

**VOSH PROGRAM DIRECTIVE: 02-024A****ISSUED: 01 September 2013****Subject** Severe Violator Enforcement Program (SVEP)

**Purpose** **CHANGE I:** This Directive transmits to VOSH compliance personnel policies and procedures for VOSH's Severe Violator Enforcement Program (SVEP), which concentrates resources on inspecting employers who have demonstrated indifference to their OSH Act obligations by willful, repeated, or failure-to-abate violations. It also replaces OSHA's Enhanced Enforcement Program (EEP), which was not adopted by VOSH. **CHANGE II:** This change transmits guidance on removing employers from the Severe Violator Enforcement Program (SVEP) after a period of three years from the date of final disposition of the SVEP inspection citation items.

*This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.*

**Scope** This Directive applies to all VOSH personnel.

**Reference** **CHANGE I:** OSHA Instruction CPL 02-00-149 (June 18, 2010);  
**CHANGE II:** Memorandum from Thomas Galassi, Director of Enforcement Programs (16 August 2012).

**Cancellation** VOSH Program Directive 02-024 (01 April 2011).

**Effective Date** CHANGE I: 01 April 2012  
 CHANGE II: 01 September 2013

**Action** Directors and Managers shall ensure that the policies and procedures established in this Directive are followed.

Courtney M. Malveaux  
 Commissioner

Distribution: Commissioner of Labor and Industry  
 Assistant Commissioner - Programs  
 VOSH Directors and Managers  
 Legal Support and IMIS Staffs

Cooperative Programs Manager  
 VOSH Compliance and Cooperative Programs Staffs  
 OSHA Regional III and Norfolk Area Offices

Attachments: Severe Violator Enforcement Program (SVEP) and Memorandum from Thomas Galassi (16 August 2012)

When the instructions, as set forth in this Program Directive, are applied to the Department of Labor and Industry and/or to Virginia employers, the following federal terms, if and where they are used, shall be considered to read as below:

Federal Terms

VOSH Equivalent

OSHA

VOSH

Federal Agency

State Agency

Agency

Department

Regional Administrator

Assistant Commissioner

Area Director

Regional Director or  
VOSH Program Director

Regional Solicitor

Attorney General or VOSH  
Division of Legal Support (DLS)

Office of Statistics

VOSH Research and Analysis

29 CFR

VOSH Standard

Compliance Safety and Health Officer (CSHO)  
And/or Industrial Hygienist

CSHO

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**I. Purpose.**

This Directive establishes enforcement policies and procedures for VOSH's Severe Violator Enforcement Program (SVEP), which concentrates resources on inspecting employers who have demonstrated indifference to VOSH laws and regulations by committing willful, repeated, or failure-to-abate violations.

**II. Scope.**

This Directive applies VOSH-wide.

**III. Reference.**

CHANGE I: OSHA Instruction CPL 02-00-149 (June 18, 2010); and  
CHANGE II: Memorandum from Thomas Galassi, Director Directorate of Enforcement Programs (16 August 2012)

**IV. Cancellations.**

VOSH Program Directive 02-024 (01 April 2011)

**V. Background.**

The SVEP is intended to focus enforcement efforts on significant hazards and violations by concentrating inspection resources on employers who have demonstrated recalcitrance or indifference to their compliance obligations by committing willful, repeated, or failure-to-abate violations in one or more of the following circumstances: (1) a fatality or catastrophe situation; (2) in industry operations or processes that expose employees to the most severe occupational hazards and those identified as "High-Emphasis Hazards," as defined in Section VIII of this Directive; (3) exposing employees to hazards related to the potential release of a highly hazardous chemical; or (4) all egregious enforcement actions.

Cases meeting the severe violator enforcement criteria are those in which the employer is found to be recalcitrant or indifferent to its compliance, thereby endangering employees. The SVEP procedures in Section XI are intended to increase attention on the correction of hazards found in these workplaces and, where appropriate, in other worksites of the same employer where similar hazards and deficiencies may be present. This program applies to all employers regardless of size.

