

DOSH DIRECTIVE

Department of Labor and Industries
Division of Occupational Safety and Health
Keeping Washington safe and working

2.68

Severe Violator Enforcement Program

UPDATED: November 14, 2014

I. Purpose

This Directive establishes enforcement policy for DOSH's Severe Violator Enforcement Program (SVEP).

II. Scope and Application

This directive applies to DOSH operations statewide. It replaces all previous instructions on this issue, whether formal or informal. This directive is intended to supplement the guidance outlined in the DOSH Compliance and Consultation Manuals, to focus our resources on follow-up inspections of employers who are resistant or indifferent to DOSH enforcement activities.

III. References

- OSHA Instruction CPL 02-00-149, Severe Violator Enforcement Program (SVEP)
- DOSH Compliance Manual
- Chapter 296-900 WAC, Administrative Rules
- Chapter 296-67 WAC, Process Safety Management

IV. Background

This Directive concentrates DOSH enforcement resources on inspecting employers who have demonstrated indifference to their WISH Act obligations by committing willful, repeated, or failure-to-abate violations. Enforcement actions for severe violator cases include mandatory follow-up inspections, increased company/corporate awareness of DOSH enforcement, corporate-wide agreements where appropriate, enhanced settlement agreements, and court enforcement under Section 49.17.140 of the WISH Act.

V. Summary of Events for an Effective SVEP

- A. The CSHOs must be familiar with Appendix B of this directive to effectively evaluate employers during any inspection likely to result in a severe violator enforcement case.
- B. The regional compliance manager, in accordance with criteria set forth in this directive, will identify severe violator enforcement cases no later than at the time the citations are issued.
- C. When an inspection meets the severe violator enforcement case criteria:
 - 1. The inspection will be classified as such
 - 2. The regional compliance manager will notify the statewide compliance manager, who will in turn notify the assistant director
 - 3. Appropriate SVEP actions will be determined by the statewide compliance manager and the assistant director of DOSH.

VI. Enforcement Policies

A. **Criteria for a Severe Violator Enforcement Case.**

Any inspection that meets one or more of the following, at the time that the citations are issued, will be considered a severe violator enforcement case. The regional compliance manager will identify severe violator enforcement cases no later than at the time the citations are issued, in accordance with criteria set forth in this instruction (also see Appendix B).

Over time, a severe violator case may extend beyond a single employer location, depending on what further research and follow-up inspections reveal.

1. Fatality/Catastrophe Criterion.

An inspection of a fatality, or an in-patient hospitalization of one or more employees in which DOSH finds **one** or more of the following related to a death or in-patient hospitalization of an employee:

- (a) **Willful** or **repeated** serious violations **or**
- (b) **Failure-to-abate** notices based on a serious violation.

Note: The violations under this criterion do not have to be High-Emphasis Hazards.

2. Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards.

An inspection in which DOSH finds two or more **willful** or **repeated** serious violations or **failure-to-abate** notices (or any combination of these violations/notices), based on serious violations with **high gravity** related to a **High-Emphasis Hazard**.

3. Non-Fatality/Catastrophe Criterion for Hazards Due to the Potential Release of a Highly Hazardous Chemical (Process Safety Management).

An inspection in which DOSH finds three or more willful or repeated serious violations or failure-to-abate notices (or any combination of these violations/notices), based on serious violations with **high gravity** related to hazards due to the potential release of a highly hazardous chemical, as defined in Chapter 296-67 WAC, Process Safety Management.

4. Egregious Criterion.

All **egregious** (e.g., per-instance citations) enforcement actions will be considered SVEP cases.

Note: Willful or repeated citations or failure-to-abate notices must be based on a serious violation, except for recordkeeping, which must be based on an egregious violation. Refer to the DOSH Compliance Manual for criteria on egregious violations.

