division indicating that settled citation items have been abated or are in the process of being abated before a PSA can be agreed upon.
- F. **Exculpatory Language.** An employer may request insertion of exculpatory language in a SA. Exculpatory language limits the usage of the settlement or the settlement terms and conditions against the employer for purposes or legal proceedings outside of those authorized under the MIOSH Act. MIOSHA has developed and approved specific language for this purpose which protects MIOSHA's interests and authority. If an employer requests exculpatory language be included in a SA, the employer may select one or more of the paragraphs contained in [Appendix D](#). The exculpatory language options in Appendix D may be combined upon request but shall not be modified in any other manner.
- G. **Union Involvement.** Efforts must be made by MIOSHA staff to inform participating employee representatives of significant modifications being proposed to resolve contested MIOSHA citations.
1. **Applicability.** When an employee representative has been identified during the inspection and has requested copies of the citation(s) or has elected party status at the second appeal level, contact with the employee representative is to be made to advise them of any SA in which there will be a significant modification to the citation(s) or abatement date(s). A significant modification to the citation includes any of the following:
 - a) Vacating or dismissal.
 - b) Standard or rule change.
 - c) Classification change.
 2. **File Documentation.** The contacting staff member shall document in the case file the date(s) the employee representative was contacted, or attempted to be contacted, and a summary of any concerns expressed by the employee representative related to the SA terms.
- H. **Enhanced Settlements.** MIOSHA may include additional requirements into a SA that go beyond minimum compliance with the standards when determined appropriate on a case-by-case basis. These additional requirements are not routinely required of an employer. However, MIOSHA has discretion to enhance a SA to require an employer to go beyond the rules and standards, when it is determined necessary, to help ensure that abatements are maintained and employees are adequately protected (e.g., require a written safety and health program, or additional specialized training). Additional penalty reductions may

be appropriate when the enhanced settlement terms would result in a greater financial commitment by the employer toward worker safety and health than minimum compliance with the standard would require.

- I. Section 35 Agreements. In circumstances when the actual classification of the violation is secondary to other considerations, such as obtaining appropriate commitments while at the same time achieving swift and sure abatement of hazardous conditions, MIOSHA may seek to resolve a violation by applying a Section 35 designation to the violation. An agreement to make a Section 35 designation must be contained in a written SA and is normally only applied at the second step of the appeals process.
 1. Usage. A Section 35 designation may be used if the employer:
 - a) Has been cited as willfully or repeatedly violating the Act.
 - b) Has demonstrated its efforts or willingness to diligently correct all violations.
 - c) Is willing to pay all, or almost all, of the penalty (normally not less than 80%).
 2. Terms. Decisions to make a Section 35 designation should be based upon the employer's showing of good faith to abate and whether the employer is willing to make other concessions as appropriate. Examples of acceptable concessions which may be included in a Section 35 agreement include, but are not limited to:
 - a) Agreement to use a safety or health consultant and to implement the consultant's recommendations, even where such recommendations go beyond the requirements of MIOSHA standards.
 - b) Agreement to develop and implement a comprehensive safety and health management system.
 - c) Agreement to develop or implement comprehensive training requirements.
 3. Consultation with Issuing Division. Representatives of the Appeals Division will routinely consult with representatives of the enforcement divisions, Agency Director prior to finalizing a Section 35 agreement so that the appropriateness of a Section 35 designation and proposed concessions may be evaluated.
- J. [Corporate-Wide Settlement Agreements](#) (CSAs). Under special circumstances, CSAs may be entered into to obtain formal recognition by the employer of cited hazards and formal acceptance of the obligation to seek out and abate those hazards throughout all workplaces under its control. CSAs shall usually be negotiated by the Appeals Division at the second step of the appeal process and

are subject to approval by the enforcement division's director or agency director prior to finalizing the agreement.