**VI. Handling Severe Violator Enforcement Cases.**

- A.** Compliance Safety and Health Officers (CSHOs) must become familiar with Appendix B to effectively evaluate employers during all inspections likely to result in a severe violator enforcement case.
- B.** The VOSH Director will identify severe violator enforcement cases no later than at the time the citations are issued, in accordance with criteria set forth in this Directive.
- C.** State agency cases that meet the SVEP case criteria will also be classified as severe violator enforcement cases, and where the term "employer-wide" or "company-wide" is used, it will apply agency-wide or department-wide, as appropriate. Appropriate SVEP actions for such cases will be determined by the VOSH Director in consultation with the Division of Legal Support.
- D.** When a case meets the severe violator enforcement case criteria, the VOSH Director will notify the Directorate of Enforcement Programs (DEP).

- E. VOSH Director notification to DEP must be by e-mail using the SVEP-group e-mail address on OSHA's Global Address list: "zzOSHA-SVEP." The notification must be at least monthly (by the 20<sup>th</sup> of the month) and include the information requested in Appendix A. The VOSH Director will use the Excel spreadsheet format that will be sent to the SVEP Regional Coordinators shortly after this Directive becomes effective.

## VII. Criteria for a Severe Violator Enforcement Case.

An inspection will be classified as a severe violator enforcement case if:

- it meets one or more of the criteria in paragraphs A. through D., below, at the time that the citations are issued; and
- the VOSH Director determines that the willful/repeated/failure-to-abate compliance problems and issues found during the initial inspection are more likely than not in existence at other specific facilities owned and operated by that employer (See Appendix B.)

**NOTE:** Willful and repeated citations and failure-to-abate notices referenced in A. through D., below, must be based on serious violations, except for recordkeeping, which must be egregious (e.g., per-instance citations).

### A. **Fatality/Catastrophe Criterion.**

A fatality/catastrophe inspection in which VOSH finds **one** or more **willful** or **failure-to-abate** notices based on a serious violation, related to a death of an employee or three or more hospitalizations.

A fatality/catastrophe inspection in which VOSH finds **one** or more **repeat** violations based on a serious violation related to a death of an employee or three or more hospitalizations, and the repeat violation is a second or higher number repeat.

**NOTE:** The violations under this criterion **do not have to be High-Emphasis Hazards** as defined in Section VIII.

### B. **Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards.**

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

An inspection in which VOSH finds two or more **repeat** violations based on high gravity serious violations related to a **High-Emphasis Hazard**, as defined in Section VIII, and the repeat violation is a second or higher number repeat.

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

An inspection in which VOSH finds **three** or more **willful** or **failure-to-abate** notices (or any combination of these violations/notices), based on **high gravity serious** violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard.

An inspection in which VOSH finds three or more **repeat** violations based on high gravity serious violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard, and the repeat violation is a second or higher number repeat.

**D. Egregious Criterion.**

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

**VIII. Definition of High-Emphasis Hazards.**

High-Emphasis Hazards as used in this Directive means only **high gravity serious** violations of the following specific standards covered under falls or the National Emphasis Programs (NEPs) and Local Emphasis Programs (LEP) listed in paragraphs F. through K., below, **regardless of the type of inspection** being conducted (e.g., complaint, general schedule, construction schedule, Local Emphasis Programs, National Emphasis Programs). Low and moderate gravity violations will not be considered for a SVEP case.

Example 1: A CSHO conducts a **general schedule inspection** and cites the employer for one high gravity willful violation of §1910.23 and one low gravity willful violation of §1910.28. The inspection has not met the Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards and is not subject to the SVEP.

Example 2: A CSHO conducts a **Local Emphasis Program** inspection for Residential Construction. While on-site, the CSHO observes employees working in an unsupported trench and cites the employer for two high gravity willful violations of §1926.651. The VOSH Director determines that trenching compliance problems found during the initial inspection are more likely than not to exist at another worksite operated by the employer. The inspection has met the Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards and the case is subject to the SVEP.

