

**SAN JOAQUIN VALLEY UNIFIED  
AIR POLLUTION CONTROL DISTRICT  
COMPLIANCE DEPARTMENT**

**COM 1175**

**APPROVED:** \_\_\_\_\_ **SIGNED** \_\_\_\_\_ **DATE:** April 26, 2007  
**Jon Adams**  
**Director of Compliance**

**TITLE:** NOTICE OF VIOLATION GUIDELINES

**SUBJECT:** ISSUANCE OF NOTICES OF VIOLATION (NOV)

**OBJECTIVE:**

Rule 1040 (Enforcement) of the Rules and Regulations of the San Joaquin Valley Unified APCD provides for the enforcement of district rules. It is the intent of this policy to ensure (1) compliance with the requirements of the district rules; (2) ensure compliance with applicable permit conditions; and (3) ensure uniform implementation for all affected sources. This general guidance document is to be followed unless unusual field conditions require a different approach as approved by the management of the district.

**PURPOSE:**

The purpose of this policy is to establish uniform procedures for the issuance of NOV's for various violations.

**POLICY STATEMENT:**

**I. PROCEDURE**

The NOV is a written form which formally notifies an owner, operator or other responsible party that they have violated a specific provision of an applicable regulation, rule, permit condition, or order of the Hearing Board.

A NOV shall be issued for all violations of applicable District regulations or permit conditions and shall be delivered to the persons alleged to be in violation. Some exceptions exist for minor violations; see NTC guidelines.

## II. NOV CRITERIA

A NOV shall be issued for violation of District regulations or permit conditions, except as noted in Section A, "Exceptions."

### A. Exceptions

#### 1. Breakdown

A NOV **will not be issued in the field** by inspectors when excessive emissions are recorded during the period of a reported breakdown. If breakdown relief is subsequently denied, a NOV will be issued.

#### 2. Monitoring and Testing

A NOV **will not be issued in the field** by inspectors as a result of the following excessive emissions:

- a. Ground Level Monitoring (GLM) recordings
- b. Continuous Emissions Monitoring (CEM) recordings
- c. Source Tests

In the above cases the inspector will forward all charts and data to the compliance supervisor along with a report. If a NOV is recommended, it will be prepared in the office for issuance.

#### 3. Variance

When violations occur during the time period covered by a variance, a NOV shall not be issued for any violations that are specifically protected by the variance order.

#### 4. Notice to Comply

In a limited number of circumstances, a Notice to Comply (NTC) may be issued in lieu of a NOV. Refer to the NTC policy.

B. Permit Conditions

In the case where a violation can be cited under both the Regulation and a Permit Condition, the stricter standard applies. **If the Permit Condition references or quotes the regulation**, the NOV shall be issued for the regulation only.

C. Variance

When a company fails to adhere to variance conditions imposed by the Hearing Board in an *Order Granting Variance*, the NOV shall be issued citing a violation of the specific conditions of the Hearing Board Order in addition to any rule or regulation that has been violated.

D. Conditional Order Of Abatement

When a company fails to adhere to conditions imposed by the Hearing Board in a *Conditional Order of Abatement*, the NOV shall be issued citing a violation of the specific conditions of the Hearing Board Order in addition to any rule or regulation that has been violated.

E. Unconditional Order Of Abatement

When a company fails to adhere to limitations imposed by the Hearing Board in an *Unconditional Order of Abatement*, the NOV shall be issued citing a violation of the specific conditions of the Hearing Board Order in addition to any rule or regulation that has been violated.

F. Sources Operating Under Authority to Construct

Sources that are operating under a valid Authority To Construct are subject to all applicable regulations and Authority To Construct conditions.

#### IV. NOV PROCEDURES

A. General

When a NOV is issued, the inspector completes the notice in triplicate and issues the pink copy to the violator.

The inspector should schedule a re-inspection and tell the source that compliance is required, and the inspector must advise the company of the following possible options:

1. immediately comply;

2. cease operation (Remember this is not a demand, only a suggested option);
3. apply for a variance;
4. submit an application for an Authority To Construct and/or Permit To Operate for the new or modified equipment;
5. submit an Authority To Construct seeking modification of a permit condition.

Inform the facility that continued violation may result in daily penalties and/or the issuance of additional NOV's that carry increased penalties.

If the source is still in violation at the time of the re-inspection, issue a second NOV and refer the case to a supervisor for an office conference or other appropriate enforcement action.

**B. Permit NOV**

1. A violation of Rule 2010 - (Permits Required) - will be handled as follows:

Issue a NOV and provide source with appropriate permit application forms. A reasonable effort should be made to assure completion of the application.

Request that the application be mailed or delivered to the District as soon as possible. After 10 days, request the status of application and if no application has been received, return and issue a second NOV and refer the case to a supervisor for an office conference or other enforcement action as appropriate.

When an application has been deemed complete, reference the application number on the NOV report and forward the NOV to the office together with a complete NOV/Mutual Settlement Package.

2. Violation of Permit Conditions, Rule 2070 - (Standards For Granting Applications, Section 7.0 Operation According to the Permit To Operate Conditions) - will be handled as follows:

Issue a NOV and schedule a re-inspection.

If the source is still in violation at the time of the re-inspection, issue a second NOV and refer the case to a supervisor for an office conference or other appropriate enforcement action.

If an application or letter to modify the condition has been received, hold the NOV pending resolution of the requested modification. If the requested modification is approved, report the results in your report and forward the report to the Mutual Settlements Group for settlement. If the requested modification is subsequently denied, re-inspect the source to verify compliance. If the source is still in violation write a second NOV and refer the case to a supervisor for additional enforcement action.