B. High-Emphasis Hazards.

‘High-Emphasis Hazards’ as used in this directive means only serious violations with **high gravity** related to the following specific hazards in general industry, construction, agriculture, high voltage, logging, shipyard, marine terminal, and long shoring sectors, **regardless of the type of inspection** being conducted.

- Fall hazards
- Amputation hazards
- Combustible dust hazards
- Lead hazards
- Asbestos hazards
- Crystalline silica hazards
- Excavation hazards
- Grain handling hazards
- **Electrical trauma hazards**
- **Logging related struck by hazards**

C. Two or More Inspections of the Same Employer.

For classification under SVEP, each individual inspection must be evaluated separately to determine if it meets one of the criteria in subsection A., above.

If any of the inspections meet one of the severe violator criteria, it will be considered an SVEP case.

D. Enhanced Follow-up Inspections.

SVEP cases will be managed as described below:

1. General.

For any SVEP inspection opened on or after the effective date of this Directive, a follow-up inspection must be conducted after the citations become final orders, even if abatement verification of the cited violations has been received. The purpose of the follow-up inspection is to ensure that the cited violation(s) were abated, and that the employer is not committing similar violations.

Report SVEP activity to the statewide compliance manager at least monthly (see Appendix A).

2. Compelling Reason Not to Conduct.

If there is a compelling reason not to conduct a follow-up inspection, the reason must be documented in field notes. The Regions must also report these cases at least monthly to the statewide compliance manager who will in turn inform the assistant director, including why a follow-up was not initiated.

If a follow-up cannot be initiated, a notation of this will be made in the WIN system, listing the reason. Examples of compelling reasons not to conduct a follow-up inspection may include: (1) worksite/workplace closed, (2) employer out of business, or (3) operation cited has been discontinued at the worksite/workplace.

Note: A 'complied at time of inspection' situation does not take the place of a required follow-up inspection.

If the regional compliance manager learns that a cited operation has been moved from the cited location to a different location, the new location must be inspected. If the new location is outside the regional office's normal service area, a referral must be made to the region into which the operation has moved.

E. Construction Worksites.

Whenever an employer in the construction industry has an SVEP case, the regional compliance manager must further investigate the employer's compliance history. If the initially inspected worksite is closed before a follow-up inspection can be conducted, at least one other worksite of the cited employer must be inspected to determine whether the employer is committing violations similar to those found in the initial severe violator enforcement inspection. When a construction follow-up inspection is attempted but the employer is no longer at the site, the inspection will not be added to the SVEP log, but will be recorded as a "no inspection" in the WIN system.

F. Inspections of Related Workplaces/Worksites.

When there are reasonable grounds to believe that compliance problems identified in the initial inspection may indicate a broader pattern of non-compliance, DOSH will inspect related worksites of the same employer. Appendix B of this directive provides guidance in evaluating whether compliance problems found during the initial inspection are localized or likely to exist at related facilities. This information should be gathered, to the extent possible, during the initial SVEP inspection. Such information may also be sought by letter, by telephone, or, if necessary, by subpoena.

The regional compliance manager is responsible for assuring that relevant information is gathered to determine whether the information provides reasonable grounds to believe that a broader pattern of non-compliance exists. The regional compliance managers will consult with the statewide compliance manager as appropriate.

When sufficient evidence is found that all related establishments of the employer are in the same 3-digit NAICS code (or 2-digit SIC code) as the initial SVEP case, those identified establishments will be selected for inspection in accordance with subsection G.2 below. Establishments that are not in the same NAICS code (or SIC code) also may be inspected when it is believed hazards and violations may be present at the related sites.

OSHA will accept referrals, which include all relevant facts, from DOSH regarding any inspections conducted pursuant to DOSH's SVEP. DOSH referrals to OSHA are to be sent to the OSHA Regional Administrator, who will forward any referrals not in that Region to the appropriate OSHA Regional Administrator. The statewide compliance manager will consult with the assistant director of DOSH regarding referrals made to OSHA.

