

AIR POLLUTION CONTROL DISTRICT
REGULATORY COMPLIANCE DIVISION

POLICIES AND PROCEDURES

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Topic: The Notice of Violation (NOV)

Distribution: All Policy Holders

The written Notice of Violation (NOV) documents a violation of APCD rules, permit conditions, or the California Health and Safety Code, and officially informs the violator of the specific occurrence or condition which is not in compliance. The NOV is also used with other supporting background information and evidence as the referral document to the Mutual Settlement Program or the district attorney for penalty action. All NOVs are referred to the appropriate authority for review for potential penalty action.

The following procedure will be used by APCD enforcement staff when issuing a NOV:

1. Compliance Determination

Prior to the issuance of a NOV, an inspector must determine that the facility is in violation of an APCD rule, permit condition, or the California Health and Safety Code. This determination may take the form of an on-site inspection, a review of information contained in the source file, or the review of source test or sample analysis results. The inspector must determine the condition or operation which constitutes the violation as well as the specific equipment which is associated with the violation. Also, the inspector must determine a responsible party to whom the NOV will be issued. In most cases, the responsible party will be the owner or operator of the facility.

2. Information and Evidence

Prior to issuance of the NOV, an inspector will collect sufficient information and evidence to prove that a violation has occurred. This information and evidence may be in the form of a Visible Emission Evaluation, photographs, samples, or information obtained in a field interview of source personnel, all of which must be documented in the inspection report.

3. Issuing the Notice of Violation

A. Prior to an inspection, the inspector should review the source file to determine if there is information in the file which would indicate compliance status, for example, required data submittals which have not been received by the APCD. If a review of the file reveals a violation, the inspector should be prepared to issue the NOV in the field at the time of the inspection.

- B. If compliance status can be determined at the time of the inspection, and the information and evidence acquired in the field substantiates a violation, then the NOV will be issued in the field at the time of the inspection.
- C. When issuing the NOV in the field, the inspector will inform the responsible party at the source of the specific nature of the violation, and that each day of non-compliance is a separate violation subject to additional NOVs being issued and additional penalties being imposed.
- D. The inspector will cite the specific California Health and Safety Code, APCD rule, and/or permit condition (if appropriate) which has been violated and briefly describe each infraction on the Notice of Violation. When a permit condition has been violated, the proper rule to be cited is APCD Rule 206, unless the condition was on an Authority to Construct under New Source Review (Rule 205.C). California Health and Safety Codes are listed below for specific situations:

<u>Type of Violation</u>	<u>H&SC Section</u>
Nuisance	41700
Visible Emissions	41701
Non-Agricultural Burning	41800
General Ag Burning	41850
Ag Burning Without a Permit	41852
Burning on an ARB No-Burn Day	41854
Gas Station Submerged Fill Pipe	41950
MVFF Vapor Recovery	41960.2
Permits Required	42300
Permit Conditions	42301
Other APCD Rules	40702

- E. The inspector will also inform the source operator of potential penalties provided for by the California Health and Safety Code. The inspector will give the source operator the second page copy of the NOV and retain the original.
- F. If compliance status can only be determined by information requested at the time of the inspection, or by review of source test or sample analysis results, it is permissible for the NOV to be issued by certified mail. If the inspector is unable to locate a responsible party at the site of the violation, it is acceptable to issue the NOV by certified mail after research has identified the appropriate recipient.
- G. All recipients of NOVs are required to return a copy of the NOV to the APCD within 10 days, together with a written description of the corrective action taken to prevent a continued or recurrent violation. At the time the NOV is issued, the inspector will inform the recipient of the NOV of this requirement. The returned NOV will be directed to

the attention of the inspector who issued it and then routed to the company file.

- H. If the facility found in violation is owned or operated by a federal, state or local government agency, the NOV will not be issued in the field. The inspector will conduct a thorough inspection, collect all necessary evidence and document the violation in an inspection report. The report will be submitted with a draft NOV and draft transmittal letter (see standard government agency NOV transmittal letter) to the inspection supervisor for review. After review, the inspection supervisor will transmit the draft NOV package to the Manager of the Regulatory Compliance Section for review, approval, and signature. The approved NOV and transmittal letter will be mailed to the agency by certified mail.