#### C. Compliance Verification

Before a mutual settlement case can be processed, a determination of the source's compliance status must first be made either by:

1. An on-site inspection
2. A source test
3. A lab analysis provided by the source or the District
4. Filing an application for variance that is later granted
5. Determination that the source has ceased operation of the affected equipment, has closed down, or is otherwise not in business
6. Determination that the source's application for an ATC or PTO has been deemed complete.

#### D. NOV Response

When a NOV response is received, a photocopy will be sent to the inspector via the supervisor. The inspector and/or supervisor will be responsible for providing additional data or answering any questions asked in their reply letter. If a written response is required, the inspector and/or supervisor will prepare the response letter within 5 working days.

#### E. NOV / Mutual Settlement Package

The following standard format sequence is to be used when compiling an NOV package:

1. Inspector's NOV Report
2. White copy of the NOV
3. Supporting documents, inspection forms, lab analysis, company or district wind charts, temperature/breakthrough strip charts, CEM charts, copy of PTO or ATC, etc.

## V. INSPECTOR'S NOV REPORT

All inspectors' reports shall be written so as to employ the following points and format, except when using Mutual Settlement Group approved short forms.

- A. Full names and titles will be used in identifying all persons named in the report. For nuisance violations, complainants will only be referred to by complaint number (C#).
- B. The report will be written in the third person, Reporting Inspector (R/I).
- C. The report shall contain the following sections:

1. Summary of Violation

Begin with a brief introductory statement outlining the purpose of the report and the nature of the violation. Summarize what the report is about.

2. Observations and Statements

Observations and statements shall be reported in the chronological order in which they happened.

Only the facts of the Inspector's direct observations or technical/engineering evaluations and the statements of all persons interviewed in connection with this report where, in the opinion of the Inspector, the statement or statements are relevant are reported in this section. No assumptions, opinions, speculations or recommendations should appear here.

The Inspector should document the evidence as follows:

- a. nature and extent of the violation

- b. time and location of the violation
- c. person(s) responsible for the violation
- d. equipment involved in the violation
- e. operational design or maintenance factors which caused the violation

The best record of a witness' statement is an **exact quote**. e.g., Mr. Jones stated, "I dumped 15 bags of asbestos waste at Tuolumne Street and Van Ness Avenue on the evening of June 1, 1990."

#### 4. Conclusion

This section is used to summarize the inspector's opinions and conclusions. The inspector should draw upon additional information; e.g., previous violation history, breakdowns and variances. It is important to present this information objectively, and the inspector must be free from bias and unsubstantiated opinion.

#### 5. Compliance Statement

This section of the report will indicate, in a complete narrative form, the final result of the NOV; (a) continued violation, (b) compliance verified, or (c) compliance to be determined by Source Test, etc.

If compliance is verified, the narrative should reflect the following information in order to be complete: (a) the corrective action taken, (b) the method utilized by the inspector to determine compliance.

*Remember, it is the Inspector's job to collect and convey the information necessary so staff and others will have a clear understanding of the facts associated with the case.*

## VI. PENALTY ACTION

All packets are to be reviewed by a supervisor to verify that a rule or regulation has been violated and that the facts of the case as presented in the NOV report support that conclusion. At this point a NOV may be sent on for mutual settlement processing, or may be amended, dropped, or voided. Definitions for terms in this section include:

- A. Amend: any NOV which contains an error which does not otherwise invalidate the NOV will be amended. Amendments may include deletion of a regulation or a rule. Amendments shall be reported to the Mutual Settlement Group.
- B. Dropped: all NOV's which have been issued in error shall be dropped. A No Further Action/Dropped NOV Worksheet shall be completed for each dropped NOV.
- C. Void: any NOV which has been written in error but not issued, or damaged beyond use, must be Voided. (*Write void across all copies of the NOV and send a copy to the Mutual Settlement Group*).

Inspectors must account for all NOV's that have been issued to them

## VII. NOTICE OF VIOLATION FORM

Use ink and print legibly when filling out the Notice of Violation.

- A. Regional Office Northern, Central, Southern, Regional Office [check box]
- B. Issued To
  - 1. *Name* - operator, responsible person, owner
  - 2. *Permit No.* - any applicable permit number
  - 3. *Address/City/State/Zip* - mailing address, complete with zip code
  - 4. *Phone* - complete with area code
- C. Occurrence Location
  - 1. *Name* - facility name
  - 2. *Address/City/State/Zip* - location of violation, complete with zip code if possible
  - 3. *Date* - violation date
  - 4. *Time* - when the violation occurred
- D. This Notice Has Been Issued As A Result Of An Alleged Violation Of



1. *San Joaquin Valley Unified Air Pollution Control District Rules and Regulations* [check box]
2. *California Health and Safety Code* [check box]
3. *Rule(s)/Section(s)* - be specific
4. *Equipment Type (If Applicable)* - be specific
5. *Description* - brief description of the violation(s)
6. Permit or Authority To Construct conditions

E. *Recipient Name & Title* - print name and title

F. Issued By the date the NOV was issued

1. *Issued By* - print name
2. *Date* - the date the NOV was issued
3. *Time* - the time the NOV was issued
4. *Mailed* - [check box] if mailed; try not to mail NOVs, obtain recipient's signature and issue NOVs at the scene
5. All mailed NOVs should be mailed via Certified Mail (Return Receipt Signed)