1. Suitability of Cases for CSAs. CSAs shall generally be directed to areas of safety and health that have been the subject of a citation and circumstances are conducive to abatement at multiple worksites of an employer. Prior to entering a CSA, an evaluation must be performed to assess the extent and nature of similar conditions and hazards believed to exist at other worksites. CSAs can be suitable under various circumstances, including but not limited to:
 - a) High Profile Enforcement Cases.
 - b) Extensive Recordkeeping Deficiency Cases.
 - c) Cases where High Gravity Serious citations were issued, and the corporate history shows:
 - (1) A systemic pattern of violations associated with a particular MIOSHA standard or rule.
 - (2) A significant history of MIOSHA violations.
 - (3) Accident or fatality trends stemming from the same or similar conditions.
 2. CSAs Issued by MIOSHA. MIOSHA will not typically negotiate a CSA that includes facilities outside of Michigan.
 3. CSAs Issued by OSHA. When a CSA has been entered into by federal OSHA which includes facilities in Michigan, MIOSHA will be asked to recognize the terms of these agreements. MIOSHA will evaluate CSAs on a case-by-case basis. When there is an indication that an employer has entered a CSA with federal OSHA covering the same hazard under contest with MIOSHA, efforts shall be made to obtain and review the federal CSA prior to determining the appropriate resolution of the contested citation.
- K. Severe Violator Enforcement Program (SVEP) Settlements. Agency Instruction [Severe Violator Enforcement Program \(SVEP\), MIOSHA-COM-11-2](#), as amended, outlines policies and procedures to concentrate resources on inspecting employers who have demonstrated indifference to their obligations under the MIOSH Act by willful, repeated, or failure-to-abate violations. To ensure the SVEP has its intended impact upon employers and supports improvements to workplace safety and health, careful consideration shall be given to the way citations issued under the SVEP are resolved. Settlement agreements in SVEP inspections must be completed in accordance with the [Severe Violator Enforcement Program \(SVEP\), MIOSHA-COM-11-2](#) instruction.
- L. Enforcement of Reversion Clauses in Settlements. SAs executed during the first and second appeal process shall contain language notifying the employer that failure to comply with the terms of the SA will result in reversion or reinstatement

of the original classifications and penalties. The Appeals Division shall be responsible for handling reversion cases.

1. **Communications.** The issuing division shall try to inform the employer of the SA terms which have not been complied with and gain voluntary compliance. Communications may be made by phone or in writing and shall be documented in the case file.
2. **Time Limits.** An SA must have become a final order of the board, exceeded the appeal period, and exceed the time limits set for compliance with the given term or condition (e.g., payment, abatement, satisfaction of the enhanced term or condition), before reversion can be sought.
3. **Limitations.** Reversion should be sought in cases where:
 - a) There is no alternative method available to MIOSHA to obtain the employer's compliance with the term or condition of the SA.
 - b) The method available would be inadequate to fully address the employer's noncompliance.
 - c) The employer has demonstrated a continued pattern of noncompliance despite the use of the alternative methods available.
 - d) Use of the alternative method to attempt to gain compliance would be less efficient or strain MIOSHA resources.
4. **Process.** If the attempts to gain the employer's voluntary compliance with the agreement are not successful, the issuing division may refer the inspection file to the Board through the Appeals Division. The Appeals Division shall notify the employer in writing when a file has been received for reversion. The Board will forward the matter to the MOAHR for a determination by an ALJ whether the employer has good cause to have not complied with the SA. The ALJ will issue an Order to Show Cause Why Reversion Should Not Be Granted (Show Cause Order) to the employer and the MIOSHA Appeals Division. The Show Cause Order will direct the employer to respond to the order in writing and offer the MIOSHA Appeals Division an opportunity to reply to the employer's response. The employer's response to the Show Cause Order must:
 - a) Include the employer's reason(s) the SA was not complied with or proof of compliance.
 - b) Be sent to the ALJ assigned, MIOSHA Appeals Division Director, and any other person or party listed on the Order's proof of service.
 - c) Be sent within the timeframe set by the Order.

The ALJ will review the employer's timely response and any reply filed by MIOSHA. Upon review, the ALJ will issue an Order deciding whether

the citation and penalties will be reverted. Reversion will be granted as outlined by the ALJ when an employer has not shown good cause for the failure to comply with the SA. The ALJ's decision will be subject to review by the Board for approval as a final order in accordance with the [Occupational Safety and Health Standard Part 4](#).

