

Agenda Date: October 19, 2017  
Agenda Placement: Regular  
Estimated Time: 15 minutes  
Continued Item: No

## Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer

CONTACT: Kaitlin McNally, Compliance Division Manager (961-8855)

SUBJECT: District Compliance Program

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### RECOMMENDATION:

Receive a presentation from District staff on the District compliance program.

### BACKGROUND:

On January 19, 2017, your Board requested a presentation on the District's violations and Mutual Settlement Program. This presentation will inform your Board on these subjects.

### DISCUSSION:

The District's Compliance Division enforces all orders, rules, and regulations prescribed by the District Board; all variances and orders prescribed by the District Hearing Board; and all permit conditions imposed by the District permit program, pursuant to Section 40752 of the California Health and Safety Code.

The Compliance Division is staffed with seven full time employees: one manager, one supervisor, and five inspectors. All rules and regulations are equitably enforced to protect public health and the environment, to ensure air pollution control requirements are met, to motivate and educate regulated sources, and to promote regulatory equity in the marketplace. Furthermore, we strive to protect the public from air quality nuisances and to inform and educate the public about emissions to which they may be exposed.

These goals are accomplished by providing initial and ongoing inspection and enforcement services to applicants and operators of stationary sources of air pollution, and responding to citizen complaints. Inspectors review records, provide in-the-field compliance assistance, and in some cases, use emission-measuring equipment to document compliance. The APCD's Inspection Policy and Procedures are posted on the District's website. District policy is that most source categories under an APCD permit will be inspected at least once per year. The higher emissions that occur at a facility result in more inspections throughout the year.

In addition, the Compliance Division implements the National Emission Standards for Hazardous Air Pollutants for asbestos, inspects equipment under the Statewide Portable Equipment Registration Program (PERP), and implements our burn programs (e.g., agricultural burns, prescribed burns) in coordination with Santa Barbara County Fire.

### ***Notice of Violation***

A Notice of Violation (NOV) documents non-compliance with air quality requirements. The primary purpose of an NOV is to initiate corrective action by a stationary source to reduce air pollution and comply with the applicable requirements. NOV's are typically issued by Compliance staff after an on-site inspection, the review of source records or the review of source test results. NOV's may also be for violations discovered during complaint investigations.

Pursuant to Section 338(k) of the California Code of Civil Procedure, the statute of limitations for the District to issue an NOV is three years from the date of discovery by the District. Each day of non-compliance is an additional violation by the source. After an NOV is issued, the source is asked to return a written description of the corrective action taken. In some cases, District staff will work with sources to design compliance strategies.

Sources may petition to the District Hearing Board for a variance if they are currently, or likely may become, out of compliance with District rules, regulations, or the Health and Safety Code. A variance is an administrative order granting temporary relief from specific provisions of a District rule or permit condition. If approved by the District Hearing Board, a variance allows the source to continue operations while taking steps to come into compliance.

The District's enforcement options for serious violations include compliance agreements to outline the path to compliance; abatement orders, brought to the District Hearing Board, to require specific actions or shut down of operations; or referring the case to an independent enforcement agency such as the Santa Barbara County District Attorney's office for further civil law enforcement action.

### ***Mutual Settlement Program***

After compliance is achieved, an NOV is processed in the District's Mutual Settlement Program. Mutual settlement agreements are made and entered into by and between the Air Pollution Control Officer (APCO) and the NOV recipient. The settlement process, including negotiation, leading up to a final settlement agreement, is at the discretion of the APCO and is outside the purview of your Board. The District's policy is to negotiate a resolution for all violations with the goal of clean air to Santa Barbara County residents. To provide a deterrent and a level playing field, the District has established monetary penalties for documented violations of air

pollution laws and regulations. The District typically attempts to settle NOV's directly with the source through the District Mutual Settlement Program. This helps avoid the time and expense of litigation that would accrue to both parties.

