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OSHA's Severe Violator Enforcement Program (SVEP)

OSHA's Severe Violator Enforcement Program, or SVEP, became effective on June 18, 2010 and is designed to focus enforcement efforts on employers who willfully and repeatedly endanger workers by exposing them to serious hazards. Specifically, an employer can be placed in this program by OSHA if the employer is found to have committed willful, repeated, or failure-to-abate violations in one or more of the following circumstances: (1) a fatality or catastrophe; (2) a severe occupational hazard or those identified as "High-Emphasis Hazards," as defined by OSHA; (3) exposing employees to hazards related to the potential release of a highly hazardous chemical; or (4) all egregious enforcement actions. Willful and repeated citations and failure-to-abate notices must be based on serious violations, except for recordkeeping, which must be egregious.

An employer who is placed in the SVEP is subject to the following for a minimum of three years:

- ✓ *Enhanced Follow-up Inspections.* Follow-up inspection will be conducted by OSHA 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.
- ✓ *Nationwide Inspections of Related Workplaces/Worksites.* When there are reasonable grounds to believe that compliance problems identified in the initial inspection may be indicative of a broader pattern of non-compliance, OSHA will inspect related worksites of the same employer.

Related establishments of the employer that are in the same 3-digit NAICS code (or 2-digit SIC code) as the initial SVEP case will be identified and these establishments will be selected for inspection. 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 may be present at the related sites. According to OSHA, establishments are related when there is common ownership such as subsidiary, affiliate, or parent corporations with substantial common ownership.

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.

- ✓ *Notification of citations.* For all employers that are the subject of a SVEP case, the OSHA Area 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. In cases where OSHA determines that an establishment's safety and health problems should be addressed at the corporate level, the following actions may be considered:

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- A letter sent from the OSHA Regional Administrator, or the appropriate National Office official, to the company President expressing the Agency's concern with the company's violations. A copy of the citations will be sent with the letter if the citations and cover letter have not been sent to the company President previously.
 - A meeting may be held between OSHA, company officials, employees and unions representing affected employees to discuss how the company intends to address safety and health compliance.
 - Employee representatives, such as collective bargaining units, shall be notified by letter when OSHA determines that the establishment's safety and health problems need to be addressed at the corporate level.
- ✓ **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:
- Employers shall hire a qualified safety and health consultant to develop and implement an effective and comprehensive safety and health program;
 - Applying the settlement agreement company-wide;
 - Requiring interim abatement controls if OSHA is convinced that final abatement cannot be accomplished in a short enough period of time;
 - 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 OSHA the specific protective measure to be used for each current or future jobsite;
 - Requiring the employer for a specified time period to submit to the Area Director its Log of Work-related Injuries and Illnesses (OSHA 300 Log) on a quarterly basis, and to consent to OSHA conducting an inspection based on the information;
 - Requiring the employer for a specified time period to notify the Area Office of any serious injury or illness requiring medical attention and to consent to an inspection; and
 - Obtaining employer consent to entry of a court enforcement order under Section 11(b) of the Act.

Removal from the Severe Violator Enforcement Program - Generally, an employer may be considered for removal from the program by an OSHA Regional Administrator after:

- ✓ A period of three years from the date of the final disposition of the SVEP inspection citation items.
- ✓ All affirmed violations have been abated, all final penalties have been paid, and the employer has abided by and completed all settlement provisions, and 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.

For more information, please contact RiskControl360's Group Safety Coordinator, Lisa Shaver at (877) 360-3608 ext. 2367

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