- M. Late Appeal. A first or second appeal not filed within the timeframe set in Section 41 of the MIOSH Act, will be considered late. Late appeals must proceed through the Board's late appeal process outlined in section [XI.M.3](#) of this instruction.
1. Late First Appeal. A first appeal is late if not filed with the issuing division within 15 working days of the employer's receipt of the citations.
 - a) Filing Date. Filing date is determined by the postmark date on the first appeal letter envelope.
 - b) Handling. The issuing division in receipt of a late first appeal must issue a decision to the employer notifying the employer the appeal is late and that the citation(s) have become a final order of the Board. If the employer wishes to continue to attempt to appeal, the employer must file a second appeal to the Board for late appeal review. When a second appeal of a late first appeal is received, the issuing division must promptly transfer the file to the Board through the Appeals Division for late appeal review.
 2. Late Second Appeal. A second appeal is late if not filed with the issuing division within 15 working days of the employer's receipt of the issuing division's first appeal decision.
 - a) Filing Date. Filing date is determined by the postmark date on the second appeal letter envelope or delivery date if delivered by hand.
 - b) Handling. The issuing division in receipt of a late second appeal must promptly forward the appeal to the Board through the Appeals Division for handling. The Appeals Division shall handle all court or board proceedings related to a late appeal.
 3. Late Appeal Review Process. All late appeals received by the Board will be directed to the MOAHR. An ALJ assigned by MOAHR will issue an Order to Show Cause Why Petition/Appeal Should Not Be Dismissed (Show Cause Order) to the employer and the MIOSHA Appeals Division. The Show Cause Order will direct the employer to respond to the order in writing and offer the MIOSHA Appeals Division an opportunity to reply to the employer's response. The employer's response to the Show Cause Order must:
 - a) Include the employer's reason(s) the appeal was late.
 - b) Include the employer's merit-based defense(s) to the citation(s).

- c) Be sent to the ALJ assigned, MIOSHA Appeals Division Director, and any other person or party listed on the Order's proof of service.
- d) Be sent within the timeframe set by the Order.

The ALJ will review the employer's written response along with any reply by MIOSHA. Upon review, the ALJ will issue an Order deciding whether the appeal may proceed or is dismissed. The ALJ's Order will be subject to review by the Board. Late appeal cases that the ALJ or Board order to proceed will resume with the Board's scheduling of a prehearing conference as outlined in section [XI.C.5. Prehearing Conference](#).

- 4. Late Appeal Inquiries. Employers seeking more information about the second appeal process may be referred to:
 - a) [Late Appeal Process Flow Chart](#).
 - b) [MIOSHA Fact Sheet, Late Appeals](#).

Note: These materials are consistent with the MIOSH Act and [Occupational Safety and Health Standard Part 13](#).

- N. Petition for Modification of Abatement (PMA). An employer may request modification of the date set forth in the citations for abatement or correction of the hazards cited. An employer solely desiring to modify the abatement date may either file an appeal as described in [Section XI.B. First Appeal](#), or file a PMA once the citation has become a final order. A PMA may be filed when the citation has become a final order of the Board and the employer has made a good faith effort to comply with abatement requirements of a citation, but abatement has not been completed because of facts beyond the employer's reasonable control.
 - 1. Modification by Appeal. Written requests to modify the abatement or correction date of a citation that are mailed to the issuing division *prior to* the citation becoming a final order shall be treated as an appeal under Section 41 of the MIOSH Act. The procedures for first and second appeals in Sections [XI.B. First Appeal](#), and [XI.C. Second Appeal](#), of this instruction shall be followed to handle the request.
 - 2. Upon Final Order. Written requests to modify the abatement date of a citation mailed to the issuing division *after* the citation has become a final order will be handled in accordance with Rule 1355 of [Occupational Safety and Health Standard Part 13](#).
 - a) Time Limits. The PMA must be filed with the Board no later than the close of the next working day after the abatement date listed on the citation. The filing date will be determined by the postmark date.
 - b) Content. The PMA must include all the following:

- (1) The steps taken by the employer, and the dates of those steps, to achieve compliance during the prescribed abatement period.
 - (2) The specific additional abatement time needed to achieve compliance.
 - (3) The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
 - (4) Available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
 - (5) A certification that the petition for modification of an abatement date has been filed and posted at or near the location of the subject citation and remain posted for a period of 10 working days.
- c) Determination. The issuing division shall review the PMA and issue a determination granting or denying the PMA. The determination must be sent in writing within 10 working days of the date the PMA was filed.
 - d) Waiver. PMAs not responded to within 10 working days will be considered granted for the period requested by the employer.
 - e) Hearing. A PMA denied by the issuing division will be forwarded by the issuing division to the Board through the Appeals Division for scheduling of a hearing before an ALJ. Hearings will be conducted in accordance with Parts 1 and 11 of the [Michigan Administrative Hearing System Uniform Hearing Rules](#).
 - f) The Appeals Division will represent the issuing division in hearings on denied PMAs and be responsible for the notification of staff needed for the hearing.
- O. Variance Appeals. MIOSHA, an employer, or an affected employee may file a request for a formal hearing concerning a variance application in accordance with Rule 1226 and Rule 1227 of Administrative Rules Part 12, Variances.
1. Time Limits. A hearing request may be filed within 10 days after:
 - a) Notice of the variance application is given to employees.
 - b) A decision regarding the variance application is issued.

2. **Handling.** The enforcement division shall promptly forward the request for a formal hearing on a variance application to the Board through the Appeals Division for handling.
3. **Hearing.** Variance hearings will be conducted by an ALJ of the MOAHR in accordance with the MIOSH Act, Administrative Rules, Part 12, [Variances](#), and Part 11 of Michigan Administrative Hearing System Uniform Hearing Rules.

The Appeals Division or the Michigan Department of Attorney General may represent MIOSHA in a variance hearing when available.

P. **Discrimination Appeals.** A discrimination complainant or the employer may file an appeal of the determination issued by MIOSHA regarding an employee discrimination complaint.

1. **Time Limits.** An appeal must be filed within 15 working days of when the notice of the determination is issued.
2. **Handling.** The enforcement division shall promptly forward a request for a formal hearing to MOAHR and notify the Appeals Division for handling.
3. **Hearing.** Discrimination appeal hearings will be conducted by an ALJ of the MOAHR in accordance with the MIOSH Act, the [Michigan Administrative Procedures Act](#), MCL 24.201 et seq., P.A. 306 of 1969, as amended, and Part 1 of the [Michigan Administrative Hearing System Uniform Hearing Rules](#).

The Appeals Division or the Michigan Department of Attorney General may represent MIOSHA in a discrimination hearing when available.

4. **Settlement.** A settlement agreement negotiated in lieu of an administrative hearing shall be consistent with the settlement provisions outlined in the Whistleblower Investigations Manual, as adopted by Agency Instruction, MIOSHA-ADM-22-3, [Whistleblower Investigations Manual](#), as amended.

January 4, 2023

Appeal and Settlement Processes for MIOSHA Enforcement Divisions

Appendix A – Example of PRA Status Letter



STATE OF MICHIGAN

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

9/7/2022

In the Matter of: Some Company LLC
Inspection Number: 4445687

Dear Bob Smith,

This letter is to notify you the current status of your Penalty Reduction Agreement (PRA) submitted on 9/7/2022 is:

Approved, Waiting for Payment

Your PRA was approved on 9/7/2022, but the total reduced penalty payment has not been received. The total reduced payment must be received by 9/28/22 or the original penalty amount in full will be required immediately. Payment should be made to the division at the address marked below:

- Construction Safety and Health Division (CS), P.O. Box 30645, Lansing, MI 48909-8145
- General Industry Safety and Health Division (GI), P.O. Box 30644, Lansing, MI 48909-8144

A check or money order made payable to the "State of Michigan" is acceptable. Include "CS" or "GI" and the inspection number on your payment.

If you are experiencing financial hardship, please contact CSHD at (517) 284-7680 or GISHD at (517) 284-7750 to discuss your options. Failure to pay the penalty as agreed may result in a referral to the Michigan Department of Treasury for collection.

If you have any questions, please feel free to contact us Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

Sincerely,

Name: Mikjell Brown
Division: General Industry Safety and Health Division
Phone Number: 517-284-7750

NOTE: Text with an asterisk * in the attached PRA signify typographic corrections made to your original submission during MIOSHA's verification process.

