

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: May 22, 2023

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 and 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.

This is an update to DD 2.68, issued November 16, 2017. This update supports OSHA's CPL 02-00-169, Severe Violator Enforcement Program (SVEP), dated September 15, 2022.

III. References

- OSHA Instruction CPL 02-00-169, Severe Violator Enforcement Program (SVEP)
- DD 27.00, General or Upper-Tier Contractor (Stute) Responsibility
- DD 1.15, Dual Employers and DOSH Enforcement
- DD 27.50, Jobsite Owner Employers with Responsibility to Indirect Employees (Afoa)
- DOSH Compliance Manual
- Chapter 296-900 WAC, Administrative Rules

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. DOSH Compliance Operations Program will identify severe violator enforcement cases and work with the CSHOs to ensure cases are properly coded in WIN, prior to issuing the citation.
- B. When an inspection meets the severe violator enforcement case criteria:
1. The inspection will be classified as such.
 2. DOSH Compliance Operations Program will notify the Statewide Compliance Manager and DOSH Assistant Director.
 3. Appropriate SVEP actions will be determined by the Regional Compliance Manager in coordination with the Statewide Compliance Manager.

VI. Enforcement Policies

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

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

- Willful or repeated citations or failure-to-abate notices must be based on a serious violation.
- Citations for recordkeeping (OSHA 300) has to be based on an egregious violation to be considered a severe violator enforcement case. Refer to the DOSH Compliance Manual for criteria on egregious violations.

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 violations** related to a death or in-patient hospitalization of an employee:

- a. Willful
- b. Repeated
- c. Failure-to-abate

These violations must be based on a serious violation.

- #### 2. Non-Fatality/Catastrophe Criterion. 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 a gravity of 6 or higher.

NOTE: An employer may also have responsibility for the safety and health of employees other than their own as a creating, correcting or controlling employer. In these situations, an employer may qualify for SVEP even if none of its own employees were exposed to the qualifying hazards. See the following DOSH Directives for additional guidance:

- DD 27.00, General or Upper-Tier Contractor (Stute) Responsibility
- DD 1.15, Dual Employers and DOSH Enforcement
- DD 27.50, Jobsite Owner Employers with Responsibility to Indirect Employees (Afoa)

For “Stute” and “Afoa” situations, grouped violations will be considered independent for possible inclusion in SVEP, using the same gravity as (a) of that grouping.

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

NOTE: Except for asbestos, lead and confined space, written programs and training violations will not qualify for SVEP regardless of classification and gravity.

B. 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.

C. Assigning SVEP Referrals from other States. When DOSH inspects an employer due to a nationwide referral, the inspection will be assigned as an unprogrammed referral from the National Office or appropriate State Plan.

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 **two to three months** after the citations become final orders, even if abatement verification of the cited violations has been received, **per the DOSH Compliance Manual**. The purpose of the follow-up inspection is to ensure that the cited violation(s) were abated.

These inspections will be coded as Severe Violator Follow Up in the “Special Tracking” field. The following text must be included in the summary in WIN:

“This inspection was initiated to do an **abatement follow-up** to ensure the violation(s) that qualified this employer for SVEP in inspection [SVEP inspection number] have been abated.

Report SVEP activity to the Statewide Compliance Manager at least monthly (see [Appendix A](#) below in this Directive).

2. Fixed Industry.

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 in a different DOSH region, the appropriate Regional Compliance Manager must ensure a follow up inspection is initiated.

***NOTE:** CSHOs must create an inspection in WIN for all SVEP follow-up attempts. In instances where the employer is no longer located at the originally-inspected site, mark the inspection as “No Inspection.”*

3. Construction Worksites.

- a. When an employer in the construction industry has an SVEP case, a follow-up inspection should be attempted. If the employer is at an ongoing large development with multiple worksites, a follow-up inspection should be conducted with that employer at one of the active sites.

Since construction worksites are often difficult to locate, a CSHO must go to the employer’s office to request addresses of active sites to inspect.

- b. The following means may be useful to identify a cited employer’s other sites:

- If the case is resolved through a settlement, the agreement may require the employer to notify the Regional Compliance Manager prior to beginning work at any new construction site during subsequent specific time period.
- An administrative subpoena, prior to issuing a citation, may be issued to the employer requesting the location of the worksite where their employees are currently working, or are expected to be working within a specified time period.
- An administrative subpoena may be issued during the early stages of an inspection, if it appears the inspection is likely to result in an SVEP case, and the region determines the hazard discovered, and the employer’s response to those hazards indicate a broader agency response is appropriate.

E. Unable to Conduct a Follow-up Inspection.

When a follow-up inspection is not possible, the CSHO will document a “No Inspection” in WIN, with an explanation that it was an attempted follow-up on an SVEP case.

Reasons for not being able to conduct a follow-up may include:

- Worksite workplace closed
- Employer is out of business, or
- Cited operation discontinued.