**A. Fall hazards covered under the following general industry standards:**

1. §1910.23 - Guarding floor and wall openings and holes [Walking-Working Surfaces]
2. §1910.28 - Safety requirements for scaffolding [Walking-Working Surfaces]
3. §1910.29 - Manually propelled mobile ladder stands and scaffolds (towers) [Walking-Working Surfaces]
4. §1910.66 - Powered platforms for building maintenance [Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms]
5. §1910.67 - Vehicle-mounted elevating and rotating work platforms [Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms]
6. §1910.68 - Manlifts [Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms]

**B. Fall hazards covered under the following construction industry standards:**

1. §1926.451 - General requirements [Scaffolds]
2. §1926.452 - Additional requirements applicable to specific types of scaffolds
3. §1926.453 - Aerial lifts [Scaffolds]
4. §1926.501 - Duty to have fall protection
5. §1926.502 - Fall protection systems criteria and practices
6. 16 VAC 25-145 - Fall protection [Steel Erection]

7. §1926.1052 - Stairways [Ladders]
- C. Amputation hazards** specified below that are covered under the National Emphasis Program on Amputations [VOSH Program Directive 14-233A or its successor].
1. §1910.147 - The control of hazardous energy (lockout/tagout)
  2. §1910.212 - General requirements for all machines
  3. §1910.213 - Woodworking machinery requirements
  4. §1910.217 - Mechanical power presses
  5. §1910.219 - Mechanical power-transmission apparatus
- D. Combustible dust hazards** specified below that are covered by the Combustible Dust National Emphasis Program (Reissued) [VOSH Program Directive 14-236A or its successor], including the General Duty Clause, Va. Code §40.1-51.1(a):
1. §1910.22 - General requirements [Walking-Working Surfaces]
  2. §1910.307 - Hazardous (classified) locations [Electrical]
  3. Va. Code §40.1-51.1(a) – Any General Duty Clause violation concerning hazards related to dust collectors inside buildings, deflagration isolation systems, and duct-work issues.
- E. Crystalline silica hazards** specified below that are covered by the National Emphasis Program - Crystalline Silica [VOSH Program Directive 14-410 or its successor]:
- 1. Overexposure.**
    - a. §1910.1000 and §1915.1000 - Air Contaminants
    - b. §1926.55 - Gases, vapors, fumes, dusts, and mists
  - 2. Failure to Implement Engineering Controls.**
    - a. §1910.1000(e) - Air Contaminants
    - b. §1926.55(b) - Gases, vapors, fumes, dusts, and mists
  - 3. When Overexposure Occurs.**

§1910.134; §1926.103; and §1915.154 - Respiratory protection
- NOTE:** The Silica NEP requires a mandatory follow-up inspection when overexposures to crystalline silica are found. If a follow-up inspection finds the same violations as previously cited, the follow-up inspection will most likely qualify as a SVEP case. See paragraph XI.A.4.
- F. Lead hazards** specified below that are covered by the National Emphasis Program – Lead (only violations based on sampling) [VOSH Program Directive 14-437A or its successor].
1. §1910.1025 - Lead
  2. §1926.62 - Lead
- G. Excavation/trenching hazards** specified below that are covered by the Special Emphasis Program - Trenching and Excavation [VOSH Program Directive 14-203 or its successor].

1. §1926.651 - Specific excavation requirements
2. §1926.652 - Requirements for protective systems [Excavations]

**H. Electrocuting hazards** specified below that are covered by the Local Emphasis Program – Overhead High Voltage Line Safety [VOSH PD 14-221D or its successor].

1. Va. Code §59.1-406 to -414, Virginia Overhead High Voltage Line Safety Act

**IX. Hazards Due to the Potential Release of a Highly Hazardous Chemical (Process Safety Management).**

**Petroleum refinery hazards** are those hazards that are covered by the Petroleum Refinery Process Safety Management National Emphasis Program and hazards due to the potential release of a highly hazardous chemical as covered by PSM Covered Chemical Facilities National Emphasis Program:

§1910.119 – Process safety management of highly hazardous chemicals

**X. Enforcement Considerations – Two or More Inspections of the Same Employer.**

For classification under the SVEP, each individual inspection must be evaluated separately to determine if it meets one of the criteria in VII. If any of the inspections meet one of the severe violator criteria, it will be considered a SVEP case and coded according to section XIV.

**XI. Procedures of the Severe Violator Enforcement Program (SVEP).**

When the VOSH Director determines that a case meets one of the SVEP criteria, it will be treated in accordance with paragraphs XI.A. through E, below. Only those SVEP actions that are appropriate for the particular employer should be taken.