G. General Industry and Other Non-construction Workplaces.**1. Employer Has Three (3) or Fewer Similar Related Workplaces.**

If the regional compliance manager determines that additional workplaces are to be inspected, and the employer has three or fewer similar related workplaces, all such workplaces will be inspected to determine whether those sites have hazardous conditions or violations similar to those in the severe violator enforcement case.

When any of the three or fewer workplaces are in **two or more Regions**, the information will be forwarded to the appropriate regional compliance manager for inspection.

Regional compliance managers will consult with the statewide compliance manager as appropriate. The statewide compliance manager has overall responsibility for planning and coordinating inspections that cross regions.

2. Employer Has More Than Three (>3) Similar Related Workplaces.

If the regional compliance manager determines that additional work-places are to be inspected, and the employer has more than three similar related establishments, the compliance manager will send the recommendation for inspection, including all relevant facts, to the statewide compliance manager.

- a. If the statewide compliance manager determines that similar related establishments are to be inspected, he/she will issue an SVEP Statewide inspection list. When there are more than 3 worksites, the statewide compliance manager will decide the number of additional locations to be assigned.

All establishments on the inspection list will be inspected to determine whether hazardous conditions or violations similar to those found in the initial SVEP inspection are present. Based on the results of these inspections, the statewide compliance manager may determine whether inspections of additional establishments are to be conducted.

- b. When the statewide compliance manager has reason to believe that hazards may exist at particular other related establishments, he/she may select those establishments for inspection.
- c. The statewide compliance manager will be responsible for coordinating statewide inspections of related establishments under this paragraph. Where complex or systemic issue are present, the statewide compliance manager will appoint a team to advise on investigative strategies, such as the use of administrative depositions or experts, and will share information among offices participating in the inspections.

H. Scope of Related Inspections.

The scope of inspection of a related establishment will focus on the same or similar hazards to those found in the original SVEP case.

I. Priority of the Inspection.

In accordance with inspection priorities listed in the DOSH Compliance Manual, SVEP inspections will come after imminent danger, fatality, and complaints, but before other scheduled inspections. Refer to the DOSH Compliance Manual to determine when other inspections may be conducted concurrently.

J. Increased Company Awareness of DOSH Enforcement.**1. Sending Citations and Notifications of Penalty to Headquarters.**

- a. For all employers that are the subject of an SVEP case, a copy of the Citations and Notifications of Penalty must be sent to the employer's national headquarters including message language explaining that their company is being inspected as part of the Severe Violators Enforcement Program, with follow-up inspections planned for the future.

Note: Until an automated message can be developed for the WIN system, the SVEP message entered by CSHO's will read as follow:

"This employer has been identified as a Severe Violator Enforcement case under the Washington State Department of Labor & Industries Division of Occupational Safety & Health's (DOSH), Severe Violator Enforcement Program (SVEP). Your company will be subject to follow-up inspections to determine if the conditions cited here still exist in the future. Follow-up inspections of this company will continue at a heightened level until the Department is satisfied that the conditions no longer exist."

- b. Employee representatives (e.g., unions) will also be mailed a copy of the Citations and Notifications of Penalty that are mailed to the employer's national headquarters as per the direction of the DOSH Compliance Manual.

K. Settlement Provisions.

Settlement provisions must follow current DOSH protocols for effective abatement of hazards.

VII. Recording and Tracking SVEP Designated Inspections**A. SVEP Log.**

The SVEP Log is an OSHA required document. The DOSH Compliance Operations Program will maintain the Log, in which inspections with one or more violations that meet the SVEP criteria, or are SVEP-related, will be documented (such as, SVEP

follow-ups, or inspections at other worksites of SVEP designated employers). The Compliance Operations Program is responsible for sending the completed log to the Region X Enforcement Program Manager each month. Each inspection that meets the criteria will be coded in WIN as “Severe Violator Enforcement Program” in the “National Emphasis Field.”

