



VOSH PROGRAM DIRECTIVE: 02-058 (e-version)

ISSUED: January 15, 1988

SUBJECT: Procedures for Combining, Grouping and Assessing Penalties for Willful Violations

**A. Purpose.**

This directive transmits procedures to field personnel on combining, grouping and assessing penalties in cases involving willful violations of occupational safety and health regulations.

A "willful" violation exists where:

the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation or

the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

*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.*

**B. Scope.**

This Program Directive applies to all VOSH personnel.

**C. Action.**

The Directors and Managers shall ensure that the procedures set forth in the directive are followed in cases involving willful violations of occupational safety and health standards.

**D. Issue Date.**

November 15, 2000

**E. Expiration Date.**

Not applicable.

**F. Background.**

Section 40.1-49.4 J. states "Any employer who willfully or repeatedly violates any safety and health provision of Title 40.1 of any standard, rule, or regulation promulgated pursuant thereto may be assessed a civil penalty of not more than \$10,000 for each such violation." Since willful violations covered by this directive involve a substantial probability of death or serious bodily injury, in keeping with the provisions of the Virginia Code, it is essential that procedures for assessing penalties for willful violations reflect the gravity of those violations.

**G. Summary**

Procedures for assessing penalties for willful violations must reflect the gravity of those violations.

**H. Procedures**

The following procedures apply to all VOSH cases involving private sector willful violations of VOSH standards:

1. A "willful" violation exists where:  
  
the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation or;  
  
the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.
2. Section A.2.i.(4) of Chapter VI of the FOM is cancelled.
3. This procedure applies only to willful violations involving a substantial probability of death or serious bodily injury (i.e., but for the "willful" nature of the violation, it would normally have been classified as "serious").
4. There shall be no grouping or combining of willful violations covered by this procedure and a separate penalty shall be calculated for each violation. Grouping of several "willful" other-than-serious violations is permitted where it would result in a single "willful" violation (and single penalty) that created a substantial probability of death or serious physical harm.

Distribution: Commissioner of Labor and Industry  
Directors and Managers  
VOSH Compliance Staff  
Cooperative Programs Staff  
Legal Support Staff  
OSHA Regional Administrator, Region III  
OSHA Regional Office, Norfolk