**A. Enhanced Follow-up Inspections.**

**1. General.**

For any SVEP inspection issued 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 assess **not only** whether the cited violation(s) were abated, **but also** whether the employer is committing similar violations at other worksites.

**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 the file. The VOSH Director shall also report these cases monthly to the Director of Enforcement Programs, along with the reason a follow-up was not initiated.

If a follow-up cannot be initiated, the follow-up column of the SVEP Log must be completed by giving the reason. Examples of compelling reasons not to conduct a follow-up inspection 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 Corrected During Inspection (CDI) situation does not take the place of a needed follow-up inspection.

**If the Regional Director learns that a cited SVEP worksite has been moved from the cited location to a different location, the new location shall be inspected. If the new location is outside the Regional Office’s jurisdiction, a referral shall be made.**

**3. Construction Worksites.**

When the Regional Office has reason to believe that a construction worksite is no longer active (or is nearing completion), thus making a follow-up inspection of the same worksite impossible or impractical, the provisions in paragraph XI.B.6. shall apply. When a construction follow-up is attempted but the employer is no longer at the site, it will not be added to the SVEP Log.

**4. Silica Overexposure Follow-ups.**

The Silica NEP [VOSH PD 14-410 or its successor] requires a mandatory follow-up inspection when citations are issued for overexposure to crystalline silica to determine whether the employer is eliminating silica exposures or reducing exposures below the PEL. If a follow-up inspection finds the same or similar violations as previously cited, the follow-up inspection will most likely qualify as a severe violator enforcement case under the criteria in section VII.

**B. Statewide Inspections of Related Workplaces/Worksites.**

**1. General.**

OSHA and VOSH have found that employer indifference to compliance responsibilities under the Act may be indicative of broader patterns of non-compliance at related employer worksites. When there are reasonable grounds to believe that compliance problems identified in the initial inspection are more likely than not indicative of a broader pattern of non-compliance, OSHA and VOSH will inspect related worksites of the same employer. Appendix B of this Directive provides guidance in evaluating whether compliance problems found during the initial SVEP inspection are localized or likely to exist at related facilities. This information shall be gathered, to the extent possible, during the initial SVEP inspection. Such information may also be sought by letter, telephone, or provisions contained in Va. Code §40.1-6(4), take and preserve testimony, examine witnesses, administer oaths, interrogatories.

The VOSH Director shall be responsible for assuring that relevant information is gathered and for determining whether the information provides specific grounds to believe that a broader pattern of non-compliance may exist. In Virginia, an SVEP referral must be supported by specific probable cause to believe that there is a “condition, object, activity or circumstance which legally justifies” an inspection. Va. Code §40.1-49.9. To support a statewide or nationwide SVEP referral, there must be reliable information and evidence that the hazards/violations addressed in the willful, repeated or failure-to-abate violations referenced in paragraph VII.A. to D. are more likely than not present at any specific related facility owned by the employer for which an inspection is planned.

The VOSH Director shall consult with the Division of Legal Support (DLS) as appropriate. When sufficient evidence is found for a specific related establishment of the employer that is in the same 3-digit NAICS code (or 2-digit SIC code) as the initial SVEP case will be identified; the establishment will be selected for inspection in accordance with subsection 4 below.

Establishments that are not in the same 3-digit NAICS code (or 2-digit SIC code) also may be inspected if there are reasonable grounds to believe hazards and violations, directly related to the willful/repeated/FTA violations from the initial inspection are more likely than not to be present at the specific related sites.

When a nationwide referral is received from federal OSHA, the VOSH Director will assign it to the appropriate region for inspection if:

- it meets one or more of the criteria in paragraphs VII.A. through D. at the time that the citations were issued; and
- the willful/repeated/failure-to-abate compliance problems and issues found during the initial inspection are more likely than not in existence at the specific facility/worksite that is the subject of the referral (see Appendix B).

If the nationwide referral is found to not meet the above criteria, the VOSH Director, after consultation with DLS, as needed, shall contact the referring Regional Administrator and request they provide any additional information from the initial inspection that could be used to support a finding of specific probable cause to inspect.

