



# The Washington DOSH Naughty List: Insight into the Severe Violator Enforcement Program

By Jennifer L. Truong ■ September 20, 2018

For Washington state employers who have demonstrated indifference to their Washington Industrial Safety and Health Act (WISHA) obligations, the Department of Labor and Industries Division of Occupational Safety and Health (DOSH) may add your company to Severe Violator Enforcement Program (SVEP), which can result in increased enforcement actions.<sup>1</sup>

Whether or not your business is included on the SVEP list is determined at the time a WISHA citation is issued. Each case and outcome is unique. However, engaging counsel early on during the appeal and/or settlement process can be crucial to vacating or modifying the SVEP designation.

How does the DOSH regional compliance manager determine whether your business will be identified for the SVEP? In general, DOSH looks at the following criteria:

1. Is the violation egregious?<sup>2</sup> Egregious violations are classified as willful, but also exceptionally flagrant (i.e. persistently high rates of worker injuries or illnesses; an extensive history of prior violations; the intentional disregard of safety and health responsibilities; bad faith; a significantly undermined safety and health program).
2. Is a violation related to the death or in-patient hospitalization of an employee and is the violation considered to be willful, repeated or a failure-to-abate scenario?
3. Has there been two or more willful or repeat serious violations, or two or more failure-to-abate notices related to a non-fatality/catastrophic incident, but related to a high-emphasis hazard (i.e. fall; amputation; combustible dust; lead; asbestos; crystalline silica; excavation; grain handling; electrical trauma; logging; upstream oil; gas)?
4. Has there been three or more willful or repeat serious violations or failure-to-abate notices related to the potential release of a highly hazardous chemical?

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If your company has been designated for SVEP inclusion, DOSH will include your name on their public program list, which is published online. However, that marks only the beginning of your mandatory three year participation in the SVEP program. What can a SVEP enrollee expect?<sup>3</sup>

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## The Washington DOSH Naughty List (continued)

1. Heightened follow-up inspections of not only the original worksite, but also related worksites of the same employer.
2. Inclusion in the monthly SVEP log submitted to the OSHA Region X enforcement program manager.
3. Increased corporate awareness of DOSH enforcement.
4. Department meeting(s) with company officials (separate from the informal conference).
5. Court enforcement.
6. Enhanced settlement agreements, as appropriate.

Mandatory participation in the SVEP means your business will be asked tough questions your compliance problems. Your company structure will be investigated to determine control and influence of your safety culture. It is vital that you are prepared to communicate management's commitment to a safe and healthful working environment for all employees.

An employer may be removed from the SVEP list after three years from the date of final order. However, removal is not automatic and any failure to abide by the programs criterion could result in three additional years on the SVEP list.

Whether your business is faced with the prospect of being placed on the SVEP list or you are currently experiencing the heightened scrutiny from identification as a severe violation, the attorneys at Reinisch Wilson Weier PC can assist in developing an action plan. ■

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<sup>1</sup> OSHA Instruction CPL 02-00-149; WRD 2.68 (revised in November 2017).

<sup>2</sup> DOSH Compliance Manual Chapter 5(D)(4)(d).

<sup>3</sup> WAC Chapter 296-67.

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