If upon final order, through a settlement agreement during the appeal process, the citation(s) that qualified the establishment for SVEP designation is vacated or modified to no longer qualify for SVEP, the entry on the SVEP Log will be moved to the “Removed From SVEP” section of the SVEP Log. The reason will be noted on the Log and the SVEP code will be administratively removed from the inspection. A note of explanation will be added to the file.

Removal of the SVEP designation cannot be used as an incentive for a settlement agreement.

B. Removal from SVEP.

An employer may be removed from the SVEP after three years from the date of final order. Employers must have:

- Abated all SVEP-related hazards affirmed as violations
 - Paid all final penalties
 - Abided by and completed all settlement provisions
- and**
- Must not have received any additional serious citations related to the hazards identified in the SVEP inspection, at the initial establishment or any related establishment.

Approval of an employer’s removal will be at the discretion of the DOSH Assistant Director or designee, and shall be based on the results of an additional follow-up inspection.

C. Notification of Change in SVEP Status.

If a referral was made to another state for an SVEP designated employer, the DOSH Statewide Compliance Manager will notify the state(s) if there is a change in SVEP status.

D. Non-Compliance with Final Order.

If an employer fails to abate all hazards, pay all penalties, or comply with settlement terms during the three-year period following the inspection’s final order, the DOSH Regional Compliance Manager shall notify the Statewide Compliance Manager and Compliance Operations Manager. The Compliance Operations Program will notify the OSHA Region X Enforcement Program Manager with a brief summary of the situation. The SVEP designation will remain for an additional three years and then will be reevaluated using the same criteria.

VIII. Relationship to Other Programs

A. Unprogrammed Inspections.

If an unprogrammed inspection arises with respect to an establishment that is to receive an SVEP-related inspection, the two inspections may be conducted either separately or concurrently. This directive does not affect in any way DOSH's ability to conduct unprogrammed inspections.

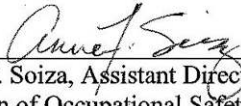
B. Programmed Inspections.

Some establishments selected for inspection under the SVEP may also fall under other DOSH inspection scheduling initiatives. Inspections under these programs may be conducted either separately or concurrently with the SVEP inspections.

C. Coordination with DOSH Consultation.

In the event a consultation visit has been scheduled, or is in progress at a worksite that compliance has determined is a "related workplace/worksite of an SVEP employer", the requirements in the *Compliance Manual, Chapter 1, Coordination with DOSH Consultation*, need to be followed if an inspection is to be conducted.

Approved: _____


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Department of Labor and Industries

[Note: Appendices A and B are attached to this Directive]

APPENDIX A**Information Required on Each SVEP Inspection for
Monthly Report to the Statewide Compliance Manager**

Employer Name
Inspection Number
Regional Office
Opening Date
SIC & NAICS Codes
of Employees Controlled

Indicate the type of SVEP inspection (follow-up, construction-related, general industry, or other non-construction industry). If the inspection is done based on an SVEP nationwide referral from OSHA, the inspection must be classified as either construction-related or general industry.

What SVEP criteria apply (more than one can apply):

- (1) Fatality/Catastrophe -- One or more willful, repeated serious, or failure-to-abate (W/RS/FTA) based on a serious violation of any gravity related to death or an in-patient hospitalization of one or more employees.
- (2) Non-Fatality/Catastrophe -- Two or more W/RS/FTA based on serious violations with **high gravity** related to a High-Emphasis Hazard (excluding Process Safety Management).
- (3) Non-Fatality/Catastrophe for PSM hazards -- Three or more W/RS/FTA based on serious violations with **high gravity**.
- (4) Egregious Case

What SVEP actions have been taken (do not report any planned activities):

- (1) Follow-up inspection conducted; or compelling reason not to conduct
- (2) Additional construction worksite inspected
- (3) Additional general industry worksite inspected
- (4) Letter and citation sent to company headquarters by Region or National Office official
- (5) Meeting with company officials (separate from informal conference)
- (6) Enhanced settlement agreements.