If sufficient additional information is provided, the VOSH Director will assign the referral to the appropriate region. If sufficient information is not available, the VOSH Director shall inform DEP that the referral inspection cannot be assigned based on current available information.

The Directorate of Enforcement programs will serve as the National Office point of contact for all SVEP nationwide referrals. Any questions should be addressed to the Director or Deputy Director in DEP. The VOSH Director is Virginia's SVEP Coordinator.

## **2. Office of Statistical Analysis (OSA).**

**For federal SVEP sites only.** At the request of the OSHA Director of the Directorate of Enforcement Programs, the Regional Administrator, or the Regional Coordinator, OSA will assist in identifying similar and other related worksites nationwide (including in State Plan States) of the same employer.

Establishments are related when there is common ownership. Related establishments include establishments of corporations that are in the same corporate family, including subsidiary, affiliate, or parent corporations with substantial common ownership. Similar related establishments are related establishments that are in the same 3-digit NAICS code (or 2-digit SIC code).

## **3. State Plan State Referrals.**

OSHA will accept referrals, which include all relevant facts, from other State Plan States and federal OSHA regarding any inspections conducted pursuant to the State's SVEP. State Plan referrals to Federal OSHA are to be sent to the Regional Administrator, who will forward any referrals not in its Region to the appropriate OSHA Regional Administrator.

**4. General Industry Workplaces.**

- a. When the VOSH Director determines that additional workplaces in Virginia should be inspected, 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. The VOSH Director shall have overall responsibility for coordinating the inspections and planning investigative strategy. The VOSH Director shall consult with DLS, as appropriate.
- b. In addition to or in lieu of (a) above, when the Director has reasonable grounds to believe that hazards may exist at particular other related establishments, he/she may select those establishments for inspection.
- c. The VOSH Director shall be responsible for coordinating statewide inspections of related establishments under this paragraph.

**5. SVEP Nationwide Related Inspections that involve process safety management (PSM) hazards.**

A SVEP statewide inspection will be limited to investigations of the PSM standard for which the willful or repeated citations or failure-to-abate notices were issued, and will not include units that were inspected in the previous two years.

**6. Construction Worksites.**

- a. Whenever an employer in the construction industry has a SVEP case, the VOSH Director should further investigate the employer's compliance record. If the initially inspected worksite is closed before a follow-up inspection can be conducted, at least, one other worksite of the cited employer should be inspected to determine whether the employer is committing violations similar to those found in the initial severe violator enforcement inspection. Because the worksites of construction employers are often difficult to locate, the following means may be used to identify other worksites of the cited employer.
  - If the severe violator enforcement case is resolved through a settlement, the agreement should require the employer to notify the Regional Director of its other jobsites prior to when work starts at new construction sites during the following one-year period.
  - Interrogatories pursuant to Va. Code 40.1-6(4) may be issued to an employer prior to the issuance of the citation to identify the location of worksites where employees of that employer are presently working or are expected to be working within the next 12 months.
  - Interrogatories may be issued at any time during an inspection if it appears that the inspection is likely to result in a SVEP case and the Regional Director determines (after consultation with the VOSH Director) that the hazards disclosed by the inspection and the inadequacy of the employer's response to those hazards indicate that a broader response by VOSH is appropriate.

- Whenever interrogatories are to be issued pursuant to the SVEP, the VOSH Director shall coordinate with DLS.

**b. VOSH Headquarters.**

- When a Regional Director determines that a SVEP construction employer is operating in a different region in Virginia, the Regional Director will send a recommendation for inspection, including all relevant facts, to the VOSH Director. The VOSH Director shall consult with DLS, as appropriate.
- When the VOSH Director deems it necessary to notify Regional Directors regarding activity of a particular construction employer with worksites in more than one Region in Virginia, the VOSH Director will issue a SVEP statewide referral. The procedures outlined under XI.B.6. will be followed.
- Any inspection conducted under a SVEP statewide referral is to be coded as an unprogrammed-referral, and is to be considered a referral from the federal OSHA or VOSH Headquarters. An OSHA-90 is to be generated when a site is discovered where a SVEP nationwide/statewide Referral employer is operating.

