

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

PROGRAM DIRECTIVE

Program Directive: A-277
Issued: December 9, 2010
Revised: February 22, 2019

- SUBJECT:** National Emphasis Program (NEP): Severe Violator Enforcement Program (SVEP)
- PURPOSE:** To provide enforcement policies and procedures for Oregon OSHA’s Severe Violator Enforcement Program (SVEP). Resources will be concentrated on employers who demonstrate indifference to employee health and safety as evidenced by willful, repeated, or failure-to-abate violations.
- BACKGROUND:** The SVEP focuses enforcement resources on employers who have demonstrated resistance or indifference to their Oregon Safe Employment Act obligations by committing willful, repeated, or failure-to-abate violations in any of the following circumstances: (1) a fatality or catastrophe; (2) an operation or process that exposes employees to the most severe occupational hazards and those defined as “high-emphasis hazards,” in section B (p.3) of this instruction; (3) exposure of employees to hazards related to the potential release of highly hazardous chemicals; or (4) all egregious enforcement actions.
- REFERENCES:** Oregon OSHA [PD A-265, National Emphasis Program: Trenching and Excavation](#).
Oregon OSHA Field Inspection Reference Manual (FIRM).
Oregon OSHA [PD A-253, Local Emphasis Program: Silicosis](#).
Oregon OSHA [PD A-268, National Emphasis Program: Combustible Dust](#).
Oregon OSHA [PD A-177, Process Safety Management of Highly Hazardous Chemicals](#).
Oregon OSHA [PD A-273, NEP Lead in General Industry & Construction](#).
Memo from federal OSHA: [Removal Criteria for the Severe Violator Enforcement Program](#).

ACTION:

A. Severe violator enforcement cases

A severe violator enforcement program case (SVEP) is any inspection that meets one or more of the following criteria:

1. Fatality/Catastrophe Criteria

A fatality/catastrophe inspection where Oregon OSHA finds one or more willful, repeated, or failure-to-abate serious violations related to a death of an employee or three or more employees being hospitalized.

NOTE: The violations under this criteria do not have to be high-emphasis hazards as defined in section B (p.3 thru p.5).

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

An inspection where Oregon OSHA finds two or more willful, repeated, or failure-to-abate violations (or any combination of these violations), based on high probability/serious violations related to a high-emphasis hazard as defined in section B (p.3).

3. Non-fatality/catastrophe criteria for hazards due to the potential release of highly hazardous chemicals (process safety management).

An inspection where Oregon OSHA finds three or more willful, repeated, or failure-to-abate violations (or any combination of these violations), based on high probability/serious violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the process safety management (PSM) standard.

NOTE: Willful, repeated, and failure-to-abate citations must be based on serious violations to qualify as an SVEP case, except for recordkeeping, which must be egregious (e.g., per-instance citations).

4. Egregious criteria.

All egregious (e.g., per-instance citations) enforcement actions will be considered an SVEP case. For example, recordkeeping citations must be egregious (e.g., per-instance citations) to qualify as an SVEP case.

B. Definition of high-emphasis hazards.

High-emphasis hazards applies only to high probability/serious or death violations of the following specific standards. They include falls as listed in items 1 and 2 below, and national emphasis programs (NEPs) listed in 3 through 6, regardless of the type of inspection-complaint, scheduled, LEP, or NEP. Low and moderate probability/serious violations will *not* be considered for an SVEP case. See the FIRM, Chapter 2 for determining what constitutes a high probability/serious or death violation.

1. Fall hazards covered under the following general industry standards:
 - a. [1910.23](#) – Ladders
 - b. [1910.27](#) – Scaffolds and rope descent systems
 - c. [1910.28](#) – Duty to have fall protection and falling object protection
 - d. [1910.29](#) – Fall protection systems and falling object protection – criteria and practices
 - e. [1910.66](#) – Powered platforms for building maintenance
 - f. [1910.67](#) – Vehicle-mounted elevating and rotating work platforms
 - g. [1910.68](#) – Manlifts
 - h. [437-003-0071](#) – Manually propelled elevation aerial platforms
 - i. [437-003-0074](#) – Scissor lifts – self-propelled elevating work platforms
 - j. [437-003-0073](#) – Boom supported elevating work platforms

Example: A CSHO conducts a scheduled inspection from the targeting list and cites the employer for one high probability/serious willful violation of 1910.28 and one low probability/serious willful violation of 1910.23. The inspection has not met the non-fatality/catastrophe criteria related to high-emphasis hazards and is not subject to the Severe Violator Enforcement program. (Low and moderate serious violations are not considered for a SVEP case.)