4. Supplemental Forms

A. Request to Apply and Application for Permit

If the source is in violation of APCD Rule 201, in addition to the Notice of Violation it is necessary to provide the operator with a Request to Apply for Permit (APCD-48) and the appropriate application forms in accordance with Regulatory Compliance Division's Policies and Procedure VII.A.3 (Enforcement Policy for Sources Operating Without a Permit).

B. Request for Information

If the compliance status cannot be determined at the time of the inspection due to a lack of operational data, or if the source is in violation of a permit condition which requires submittal of periodic reports, then a Request for Information Form must be issued at the time of the inspection. On the form the inspector will note the date by which the information must be submitted. The inspector will give a copy of this form to the Regulatory Compliance Division clerk to be placed in a suspense file and returned to the inspector on the date cited on the form.

C. Variance Application Information

If a source is unable to achieve compliance within twenty-four hours of the discovery of the violation, each and every day of subsequent operation is a separate violation. Consequently, the source operators may want to apply for a variance in order to operate during the repair or modification period. A variance may not be granted for violation of APCD Rule 201 (Permit Required) or Rule 303 (Nuisance). The inspector will provide the source with the variance brochure at the time the violation is noted.

D. Notice of Violation Brochure

The Notice of Violation Brochure will be provided to every recipient of a NOV.

5. Reports and Documentation

The inspector will prepare an inspection report which documents the findings of the inspection which revealed the violation. The report will contain sufficient detail to clearly explain the essential elements of the compliance status determination (see report writing procedure). Supplemental documentation in the form of photographs, visible emission evaluations, sample analysis and source test results will be attached to the inspection report. The original NOV will be attached to the original report and filed in Section IV of the permit file.

6. Enforcement Actions Recommended by Permit Compliance Section

During or after the Source Compliance Demonstration Period (SCDP), violations may be discovered by an inspector or by the project manager assigned to track compliance with permit conditions. During SCDP all violations discovered by an inspector or other APCD staff member will be reported to the project manager for review prior to the issuance of a NOV. If the inspector and the project manager have previously agreed upon the interpretation of specific events or conditions as violations, then the inspector will issue NOVs for such violations in the field. Due to the nature of the SCDP, it is important that the inspector and the project manager communicate closely throughout this period. If the project manager discovers a violation and recommends that an NOV be issued, s/he will complete an NOV Action Form and submit it to the inspection supervisor serving the area where the source is located.

7. Enforcement Recommendation Package for Mutual Settlement Referral

Enforcement Recommendation:

The inspector will submit two copies of the NOV and a copy of the inspection report with all supplemental information under the cover of an Enforcement Recommendation Form. The enforcement recommendation will include the inspector's recommendation for enforcement action and a short explanation in the space provided on the form. The supervisor will review the package for completeness, determine if the violation is valid, and make a supervisor's recommendation in the space provided on the form. The NOV package will be forwarded to the division manager for review, and then to the Mutual Settlement Program for action.

For Quick Reference, the following material will be included in the NOV package:

- A. Enforcement Recommendation
- B. Two copies of NOV
- C. Inspection Report or Compliance Determination Report

D. Evidence Documentation

1. VEE
2. Sample Analysis
3. Source Test Report
4. Photographs
5. Chain of custody records
6. Copies of Request to Apply
7. Copies of Request for Information

8. Notice of Violation Report Submittal Deadline

The following policy and procedure provides direction to inspectors regarding the timely submittal of Notice of Violation report packages to the supervisor for review. It also stipulates the time designated for supervisory review, revisions, and submittal to the Mutual Settlement Program.

- A. Inspector submits a draft Notice of Violation report to be typed within ONE working day of the issue of a NOV.
- B. Clerk returns the typed draft of a NOV report to the inspector within ONE working day of its submittal for typing.
- C. Alternatively, the inspector uses the computer word processor to produce a typed draft of a NOV report within TWO working days of the issue of the NOV.
- D. Inspector submits the inspection report and NOV package for supervisor review within THREE working days of the issue of the NOV.
- E. Inspector sends a Notice of Violation issued by certified mail within ONE working day of the compliance determination.
- F. Supervisor reviews the NOV package and either returns it to the inspector for revision or submits the NOV package to the Regulatory Compliance Division Manager within TWO working days of receipt.
- G. Inspector revises the NOV package and returns it for supervisor review within TWO working days of its return to the inspector for revision.
- H. Regulatory Compliance Division Manager reviews the NOV package and submits it to the Mutual Settlement Program within TWO working days of receipt from supervisor.