**7. Scope of Related Inspections.**

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

**8. Priority of the Inspection.**

In accordance with inspection priorities of the FOM, the SVEP nationwide and statewide referral inspections will come after imminent danger, fatality, and complaints, but before other programmed inspections. But see section XIII. (*Relationship to Other Programs*) of this Directive, regarding when other inspections may be conducted concurrently.

**C. Increased Company Awareness of VOSH Enforcement.**

**1. Sending Citations and Notifications of Penalty to Employer's Headquarters.**

- a. For all employers that are the subject of a SVEP case, the Regional Director shall mail a copy of the Citations and Notifications of Penalty to the employer's national headquarters if the employer has more than one fixed establishment. See sample cover letter in Appendix C.
- b. Employee representatives (e.g., unions) shall receive a copy of the Citations and Notifications of Penalty that is mailed to the employer's national headquarters.

**2. Sending Letters to Corporate Officers or Coordinating Meetings with the Regional or Central Office.**

In cases where VOSH determines that an establishment's safety and health problems should be addressed at the corporate level, the following actions should be considered:

- a. A letter sent from the VOSH Director to the company President expressing VOSH's concern with the company's violations. A copy of the citations shall be sent with the letter if the citations and cover letter have not been sent to the company President previously.
- b. A meeting may be held between VOSH, company officials, employees and unions representing affected employees to discuss how the company intends to address safety and health compliance.
- c. Employee representatives shall be notified by letter when VOSH determines that the establishment's safety and health problems need to be addressed at the corporate level.

**D. Enhanced Settlement Provisions.**

The following settlement provisions shall be considered to ensure future compliance both at the cited facility and at other related facilities of the employer:

1. Employers shall hire a qualified safety and health consultant or contract with a qualified consultant to develop and implement an effective and comprehensive safety and health program or, where appropriate, a program to ensure full compliance with the subpart under which the employer was cited under the SVEP;

**NOTE:** Employers cannot be required in a settlement agreement to use VOSH consultation services; but the employer can be provided the option of excusing part of the penalty owed if they request VOSH consultation services.

2. Applying the agreement company-wide. Company-wide settlement agreements are to be coordinated with the VOSH Director and DLS.
3. Requiring interim abatement controls if VOSH is convinced that final abatement cannot be accomplished in a short period of time;
4. In construction (and, where appropriate, in general industry), using settlement agreements to obtain from the employer a list of its current jobsites, or future jobsites within a specified time period. The employer should be required to indicate to VOSH the specific protective measure to be used for each current or future jobsite;
5. Requiring the employer for a specified time period to submit to the Regional Director its Log of Work-related Injuries and Illnesses on a quarterly basis, and to consent to VOSH conducting an inspection based on the information; and
6. Requiring the employer for a specified time period to notify the Regional Director of any serious injury or illness requiring medical attention and to consent to an inspection.

**E. Petitioning Court to Enjoin Violations of VOSH Standards, Rules and Regulations**

The VOSH Director may consult with DLS to determine if the Commissioner should petition the court to enjoin violations of VOSH standards, rules and regulations in accordance with Va. Code §40.1-49.4.F.2.

## **XII. SVEP Log.**

### **A. General.**

The VOSH Director will maintain a SVEP Log in which inspections that meet the SVEP criteria, or are SVEP-related inspections (i.e., SVEP follow-ups, or inspections at other worksites of the same employer), are logged as they are reported to the National Office.

### **B. Lining-Out Establishments from the SVEP Log.**

If an establishment has entered into a settlement agreement (informal or formal) in which a citation that qualified the establishment for SVEP designation is deleted, or if there has been a court decision that has vacated such a citation, then the entry on the SVEP Log will be lined-out and the IMIS "SVEP" code will be removed from that establishment's Internet Inspection Detail summary. The Regional Director must notify the VOSH Director of these changes, who in turn must notify federal OSHA's Department of Enforcement Programs (DEP) to line-out the inspection from the SVEP Log.

## **XIII. 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, VOSH's ability to conduct unprogrammed inspections.

### **B. Programmed Inspections.**

Some establishments selected for inspection under the SVEP may also fall under one or more other VOSH initiatives such as general schedule or Local Emphasis Programs (LEP). Inspections under these programs may be conducted either separately or concurrently with inspections under this Directive.