NOTE: A ‘complied at time of inspection’ situation does not take the place of a required follow-up inspection.

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.

Employers that are designated for SVEP, and have other facilities that may have similar hazards that qualify them for SVEP, DOSH will then select the employer for inspection(s) in accordance with the criteria in section G below.

When DOSH identifies SVEP employers that are working in other states, DOSH will make a referral to OSHA and other state plans as appropriate. The referral will include all relevant facts regarding any inspections conducted pursuant to DOSH’s SVEP.

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.

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

If the Regional Compliance Manager determines that additional workplaces 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.

- When there are more than three worksites, the Statewide Compliance Manager in coordination with the regional compliance manager will decide the number of additional locations to be assigned.
- Based on the results of these inspections, the Statewide Compliance Manager may determine whether inspections of additional establishments are to be conducted.

3. Scope of Related Inspections.

- a. The scope of inspection of a related establishment will focus on the same or similar hazards to those found in the original SVEP case. These inspections will be assigned as follow-ups to the original SVEP case and coded as Severe Violator Follow-up in the “Special Tracking” field. The following text must be included in the WIN Summary:

*“This inspection was initiated as a **related workplace follow-up** to determine if similar hazard(s) that qualified inspection [SVEP Inspection number] of this employer as an SVEP case also exist at this establishment.*”

- b. 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.

- c. When a complaint or referral inspection is initiated at an SVEP site:
- When an establishment is due for an SVEP abatement follow-up following a final order and a complaint or referral inspection is initiated at that site:
 - Assign as complaint/referral
 - Address the complaint/referral allegations
 - Ensure the SVEP cited violation(s) were abated
 - Follow the coding instructions for **SVEP abatement follow-up**
 - When a complaint or referral is received for a different establishment of an employer on the SVEP list:
 - Assign as complaint/referral
 - Address the complaint/referral allegations
 - Inspect for similar hazards that placed this employer on the SVEP list
 - Follow the coding instructions for **SVEP related follow-up**
 - When an establishment is due for a follow-up **evaluation for removal follow-up** from the SVEP list three years after a final order and a complaint or referral inspection is initiated at that site:
 - Assign as complaint/referral
 - Address the complaint/referral allegations
 - Ensure the SVEP cited violation(s) are still abated
 - Follow the coding instructions for SVEP removal evaluation follow-up
 - Contact Compliance Operations for next steps
- d. If a hospitalization or fatality is initiated at an SVEP site, the SVEP follow-up inspection may be included if appropriate.

H. 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 information about the Severe Violator Enforcement Program, what it means in regards to future inspection and the removal process.
 - 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.
2. Settlement Provisions.

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

VII. Recording and Tracking SVEP Designated Inspections.

A. SVEP Log and WIN.

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 DOSH upper management each month. Each inspection that meets the criteria will be coded in WIN as: “Severe Enf. Prog.” in the “Special Tracking” Field.

CSHOs must add the following text to the “Citation & Notice Messages” field in WIN:

“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.

The following violations qualify this employer for SVEP:

*I-1 (Willful Serious)**

*I-2 (Willful Serious)**

This case has been sent to the Occupational Safety & Health Administration (OSHA). For further information, please refer to DOSH Directive 2.68 and OSHA Instruction CPL 02-00-169.”

**Examples only –CSHOs must list the actual item number and type of violation that qualified for SVEP designation, per their inspection.*

B. With Final order, violations no longer qualify.

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, then the following actions occur:

- The entry on the SVEP Log will be moved to the “Lined-out From SVEP” section of the SVEP Log, and the reason will be noted.
- In WIN, the SVEP code will be administratively removed from the enforcement case file.
- A note of explanation will be added to the file.

- The text in the “Citation & Notice Messages” field will be changed to:

“This inspection of the [Employer name] was originally designated for inclusion in the Severe Violator Enforcement Program (SVEP). The qualifying violation(s) has/have been modified to no longer qualify. This inspection has been removed from the Active SVEP Log.”

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

C. Removal from SVEP.

1. Three years from final order:

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

- Received at least one follow-up inspection
- 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 qualifying hazards identified in the SVEP inspection, at any of that employer’s establishments.

Inspections of an employer to evaluate for removal from SVEP will be coded as Severe Violator Follow Up in the “Special Tracking” field. The following text must be included in the summary in WIN:

“This inspection was initiated as an **SVEP removal evaluation follow-up** of the hazards that qualified inspection [SVEP inspection number] of this establishment for the SVEP list to determine recommendations for removal from the program.

2. Evaluating an employer for removal from SVEP.

A follow-up inspection may be initiated up to 4 months prior to removal eligibility and no more than 4 months after eligibility. When criteria for removal has been met and approval is received from the DOSH Assistant Director, the case may be removed from the program on or after the eligibility date.

