

OIL AND GAS EMPLOYERS FACE NEW SCRUTINY UNDER OSHA'S SEVERE VIOLATOR PROGRAM

by

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Effective February 11, 2015, upstream oil and gas hazards have been included on the Occupational Safety and Health Administration's (OSHA) list of high-emphasis hazards in its Severe Violator Enforcement Program (SVEP).¹ This addition puts upstream oil and gas employers on notice that a "non-fatality inspection in which OSHA finds two or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to upstream oil and gas activities (exploration, production and transportation activities up to refining),² will now be considered a severe violator enforcement case."³ Consequently, if a case meets the SVEP criteria, the employer will be subjected to additional OSHA oversight as well as get designated a "severe violator."

OSHA established the SVEP to focus more resources on inspecting employers who have been found to be "recalcitrant" or "indifferent" to their obligations under the Occupational Safety and Health Act (OSH Act).⁴ To meet the SVEP criteria, an inspection must fall within one or more of the categories listed, including "non-fatality/catastrophe criterion related to high-emphasis hazards."⁵ OSHA defines high-emphasis hazards as "high gravity serious violations" of standards relating to fall hazards, amputation hazards, combustible dust hazards, crystalline silica hazards, lead hazards, excavation/trenching hazards, shipbreaking hazards, and the 2011 inclusion of grain-handling hazards.⁶

In its February memorandum authorizing the addition of upstream oil and gas hazards, OSHA stated that it based its decision on the upstream oil and gas industry's fatality rate, which has "ranged from five to eight times greater than the national average for all U.S. industries [U.S. DOL BLS]."⁷ OSHA believes that these statistics "warranted" its decision to add upstream oil and gas hazards to the SVEP.

As a consequence of being designated a "severe violator," employers will be subjected to additional regulatory exposure. Enforcement actions include mandatory follow-up inspections, increased company/corporate awareness of OSHA enforcement, corporate-wide agreements, enhanced settlement provisions, and federal court enforcement under Section 11(b) of the OSH Act.⁸

¹ See https://www.osha.gov/dep/enforcement/memo_SVEP_oilandgas_022015.html.

² See <http://www.eandp.demon.nl/glossary/>.

³ *Id.*

⁴ See <https://www.osha.gov/dep/svep-directive.pdf>.

⁵ *Id.*

⁶ *Id.*; See also, https://www.osha.gov/dep/enforcement/svep_grainhandling_memo_04122011.html.

⁷ See *supra* n.2.

⁸ See *supra* n.3.

Moreover, an employer carries a “severe violator” designation for at least three years.

Given the ramifications of adding upstream oil and gas hazards to the list of high-emphasis hazards, the industry should brace itself for heightened surveillance from OSHA and increased enforcement activity. As usual, when OSHA places emphasis on a particular industry or hazard, it is prudent to assume that state/OSH programs may also adopt similar policies and procedures. Fed/OSHA’s enhanced focus on these hazards also serves as a good reminder to the upstream oil and gas industry to review and update their safety policies and procedures and engage in refresher training as appropriate before being subject to enforcement activity.

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