## **XIV. Recording and Tracking Inspections.**

### **A. SVEP Code.**

This applies to all severe violator enforcement cases opened on or after the effective date of this Directive. Once a case is identified as a severe violator enforcement case, enter the NEP code "SVEP" from the drop-down list in field 25d for the inspection.

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

### **B. NEP Codes for High-Emphasis Hazards.**

If the SVEP criterion used is that described in paragraph VIII.B., the appropriate NEP/LEP codes must be entered in field 25d.

### **C. Significant Enforcement Actions and Enhanced Settlement Codes.**

If any inspection in a significant enforcement action qualifies as a severe violator case, it is to be coded "SIGCASE" in item 42, for that inspection.

EXAMPLE: N            08            SIGCASE

If a severe violator case receives an enhanced settlement agreement, it is to be coded "ENHSA" in item 42.

EXAMPLE: N            08            ENHSA

**D. Other Program Codes.**

Remember to enter all applicable NEP and LEP program codes in Item(s) 25c and 25d when an inspection is conducted and the inspection also meets the protocol for other program(s). Also, enter all applicable Strategic Management Plan hazard/industry codes in Item 25f.

**XV. Dun & Bradstreet Number.**

If it is available, the Data Universal Numbering System (DUNS) number is to be entered in the appropriate field on the Establishment Detail Screen. In establishments where ownership has changed, enter the DUNS number for the new owner. If the new owner does not have a new DUNS number, enter the old DUNS number, if known. Since the DUNS number is site-sensitive, the old number will give some useful data. The field on the Establishment Detail Screen can be accessed by pressing F5 in Item 8 to access establishment processing. Once establishment processing is completed, the DUNS number will appear in Item 9b.

**XVI. End of the Fiscal Year Report.**

The Directorate of Enforcement Programs (DEP) will compile an End of the Fiscal Year Report of each Region's SVEP activity, which will be sent to the Assistant Secretary.

## Appendix A

### Information Needed on Each SVEP Inspection for Monthly Report to the National Office

Employer Name	Inspection Number	Regional Office	Field Office
Opening Date	SIC & NAICS codes	# of Employees Controlled	

Indicate if inspection is a SVEP, a Follow-up (FU), a Construction-Related (C-R), or a General Industry-Related (GI-R). If inspection is done based on an SVEP Nationwide Expansion Memo the inspection will either be a C-R or a GI-R.

If the inspection is other than a SVEP, give the name and inspection number of the SVEP case to which it is a follow-up or related. Remember: any FU, C-R, or GI-R inspections can also be a SVEP.

Indicate if construction or non-construction.

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

- 1) Fatality/Catastrophe -- One/more W/2nd or 3<sup>rd</sup> R/FTA based on a serious violation of any gravity related to death or three or more hospitalized
- 2) Non-Fatality/Catastrophe -- One/more W/2nd or 3<sup>rd</sup> R/FTA based on high gravity serious violations related to a High-Emphasis Hazard (excluding Process Safety Management)
- 3) Non-Fatality/Catastrophe for PSM hazards -- One/more W/2nd or 3<sup>rd</sup> R/FTA based on high gravity serious violations
- 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 VOSH Director
- 5) Meeting with company officials (separate from informal conference)
- 6) Enhanced settlement provisions used in informal/formal settlements

## 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 a severe violator enforcement 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. In Virginia, an SVEP referral must be supported by specific probable cause to believe that there is a “condition, object, activity or circumstance which legally justifies” an inspection. Va. Code §40.1-49.9. If violations at a local workplace appear to be symptomatic of a broader company neglect for employee safety and health, with respect to conditions cited under the SVEP inspection, the company structure should be investigated to help identify other establishments and conditions similar to those found in the initial inspection.

To support a statewide or nationwide SVEP referral CSHOs must gather reliable information and evidence that the hazards/violations addressed in the willful, repeated or failure-to-abate violations referenced in paragraph VII.A. to D. are more likely than not present at any related facility owned by the employer for which an inspection is planned.

**Extent of Compliance Problems.** Are violative conditions a result of a company decision or interpretation concerning a standard, regulation 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.