2. Fall hazards covered under the following construction industry standards:
 - a. [1926.451](#) – General requirements
 - b. [1926.452](#) – Additional requirements applicable to specific types of scaffolds
 - c. [1926.453](#) – Aerial lifts (extensible and articulating boom platforms, aerial ladders, vertical towers, or a combination of any such devices)
 - d. [437-003-0073\(2\)](#) – Boom supported elevating work platforms
 - e. [437-003-1501](#) – General fall protection
 - f. [437-003-2502](#) – Safety monitoring system
 - g. [437-003-0502](#) – Personal fall restraint
 - h. [1926.502](#) – Fall protection systems criteria and practices
 - i. [1926.760](#) – Fall protection
 - j. [1926.1052](#) – Stairways
3. Combustible dust hazards that are covered by the Combustible Dust National Emphasis Program. (See [PD A-268](#))
 - a. [1910.22](#) – General requirements
 - b. [1910.307](#) – Hazardous (classified) locations
 - c. [437-001-0760\(1\)\(b\)\(C\)](#) – A citation may be issued for deflagration, explosion, or other fire hazards that may be caused by combustible dust within a dust collection system or other containers, such as mixers.
4. Crystalline silica hazards specified below that are covered by the Local Emphasis Program – Silicosis (See [PD A-253](#)):
 - a. Overexposure.
 - i. [OAR 437-002-0382](#) – Oregon rules for air contaminants
 - ii. [OAR 437-003-1000](#) – Oregon rules for air contaminants
 - b. Failure to implement engineering controls.
 - i. [OAR 437-002-0382](#) – Oregon rules for air contaminants

- ii. [OAR 437-003-1000](#) – Oregon rules for air contaminants
- c. When overexposure occurs.
 - [1910.134](#) and [1926.103](#) – Respiratory protection
- 5. Lead hazards are covered by the following standards and program directives:
 - a. [1910.1025](#) – Lead ([PD A-273](#))
 - b. [1926.62](#) – Lead (PDs A-273 & [A-208](#))
- 6. Excavation/trenching hazards specified below that are covered by the national emphasis program - Trenching and Excavation (See [PD A-265](#))
 - a. [1926.651](#) – Specific excavation requirements
 - b. [1926.652](#) – Requirements for protective systems (Excavations)

Example: A CSHO conducts a national emphasis program inspection for trenching. While onsite, the CSHO observes employees working in an unsupported trench and cites the employer for two high probability/serious willful violations of 1926.651. The inspection has met the non-fatality/catastrophe criteria related to high-emphasis hazards and the case is subject to the SVEP.

- C. Enforcement considerations – two or more inspections of the same employer.

Evaluate each inspection separately. If any of the inspections of the same employer meet one of the SVEP criteria, it will be considered a SVEP case and coded with the NEP code SVEP.

- D. Procedures of the Severe Violator Enforcement Program (SVEP).

The field enforcement manager will notify the statewide safety or health enforcement program manager, who will in turn notify the Administrator when a case meets the SVEP case criteria.

Treat the case in accordance with paragraphs 1 through 4, listed below, when the field enforcement manager determines a case meets one of the SVEP criterion. Only those SVEP actions that are appropriate for the particular employer should be taken.

- 1. Enhanced follow-up inspections.
 - a. General.

Conduct a follow-up inspection for any SVEP inspection, after the citation has become a final order, even if abatement verification of the cited violations has been received. The purpose of the follow-up inspection is to assess whether the cited violations are abated and to determine if the employer is committing similar violations.

b. Compelling reason not to conduct.

Document any compelling reasons for not conducting a follow-up inspection in the follow-up column of the SVEP log. Examples may include: (1) worksite/workplace closed; (2) employer is out of business; (3) operation cited has been discontinued at the worksite/workplace; or (4) case no longer meets any of the SVEP criteria because citation has been withdrawn/vacated.

NOTE: A “complied with during inspection” situation does not take the place of a needed follow-up inspection.

Inspect the employer’s new location if you learn that a cited operation has been moved. Make a referral if the new location is outside the field office jurisdiction.

c. Construction worksites.

Do not add an attempted construction follow-up to the SVEP log when the employer is no longer at the site and a follow-up inspection is not conducted.

2. Statewide inspections of related workplaces/worksites.

a. General.

Inspect related worksites of the same employer when there are reasonable grounds to believe that compliance problems may be indicative of a broader pattern of non-compliance.

Determine if compliance problems found during the initial SVEP inspection are localized or likely to exist at related facilities. Gather this information during the initial SVEP inspection by letter, telephone, or if necessary, by subpoena. Ask the following types of questions:

- Are decisions being made by the local managers or by company headquarters?
- Is there a written company-wide safety program that addresses the issue?

- Is there a company-wide safety department, where is it located, and how do they communicate with worksites?
- Do personnel from company headquarters visit the worksites on an irregular or regular basis?
- How are they handling safety audits conducted by their insurer or contractors on their site?
- Does the company provide appropriate safety and health training?
- Does the company have other sites where similar processes are being performed?
- Has the company safety record improved over the past few years? If not, why not?

The safety or health enforcement manager must ensure that relevant information is gathered to determine if a broader pattern of non-compliance exists. The safety or health enforcement manager will consult with the Department of Justice as appropriate. Identify all related establishments of the employer in the same 3-digit NAICS code as the initial SVEP case when sufficient evidence is found. Select related establishments of the employer for inspection not in the same 3-digit NAICS code if there are reasonable grounds to believe hazards and violations may be present at the related sites.

b. Referrals.

Oregon OSHA will accept referrals from federal OSHA regarding any SVEP inspections. We will send SVEP referrals to federal OSHA Region X who will forward any referrals not in its region to the appropriate OSHA regional administrator.

c. Construction worksites.