3. Evaluating a construction SVEP case for removal from the program.

An inspector will do the following:

- Go to the employer's main office and explain that a follow-up inspection will need to be conducted at the site where their employees are working, in order to determine eligibility for removal from the program.
 - Request a list of current and scheduled sites work (in specified time frame) where their employees are/will be working.
 - Review the addresses with their supervisor to determine which location to assign and when to conduct the follow-up inspection.
4. 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.

If an employer is removed from SVEP:

- The entry on the SVEP Log will be moved to the "Removed From SVEP" section of the SVEP Log, and the reason will be noted.
- In WIN, the SVEP code will be administratively removed from the enforcement case file.
- A note of explanation will be added to the file
- The SVEP text in the "Citation & Notice Messages" field will be changed to:

"This inspection of [Employer name] was originally designated for inclusion in the Severe Violator Enforcement Program (SVEP). The Division of Occupational Safety and Health has completed a follow-up inspection and determined that all criteria have been met for removal from SVEP and the inspection has been removed from the Active SVEP Log."

VIII. Auxiliary SVEP Log.

- A. After five years from the final order date, if the Department has been unable to conduct a follow-up inspection, the inspection can be entered in the "Auxiliary SVEP log." Reasons for being unable to conduct a follow-up or referral inspection may include:

- Worksite/workplace closed
- Employer is out of business, or
- Cited operation discontinued at the worksite/workplace.

The employer will remain in the "Auxiliary SVEP Log" until the Department makes contact, verifies abatement, and assures the employer has fulfilled all requirements of SVEP.

B. After ten years from the case closure date, if the Collections Department has determined the case is uncollectible, the Department may move an employer from the active SVEP log to the “Uncollectible” section of the log. The reason will be noted.

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.

IX. 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”, DOSH Compliance may perform an inspection that focuses on the same or similar hazards to those found in the original SVEP case.

A company identified on a Severe Violator Enforcement Program (SVEP) list may still request and receive on-site Consultation Services. Consultants should inform their Regional Consultation Manager of SVEP consultations, and document in the WIN “coverage text” field. Although the company is receiving consultation services, in this situation Consultation visit-in-progress status does not block enforcement from performing an inspection.

X. Point of Contact

If DOSH staff have questions or need additional guidance or interpretive assistance, they are encouraged to contact Compliance Operations.

XI. Review and Expiration Date

This Directive will be reviewed **within two years from the issue date**, for consistency with current DOSH operations, and will remain in effect as long as DOSH maintains a Severe Violator Enforcement Program.



Approved:

Craig Blackwood, L&I Assistant Director
Division of Occupational Safety and Health

[Appendices A, B and C are attached to this Directive]

APPENDIX A

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

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 a gravity of 6 or higher
- (3) Non-Fatality/Catastrophe for PSM hazards -- Three or more W/RS/FTA based on serious violations with a gravity of 6 or higher.
- (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.

Following is a list of items that belong on the SVEP Log:

- | | |
|------------------|-----------------------------------|
| 1. Fiscal Year | 12. Criteria |
| 2. SVEP Log NO | 13. Actions Taken |
| 3. Region | 14. Follow Ups and Related Sites |
| 4. Area Office | 15. Const/not |
| 5. Employer | 16. # EE |
| 6. City/State | 17. # Controlled |
| 7. Inspection # | 18. 11 (b) Cases |
| 8. Opening Date | 19. Follow-up not conducted |
| 9. Issuance Date | 20. Contested (Y/N) |
| 10. SIC | 21. If contested-Final Order Date |
| 11. NAICS | |

APPENDIX B**CSHO Guidance: Considerations in Determining Company Structure and Safety and Health Organization****Extent of Compliance Problems.**

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?

- Does it address this issue?
- How is the issue addressed?

Is there a company-wide safety department?

- Who are they and where are they located?
- How does company headquarters communicate with facilities/worksites?
- Are establishment/worksite management and S&H 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?

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 them from addressing safety and health issues?

APPENDIX B (Continued)**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/worksites 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/worksites, or the company that owns the establishment or uses the worksites, owned by another legal entity (parent company)?

- What is the name and location?
- Try to find out whether the inspected establishment/worksites 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 worksites 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)?**

APPENDIX C
EXAMPLE REMOVAL LETTER



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Division of Occupational Safety and Health
P.O. Box 44600, Olympia, Washington 98504-4600

Date

Employer
Address
City, State zip

Dear Employer:

During a previous inspection (Number: [Inspection number, date issued](#)) hazards were cited that met the criteria for being placed in the Severe Violator Enforcement Program (SVEP). Employers are placed on the SVEP list for a minimum of three years after the inspection becomes a final order. As it has been over three years since that inspection had a final order ([final order date](#)), the department has completed a follow-up inspection and has determined all criteria has been met for removal from SVEP. Therefore, [Name of employer](#) has been removed from the Active SVEP Log

Call me at 360-902-5477 if you have any questions.

Respectfully,

R. Bruce Christian, CIH
Division of Occupational Safety & Health
Statewide Compliance Manager