Appendix B – Example of Approved PRA



STATE OF MICHIGAN

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

In the Matter of: Some Company LLC
Inspection Number: 4445687

PENALTY REDUCTION AGREEMENT

(FORMERLY KNOWN AS INFORMAL SETTLEMENT AGREEMENT)

The undersigned employer and the undersigned Michigan Occupational Safety and Health Administration (MIOSHA), through its representative, in settlement of the citation(s) and penalties which were issued as a result of the above Inspection on 3/8/2022 - 8/11/2022 hereby agree as follows:

1. The employer agrees to correct the violations as cited in the above Inspection and to submit verification of abatement if not already submitted. I Agree
2. The employer, by submitting this penalty reduction agreement, agrees to accept the original citations as issued and agrees to pay the 50% reduced penalty stated below within 15 working days of approval of this agreement by MIOSHA. I Agree

 Total Proposed Penalty = \$2,000.00
 Reduced Penalty = \$1,000.00
 (Checks payable to "State of Michigan")
3. The employer agrees that failure to comply with the payment terms set forth in Paragraph 2 of this agreement will cause the original penalty amount to be due in full. I Agree
4. The employer, by submitting this penalty reduction agreement, hereby waives its rights to contest the citation(s), Items(s), and penalties. I Agree
5. The employer agrees to notify its employee representative(s), if any, of the submission of this penalty reduction agreement to MIOSHA. I Agree
6. The employer agrees to immediately post a copy of the approved agreement in a prominent place. The agreement must remain posted until the violation(s) cited have been corrected, or for three (3) working days (excluding weekends and Federal holidays), whichever is longer. I Agree
7. By submitting this agreement, the employer does not admit that it violated the cited standards for any litigation or purpose other than a subsequent proceeding under the Michigan Occupational Safety and Health Act. I Agree
8. MIOSHA, by approving this penalty reduction agreement, agrees to accept a 50% reduction of the original total penalty initially proposed if paid by the employer within 15 working days of approval of this agreement by MIOSHA. I Agree

MIOSHA-COM-04-2R4

January 4, 2023

Appeal and Settlement Processes for MIOSHA Enforcement Divisions

SIGNED:

For the Employer: Some Company LLC
Name: Bob Smith
Phone Number: 269-888-9888
Email Address: Bob@somecompany.com

I Agree Bob Smith 9/7/2022

By electronically signing this agreement you certify that you have read this agreement in its entirety, agree to the terms and conditions, and have authority to enter into this agreement on behalf of the cited employer.

For MIOSHA:

Name: Mikjell Brown
Division: General Industry Safety and Health Division
Phone Number: 517-284-7750
Email Address: brownm9@michigan.gov

I Agree Mikjell Brown 9/7/2022

EXAMPLE

January 4, 2023

Appeal and Settlement Processes for MIOSHA Enforcement Divisions

Appendix C – Notice of Prehearing Conference and Notice of Employees Right to Participate as Parties to a Proceeding

**STATE OF MICHIGAN
BOARD OF HEALTH AND SAFETY COMPLIANCE AND APPEALS
Stevens T. Mason Building
530 W. Allegan Street, 2nd Floor
P.O. Box 30643
Lansing, Michigan 48909-8143
Telephone: (517) 284-7706
Facsimile: (517) 284-7705**

«company»,

Petitioner,

Appeal Docket: NOA «docketno»

v

Inspection No: «inspectionno»

Department of Labor and Economic
Opportunity, Michigan Occupational Safety
and Health Administration «division»
Safety and Health Division,

Respondent.

_____ /

NOTICE OF A TELEPHONE PREHEARING CONFERENCE

A telephone prehearing conference on this appeal will be held «PHCDate», at approximately «PHCTime» ET via teleconference.

At that time, the employer and the department representative will discuss the items on appeal. The employer is directed to be present so the telephone prehearing conference may be held. The employer may call the Board of Health and Safety Compliance and Appeals at the above number if there are any questions about hearing procedures.

Teleconference call-in instructions:

**1-888-808-6929
Access code: 7483062 #**

January 4, 2023

Appeal and Settlement Processes for MIOSHA Enforcement Divisions

Issue: «issuesandcitationnos». **The purpose of the prehearing conference is to attempt to settle. If the parties are unable to settle, a hearing will be held on a future date.**

Dated: June 26, 2023

Board of Health and Safety
Compliance and Appeals

NOTE

This proceeding is pursuant to 1974 PA 154, as amended, the Michigan Occupational Safety and Health Act, MCL 408.1001 et seq. It will be conducted in accordance with procedures applicable to the trial of contested cases under 1969 PA 306, as amended, the Administrative Procedures Act, MCL 24.201 et seq.