The statewide safety or health enforcement manager must further investigate the employer's compliance whenever an employer in the construction industry has a SVEP case. Inspect at least one other worksite of the cited employer, if the initially inspected worksite is closed before a follow-up inspection is conducted, to determine if the employer is committing similar violations.

SVEP cases resolved through a settlement agreement must have language in the agreement requiring the employer to notify Oregon OSHA of their other construction jobsites prior to any work starting during the following three-year period.

d. Scope of related inspections.

The scope of inspection of a related establishment will depend upon the evidence gathered in the original SVEP inspection. The main focus will be on the same or similar hazards to those found in the original case.

e. Priority of the inspection.

SVEP inspections will take priority after imminent danger, fatality, and complaints, but before other programmed inspections.

3. Increased company awareness of Oregon OSHA enforcement.

a. For employers that are the subject of a SVEP case, the Records Management Unit will mail a copy of the Citation and Notification of Penalty to the employer's national headquarters if the employer has more than one fixed establishment and it is determined that the issues need to be addressed at a corporate level.

b. Employee representatives (i.e., unions, safety committees) will receive a copy of the Citation and Notification of Penalty.

4. Enhanced settlement provisions.

Consider the following settlement provisions to ensure future compliance both at the cited facility and at other related facilities of the employer:

a. Have a qualified safety and health consultant assist in the development and implementation of an effective and comprehensive safety and health program. The employer must maintain the program and the program must ensure full compliance with the standards under which the employer was cited during the SVEP inspection.

b. Apply the agreement company wide. (See [PD A-163](#)).

c. Use settlement agreements in construction, and where appropriate in general industry, to get a list of current jobsites, or future jobsites within a specified time period, from the employer. The employer must indicate to Oregon OSHA the specific protective measures to be used for each current or future jobsite to ensure employee safety.

d. Submit location of all of the employer's projects 30 days before they start, to the statewide enforcement program manager. Require the employer, for a specified time period, to

submit their log of work-related injuries and illnesses on a quarterly basis to the safety or health enforcement manager and consent to an Oregon OSHA inspection based on the information.

5. Removal criteria.

The following is criteria on removing employers from the SVEP program.

1. An employer may be considered for removal from the SVEP program by Oregon OSHA when:
 - a. A period of three years has passed from the date of final disposition of the SVEP inspection citation items. Final disposition includes failure to contest, a signed settlement agreement, or court of appeals decision.
 - b. All affirmed violations have been abated
All final penalties have been paid
 - c. The employer has abided by and completed all settlement provisions,
 - d. The employer has not received any additional serious citations related to the hazards identified in the SVEP inspection at the initial establishment or at any related establishments.

Employers that fail to meet the requirements during the three years will remain on the SVEP log for an additional three years and then be reevaluated according to the above criteria.

E. Relationship to other programs.

1. Unprogrammed inspections.

If an unprogrammed inspection must be initiated due to conditions observed or uncovered during a SVEP inspection, the two inspections may be conducted either separately or concurrently. This instruction does not affect in any way Oregon OSHA's ability to conduct unprogrammed inspections.

2. Programmed inspections.

Some establishments selected for inspection under the SVEP may also fall under one or more other initiatives, such as national or local emphasis programs. Conduct inspections under these programs either separately or concurrently with SVEP-related inspections.

F. Recording and tracking inspections.

1. SVEP program directive

Once a case is identified as a severe violator enforcement case, Select the national emphasis program (NEP) code from the dropdown on the emphasis tab in OTIS.

NOTE: Only inspections that meet one of the four criterion for a severe violator enforcement case will be coded with the SVEP NEP code.

2. Other program codes.

Enter all other applicable program codes in OTIS under the emphasis and related/optional tabs when the inspection also meets the protocol for other programs.

EFFECTIVE

DATE: This directive is effective immediately and will remain in effect until canceled or superseded.

History: Issued 12-9-2010 Revised 1-28-2011, 10-6-2012, 9-20-2018, and 2-22-2019

Appendix A

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

When evaluating whether to inspect other worksites of a company designated as a severe violator enforcement case, first determine if 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 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 locations 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 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.

- Was the decision concerning the violative condition made locally or by company headquarters? Was the decision meant to apply to other facilities of the employer? If the decision was from company headquarters, what is their explanation?
- Is there a written company-wide safety program? How does it address this issue?
- Is there a company-wide safety department? Where is it located? How does company headquarters communicate with facilities/worksites? Are facility/worksite 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 and is headquarters aware of the reports and the inaction?
- Do they have other facilities or worksites that do similar or substantially similar work, use similar processes or equipment, or produce like products? Where are they?
- What is the overall company attitude concerning safety and health and do they receive support from 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 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 manager 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 and are only aware of the control and influence of 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)? If so, what is the name and location? Try to find out if 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 that owns all or a majority of its shares. 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.
- Are there other facilities or worksites controlled by these entities doing the same type of work that might have the same kinds of safety and health concerns?
- Ask interviewees for the names, positions and business addresses of relevant company personnel. 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)?