- 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 willful, repeated or failure-to-abate 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? Is there any information or evidence to suggest that the types of violative conditions being cited willful, repeated or failure-to-abate exist at the other company facilities/worksites?

- 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 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? Is there any information or evidence to suggest that the types of violative conditions being cited willful, repeated or failure-to-abate exist at the other company facilities/worksites?

**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? Is there any information or evidence to suggest that the types of violative conditions being cited willful, repeated or failure-to-abate exist at the other company facilities/worksites?
- 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 person
- 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

### Sample Letter to Company Headquarters

Area Office Header

Date

Name of Employer's National Headquarters

Address of Headquarters

Dear \_\_\_\_\_:

Enclosed you will find a copy of a Citation and Notification of Penalties for violations of Virginia Occupational Safety and Health (VOSH) laws, standards and regulations, which were issued to [establishment name, located in city, state]. This case has been identified as a severe violator enforcement case under the VOSH Severe Violator Enforcement Program (SVEP).

The violations referred to in this citation must be abated by the dates listed and the penalties paid, unless they are contested. This Citation and Notification of Penalties is being provided to you for informational purposes so that you are aware of the violations; the original was mailed to [establishment name] on [date]. We encourage you to work with all of your sites to ensure that these violations are corrected. VOSH is dedicated to saving lives, preventing injuries and illnesses and protecting Virginia's employees and employers from occupational hazards. For more information about VOSH programs, please visit our website at [www.doli.virginia.gov](http://www.doli.virginia.gov).

Sincerely,

VOSH Director

Enclosure

U.S. Department of Labor

Occupational Safety and Health Administration  
Washington, D.C. 20210

Reply to the attention of:



AUG 16 2012

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH   
RICHARD E. FAIRFAX  
DEPUTY ASSISTANT SECRETARY

FROM:   
THOMAS GALASSI, DIRECTOR  
DIRECTORATE OF ENFORCEMENT PROGRAMS

SUBJECT: Removal Criteria for the Severe Violator Enforcement Program

This memorandum provides guidance on removing employers from the Severe Violator Enforcement Program (SVEP). The SVEP has been in effect since June 18, 2010. To date, 288 inspections have been designated as SVEP inspections. In FY 2011, the Directorate of Enforcement Programs (DEP) began an in-depth evaluation of the SVEP. One of the areas considered was establishing procedures for removing employers from the program.

After reviewing the policy, DEP determined that an employer may be removed from the SVEP after a period of **three years** from the date of final disposition of the SVEP inspection citation items. Final disposition may occur through failure to contest, settlement agreement, Review Commission final order, or court of appeals decision. Employers must have abated all SVEP-related hazards affirmed as violations, paid all final penalties, abided by and completed all settlement provisions, and not received any additional serious citations related to the hazards identified in the SVEP inspection at the initial establishment or at any related establishments.

Except in cases where national corporate-wide settlements are involved, approval of the employer's removal will be at the discretion of the Regional Administrator or designee and shall be based on an additional follow-up inspection and IMIS/OIS data. The Regional Administrator or his/her designee will then notify DEP via the SVEP log that the employer has been removed/lined-out. In the event that an employer fails to abate all hazards, pay all penalties, or comply with settlement terms during this three-year period, the Regional Administrator shall notify DEP with a brief summary of the situation. The employer will remain on the SVEP log for an additional three years and will then be reevaluated. For cases involving national corporate-wide settlement agreements, DEP will make the determination, upon the termination of the agreement, regarding the employer's removal from the program. Pursuant to CPL 02-00-152, *Guidelines for Administering Corporate-Wide Settlement Agreements* (June 22, 2011), the

National Corporate-Wide Settlement Coordinator will ensure that the follow-up requirements of the SVEP have been completed and the terms of the agreement have been implemented.

The previous guidance regarding lining-out establishments remains in effect when facts indicate that reclassification of the SVEP qualifying citations is appropriate due to the quality of evidence brought forth during settlement. However, removal from the SVEP list cannot be used as an incentive for settlement.

This policy will go into effect immediately.

If you have any questions, please contact Art Buchanan, Office of General Industry and Agricultural Enforcement at 202-693-1868.