

OSHA settlement with Wal-Mart calls for use of third-party safety auditors

Federal OSHA announced this week a settlement agreement with Wal-Mart for serious safety violations found at its store on Chili Avenue in Rochester, NY. Lots of companies sign settlement agreements with OSHA, but few of them involve making safety corrections at multiple worksites controlled by the same firm. This settlement agreement will apply to 2,857 of Wal-Mart's 4,600 retail establishments in the U.S. The 2,857 stores are all of the stores located in States where federal OSHA has enforcement jurisdiction.

How will OSHA monitor Wal-Mart's compliance with the settlement agreement? In quite an unusual move, Wal-Mart will arrange, at its expense, for independent third-party monitors to conduct audits every four months at 80 percent or more of the 2,857 stores.

This OSHA/Wal-Mart settlement agreement pertains to violations identified in 2011 in response to a complaint and a referral from a credible source. The citations issued by OSHA described hazards that could easily have led to a worker fatality, and they were also safety problems identified previously by OSHA at the retail giant's other stores.

Some of the violations related to a massive trash compactor, called a [Marathon RJ-100sc](#). The citation noted dangerous practices such as:

- employees entering the compactor without receiving training on how to turn off the energy to it.
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- managers not sharing their lockout/tagout procedures with outside contractors who conducted service or maintenance on the compactor.
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- managers allowed the trash compactor to be rigged to allow it to operate with the access door open. The jerry-rigging by-passed the important built-in safety feature.
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- managers allowing the disconnect panel for a cardboard baler to not be accessible—something essential for lockout/tagout.
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Some of the same kind of violations for failing to have effective lockout/tagout procedures, including those needed when a worker is trying to unjam the trash compactor, were identified by OSHA inspectors at a Wal-Mart store in Jerseyville, IL.

If a Wal-Mart employee at the Rochester, NY location had lost a limb or worse in the trash compactor, other workers at the store would not have been equipped to handle the bloody scene. OSHA inspectors learned that maintenance workers were called upon to clean-up blood, including an incident in the mens' bathroom, and they were not provided the appropriate personal protective equipment. The maintenance employees and managers who were responsible for this grim task were not offered Hepatitis B vaccinations to protect them from that bloodborne disease, and the computer-based training program provided to employees was inadequate and did not cover all of the topics required by OSHA's bloodborne pathogens standard.

Maintenance employees at the Rochester Wal-Mart store were also not provided with adequate personal protective equipment when they used a corrosive floor cleaner, and did not have material safety data sheets about other cleaning products they used. This is not the first time Wal-Mart has violated those OSHA standards. The firm has been cited before at their stores in Queensbury, NY, Jonesboro, AR and Plant City, FL ([here](#), [here](#), [here](#))

In January 2012, when [OSHA announced](#) results of its inspection at the Wal-Mart store in Rochester, NY, the agency proposed a penalty of \$365,500 for 10 alleged repeat and 14 serious violations. Under the [settlement agreement](#) several of the citations have been vacated and the penalty reduced to \$190,000. In exchange, Wal-Mart has agreed to:

- revise its procedures for trash compactor operations, including proper maintenance of safety inter-lock devices and use only by trained and authorized personnel;
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- revise its training procedures, which must be submitted to OSHA within 20 days, to include statements instructing employees that under no circumstances should anyone enter or place a part of their body in the trash compactors, climb into or put parts of their body into the compactor chutes, or use the compactor with its door is open;
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- revise its hazard communication program to ensure employees have ready access to material safety data sheets on the cleaning chemicals they use, and that they receive appropriate training on the use, the health effects of, and the protective equipment needed for every cleaning chemical they use; and
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- ensure the safety training provided to employees is in a language, format and vocabulary they can understand.
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These provisions and others required by the settlement agreement are all fodder for the independent auditors' eyes and ears. I hope they have keen senses. The safety auditors will be: *"...confirming that the trash compactor interlock devices are functioning properly; review of relevant records...and interviews with relevant store personnel as appropriate."*

The auditors' findings will be available to OSHA upon request. Although the agreement doesn't stipulate it, I assume that OSHA intends for the auditors' reports to be provided to Wal-Mart's employees.

The settlement agreement will remain in place for two years. If OSHA determines that Wal-Mart is not making good on its side of the bargain, OSHA could issue a "failure-to-abate" citation. Those can come with a \$7,000 penalty assessed for each day the violation continues.

This move by OSHA has the potential to improve some aspects of safety for some of its 1.3 million employees. But as Dorry Samuels Levine with [National COSH notes](#), poor working conditions at Wal-Mart do not end with this OSHA settlement. Just ask the temp workers contracted by the firm, the warehouse workers who handle their goods and the women in the class action discrimination lawsuit against the giant retailer. It's good to see OSHA doing its part to help improve *some* of those working conditions.