APPENDIX B

CSHO Guidance: Considerations in Determining Company Structure and Safety and Health Organization

When determining whether to inspect other worksites of a company that has been designated an SVEP case, it must first be determined whether compliance problems and issues found during the initial SVEP inspection are localized or are likely to exist at other, similar facilities owned and operated by that employer.

If violations at a local workplace appear to be symptomatic of a broader company neglect for employee safety and health, either generally or with respect to conditions cited under the SVEP inspection, the company structure must be investigated to help identify other establishments and conditions similar to those found in the initial inspection.

Extent of Compliance Problems. Are violative conditions a result of a company decision or interpretation concerning a standard or a hazardous condition? Have corporate safety personnel addressed the standard or condition? Ask the following types of questions of the plant manager, safety and health personnel, and line employees.

- Who made the decision concerning the violative operation: local management or company headquarters? Was the decision meant to apply to other facilities of the employer as well? If the decision was from company headquarters, what is their explanation?
- Is there a written company-wide safety program? If so, does it address this issue? If so, how is the issue addressed?
- Is there a company-wide safety department? If so, who are they and where are they located? How does company headquarters communicate with facilities/worksites? Are establishment/worksites management and safety and health personnel trained by the company?
- Do personnel from company headquarters visit facilities/worksites? Are visits on a regular or irregular basis? What subjects are covered during visits? Are there audits of safety and health conditions? Were the types of violative conditions being cited discussed during corporate visits?
- Are there insurance company or contractor safety and health audit reports that have been ignored? Are headquarters safety and health personnel aware of the reports and the inaction?
- Does the company have facilities or worksites other than the one being inspected that do similar or substantially similar work, use similar processes or equipment, or produce like products? If so, where are they?
- What is the overall company attitude concerning safety and health? Does the establishment or worksite receive good support from company headquarters on safety and health matters?

APPENDIX B (Continue)

- Does the company provide appropriate safety and health training to its employees?
- Ask whether the establishment's/worksite's overall condition is better or worse at present compared to past years? If it is worse, ask why? Has new management or ownership stressed production over safety and health? Is the equipment outdated or in very poor condition? Does management allege that stressed financial conditions keep it from addressing safety and health issues?
- Is there an active and adequately funded maintenance department? Have they identified these problems and tried to fix them?
- Has the management person being interviewed worked at or visited other similar facilities or worksites owned by the company? How was this issue being treated there?

Identifying Company Structure. Inquire where other facilities or worksites are located and how they may be linked to the one being inspected? Sometimes establishment/worksite management will not have a clear understanding of the company structure, just an awareness of facts concerning control and influence from the corporate office.

- Is the establishment/worksite, or the company that owns the establishment or uses the worksite, owned by another legal entity (parent company)? If so, what is the name and location? Try to find out whether the inspected establishment/worksite is a "division" or a "subsidiary" of the parent company. (NOTE: A "division" is a wholly-owned part of the same company that may be differently named, e.g., Chevrolet is a division of GM. A "subsidiary" is a company controlled or owned by another company which owns all or a majority of its shares.)

Try to determine if the parent company has divisions or subsidiaries other than the one that owns or uses the establishment or worksite being inspected. If so, try to get the names and the type of business they are involved in. Sometimes this type of information can be found on a website or in Dun and Bradstreet. Another good source of information is the office of the Secretary of State within the state government.

- Are there other facilities or worksites controlled by these entities that do the same type of work and might have the same kinds of safety and health concerns?
- Are the company entities publicly held (have publicly traded shares) or are they closely held (owned by one or more individuals)?
- What are the names, positions, and business addresses of relevant company personnel of whom interviewees are aware? For which entities do the company safety and health personnel work?
- On what kind of safety and health-related issues or subjects do personnel from company headquarters give instructions?
- Are there other companies owned by the same or related persons that do similar work (especially in construction)?