Penalties are assessed on a case-by-case basis, following guidelines outlined in our Mutual Settlement Policy & Procedure, and the requirements within the California Health and Safety Code. More information on the District's Mutual Settlement Program, including our Policy & Procedure, is posted on the District's website. Penalties are determined based on one or more of the following factors:

1. Extent of harm to public health, safety, and welfare by the violation
2. Nature and persistence of the violation
3. Compliance history
4. Preventive efforts taken
5. Innovative nature and magnitude of effort necessary to comply
6. Efforts taken to attain compliance prior to the violation
7. Cooperation
8. Financial burden
9. Economic benefit

At the discretion of the APCO, penalties may be modified with the following settlement options. A suspension of the penalties may be offered in cases where swift action was taken to achieve compliance; there is a record of vigilant maintenance practices; or non-compliance was of a short duration. Another option is a voluntarily agreement from the source to finance a Supplemental Environmental Project (SEP). An SEP is an environmentally beneficial project, above and beyond the activities a source must take to return to compliance, and related to the violation.

After an NOV is referred to the Mutual Settlement Program, the District will initiate settlement and may recommend the payment of a monetary penalty. In addition, the settlement agreement may specify actions to be taken to ensure continued compliance with District rules and permit conditions. Sources are asked to respond to the offer within the timeframe indicated. A settlement conference may be held over the phone or in person to discuss the details of the case. If the matter cannot be resolved, it may be referred to the Santa Barbara County District Attorney's Office for civil or criminal prosecution.

### ***Inspection, NOV and Mutual Settlement Workload***

In order to keep your Board informed of the enforcement actions taken by the Control Officer, your Board is provided monthly NOV reports. In addition, District staff also track NOV's that still require action for closure. For the period of January 1, 2015 through September 29, 2017, Compliance staff accomplished the following:

- 2029 permitted facility inspections completed (average of 61 inspections per month)
- 422 NOV's issued (average of 13 NOV's issued per month)
- 54% of NOV's complied with, settled, and all applicable penalties paid
- 15% of NOV's with settlement initiated, but not finalized
- 31% of NOV's with settlement not yet initiated
- Average of 177 days between NOV issuance and settlement initiated
- Average of 51 days between settlement initiated and penalty payment

Compliance staff continue to work on the 46% of the outstanding NOV's that need to be complied with, settled, or await payment of penalties.

### ***Mutual Settlement Program Improvements***

In order to improve the District's Mutual Settlement Program, the following Mutual Settlement Program changes were instituted earlier this year:

1. An advanced journey-level inspector was assigned the Mutual Settlement Program.
2. A mutual settlement performance metric goal to send 50% of the initial mutual settlement letters within 90 days of NOV issuance was established for the 2017-2018 fiscal year.
3. NOV's will not be referred to mutual settlement until compliance is achieved. The inspector issuing the NOV is responsible for ensuring the source achieves compliance.
4. The mutual settlement agreement and settlement cover letter were revised.
5. A paperless internal mutual settlement filing system was implemented.

During the recent development and implementation of the changes identified above, the District experienced a decrease in productivity in our Mutual Settlement Program accomplishments. This was due to the time spent on training the new assigned inspector, revising the mutual settlement agreement, and implementing the paperless filing system. Moving forward, the changes identified above are expected to increase the amount of time dedicated to the Mutual Settlement Program, result in more timely initial settlement of NOV's, improve settlement negotiation outcomes, improve source compliance, avoid settlement of NOV's before compliance has been achieved, improve inspector efficiency, and ensure clarity, consistency, and fairness in the mutual settlement process.

### ***Next Steps***

We have recently begun an effort to improve the Mutual Settlement Program, but there is still much work to do. We will continue working in-house to meet the new mutual settlement performance metric, and endeavor to continue identifying and implementing additional changes to improve productivity within the Mutual Settlement Program.

There are also changes beyond our agency that impact the Mutual Settlement Program. In July 2017, the Legislature and the Governor enacted Assembly Bill (AB) No. 617. This act impacts the District compliance program with its amendment to the California Health and Safety Code to increase the maximum criminal and civil penalties for violations of air pollution laws from \$1,000 to \$5,000. In addition, the bill would annually adjust maximum penalties for violations of these laws based on the California Consumer Price Index. The District is currently working to incorporate these changes into our Mutual Settlement Program.