



Agenda Item: G-2
Agenda Date: August 19, 2021
Agenda Placement: Regular
Estimated Time: 20 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, (805) 961-8855
SUBJECT: District Enforcement Program

RECOMMENDATION:

Receive and file a presentation from District staff on the District’s enforcement program.

BACKGROUND:

On June 17, 2021, your Board requested a presentation on the District’s enforcement program. This presentation will inform your Board on this subject.

DISCUSSION:

The District’s Compliance Division equitably enforces all orders, rules, and regulations implemented by the District; all Variances and orders issued by the Hearing Board; and all permit conditions imposed by the District permit program, pursuant to Section 40752 of the California Health and Safety Code.

The goals of the District’s enforcement program are 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. These goals are achieved through the Notice of Violation process.

Notice of Violation

A Notice of Violation (NOV) documents non-compliance with air quality requirements. The primary purpose of a NOV is to initiate corrective action by a stationary source to reduce air pollution and comply with the applicable requirements. To provide an incentive for continuing compliance, NOV’s may result in monetary penalties.

NOVs are typically discovered while performing routine on-site inspections, reviewing records, investigating air quality complaints, performing surveillance inspections, or after receiving a referral from another agency. Routine inspections are performed for each permitted facility on a regular basis (e.g., quarterly, semi-annually, annually, every two years, or every three years). Air quality records are reviewed each year after the annual report is submitted, during inspections, and as needed for other submittals or records requests. In addition, the District strives to respond to air quality complaints within 24 hours of receipt. The District also regularly conducts surveillance inspections to ensure regulatory equity in the marketplace. Lastly, the District benefits from positive working relationships with other agencies who refer potential air quality enforcement items to the District when they are discovered.

The statute of limitations for the District to issue and settle an NOV is three years from the date of discovery by the District. However, the District typically issues NOVs the same day or a few days after the violation is discovered. More complicated violations may take longer for the District to review, research, and document.

After the NOV is issued, the source should take immediate action to bring the operation into compliance because each day of non-compliance is an additional violation. In addition, within 10 days of NOV issuance, the source is asked to return a written description of the corrective action taken to return to compliance. After compliance is achieved, the District may conduct a re-inspection to verify compliance.

Sometimes compliance cannot be achieved in a timely manner. In those cases, the District has other options to provide a path to compliance for both permitted and un-permitted sources. These options include Variances, Compliance Agreements, Orders for Abatement, and civil/criminal prosecution.

Variance

If a source needs to continue operations which do not comply with District rules or permit conditions, the only legal way to continue operating while they solve the problem is to obtain a Variance. A Variance is an administrative order granting temporary relief from specific provisions of a District rule or permit condition. 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. The Hearing Board reviews the following elements before approving a request for a Variance:

- The law, rule, regulation, or permit condition that has been or will be violated;
- The nature and severity of the violation;
- Whether the situation was beyond the source's reasonable control;
- Efforts taken to curtail operations, reduce and monitor emissions;
- The impact to the public; and
- The benefits and costs to the business.

If approved by the District Hearing Board, a Variance allows the source to continue operations while taking steps to come into compliance. The Variance document normally requires regular updates to the District and Hearing Board to identify the compliance status and progress being made. Certain violations such as creating a public nuisance or failure to obtain a permit are not eligible for a Variance.

Compliance Agreement

In situations where ongoing violations do not qualify for a Variance, the District may choose to pursue a Compliance Agreement with the source. Compliance Agreements outline the path to compliance with specific steps and deadlines for achieving compliance in an expeditious manner. In addition, Compliance Agreements normally include a payment schedule for penalties. The source must agree to abide by the terms identified in the Compliance Agreement. Although Compliance Agreements allow for continued operation, unlike a Variance, the source is still in violation and subject to penalties for each day they operate in violation.

Order for Abatement

A more severe remedy, normally reserved for serious violators, is the Order for Abatement. An Order for Abatement is sought by the District and granted by the Hearing Board. Once granted, the Order for Abatement requires a company operating out of compliance to take specific actions or to shut down its operation. During its review, the Hearing Board attempts to discover why and how the rule is being violated, whether the company has been working to correct the violation, when corrections will be completed, what will happen to the business if it is forced to shut down, and how the violation affects the public. The Hearing Board must find both a violation of a rule or regulation and “good cause” to grant the order. The Hearing Board is also authorized to issue a Stipulated Order for Abatement which has the same legal effect as a regular Order for Abatement, but includes the agreement, or “stipulation” of the District. There are two critical differences in the issuance of a Stipulated Order for Abatement:

1. The Hearing Board is not required to find that a facility is in violation of any rule or regulation; and
2. The conditions of the order are agreed-upon in advance by the parties.

Civil/Criminal Prosecution

The most serious remedy for ongoing violations is referral to an independent enforcement agency such as the Santa Barbara County District Attorney’s office for civil or criminal prosecution. This option is generally reserved for serious or repeated violations which show blatant disregard for the law and for public health. Some of these cases may be settled out of court, however, the referral of a violation to the District Attorney’s Office may result in civil or criminal prosecution. In addition, the District Attorney’s Office may seek an injunction to stop the source from continuing to operate in violation or compelling the source to carry out certain actions to comply. When NOVs are referred to the District Attorney’s Office, they also handle the monetary penalties associated with the violation.

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 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 NOVs 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. However, if the matter cannot be resolved, it may be referred to the Santa Barbara County District Attorney's Office for civil or criminal prosecution, as discussed above.

Board Authority

In order to keep your Board informed of the enforcement actions taken by the Air Pollution Control Officer, your Board is provided monthly NOV reports. These monthly NOV reports list NOVs that are issued in each month. Even if the NOV is ongoing, it will not be listed in the NOV report again until payment is received for the monetary penalties. However, District staff closely track ongoing violations and proceed with the most appropriate enforcement option from the list identified above. The enforcement option process, negotiations, and penalty settlement are at the discretion of the APCO and outside the purview of your Board.