A CONTINUANCE WILL BE GRANTED ONLY UPON A SHOWING OF GOOD CAUSE. PLEASE SUBMIT ADJOURNMENT REQUESTS IN WRITING.

The employer shall post where the citation was required to be posted an enclosed copy of this notice and the enclosed notice to employees of their right to participate. These notices shall remain posted until the conclusion of the prehearing conference. Copies must also be served by prepaid postage, first class mail or by personal delivery on an authorized employee representative.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses of record on _____.

Corin Krizek
Board Clerk

Appendix D – Exculpatory Language Options

Option #1

It is understood that this stipulation is made for settlement purposes only and the order may not be used except by the Petitioner, the Department of Labor and Economic Opportunity, or the Board of Health and Safety Compliance and Appeals and its Hearings Officer for their statutory purposes. This settlement may not be used in any matter (1) by employees of the Petitioner or (2) any third party to affect, in any manner, the common law rights and remedies, of whatsoever type, between said employees and the Petitioner and its employees under any other law with respect to injuries, disease, or death of employees arising out of or in the course of employment.

Option #2

It is expressly understood that this agreement pertains to only the items identified herein and shall not be construed as an admission of fault or liability as to any claim or proceeding which exists or may arise and be pursued by any person, agency, or entity other than the Board of Health and Safety Compliance and Appeals or its Administrative Law Judges. Nothing contained in this agreement shall be construed to in any way limit the right of the Respondent to utilize the Board Order pursuant to the provisions of the Michigan Occupational Safety and Health Act.

Option #3

By entering into this agreement, the employer does not admit that it violated the cited standards for any litigation or purpose other than a subsequent proceeding under the Michigan Occupational Safety and Health Act. It is expressly understood that this agreement pertains to only the items identified herein and shall not be construed as an admission of fault or liability as to any claim or proceeding which exists or may arise and be pursued by any person, agency, or entity other than the Board of Health and Safety Compliance and Appeals. It is understood that this stipulation is made for settlement purposes only and it may not be used except by the Petitioner, the Department of Labor and Economic Opportunity, or the Board of Health and Safety Compliance and Appeals and its Hearing Officer for their statutory purposes. This settlement may not be used in any manner (1) by employees of the Petitioner or any third party to affect, in any manner, the common law rights and remedies, of whatsoever type, between said employees and the Petitioner and any such third party and the Petitioner, or (2) by employees or any third party to affect the statutory rights, duties or liabilities of this Petitioner and its employees under any other law with respect to injuries, disease, or death of employees arising out of or in the course of employment.

January 4, 2023

Appeal and Settlement Processes for MIOSHA Enforcement Divisions

Option #4

None of the foregoing agreements, statements, stipulations and actions taken by the Petitioner shall be deemed an admission by Petitioner of the allegations contained within the Citations and Notifications of Penalty for Inspection No. {Enter Inspection Number} The agreements, statements, stipulations, findings and actions taken herein are made solely for the purpose of settling this matter and they shall not be used for any purpose or by any other party, except by the Michigan Occupational Safety and Health Administration for proceedings under the Michigan Occupational Safety and Health Act.

Option #5

This agreement is made solely for the purpose of settling this matter amicably and economically, to avoid the cost of litigation. By entering into this agreement and taking any action pursuant to it, neither the Employer nor any officer, employee, or agent of the Employer admits any violation of the cited standards or any other workplace obligation. It is expressly understood that (1) this agreement shall not be construed as an admission of fault or liability as to any claim or proceeding which exists or may arise and be pursued by any person, agency, or entity other than a subsequent proceeding under the Michigan Occupational Safety and Health Act of 1974, as amended, and (2) the Employer and its officers, employees and agents do not waive any claim or defense to the alleged violations and do not waive any defense or argument in future proceedings, including but not limited to the right to assert that any future conditions identical or similar to those alleged are not violations. The alleged violations, the penalty, the termination of this matter, this agreement or its execution, abatement of the alleged violations, the payment of any penalty, the waiver of the right to petition for review or appeal, as well as any final order resulting from this agreement, shall not constitute an admission or evidence of any violation of law, or of fault or liability, or as an admission or evidence that any alleged condition existed, or that any violation occurred, or that any alleged violation caused or contributed to, proximately or otherwise, any accident, injury, illness or death.