



For Immediate Release  
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Contact: Kerry Koonce  
(515) 281-9646

## **Labor Services Division Receives \$733,750 Insituform Penalty Check**

DES MOINES – Iowa Workforce Development, Labor Services Division received a \$733,750 check from Insituform Technologies USA, Inc., the Missouri-based company penalized for violating occupational safety and health standards while working on a Des Moines sewer system relining project in July of 2002.

The penalty check, believed to be the largest ever collected by the Labor Services Division, stems from a 2002 accident that resulted in the deaths of two workers overcome by toxic hydrogen sulfide gas while working on the sewer project. Five other workers were seriously injured in the accident when they attempted to rescue the two Insituform employees.

The Labor Services Division proposed a total of \$808,250 in penalties after the accident, asserting, among other things, that Insituform failed to ensure that workers had ventilation respirators, ladders and harnesses that would have assisted in pulling the workers to safety. In addition, the Labor Services Division asserted that the company had not adequately trained employees and had inadequate written programs and procedures for permit-required confined spaces entry. The proposed penalties included \$38,250 for nine serious OSHA violations and \$770,000 in penalties for eleven willful violations. The key issue in the case and a companion lawsuit, *City of Des Moines v. Employment Appeal Board*, was application of the general industry permit-required confined space standards. Insituform argued that a less stringent construction confined space standard applied to the work site.

An Administrative Law Judge initially reduced the proposed penalties from \$808,250 to \$158,000 in a January 5, 2004 decision. The Employment Appeal Board on April 30, 2004 subsequently reinstated all but one of the serious violations and all but one of the eleven willful violations and assessed a total penalty of \$733,750. On appeal, the state district court on April 1, 2005 reinstated the Administrative Law Judge's decision and \$158,000 penalty award. The Iowa Court of Appeals subsequently ruled on March 1, 2006 that the generally industry permit-required confined spaces standards were not applicable and reduced the total penalty even further to \$4,500. The Iowa Supreme Court in its February 16, 2007 decision affirmed the Employment Appeal Board's decision and reinstated the \$733,700 penalty award.

Interim Iowa Workforce Development Director Dave Neil applauded the Iowa Supreme Court's decision affirming the Labor Division's penalty assessment. "This decision will serve as a precedent if similar issues are raised in future cases regarding interpretation of OSHA law," Neil said. He praised the work of the Labor Services Division inspectors who investigated the accident, and attorneys Gail Sheridan-Lucht with the Division and Rick Autry, formerly of the Attorney General's office, who handled the five-year litigation and appeal. He stated: "It is good to see the hard work of an inspection being upheld through all stages of the legal process. We hope this provides some additional closure to the families of those lost."

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