



Maricopa County

Air Quality Department

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Draft Notice to Comply (NTC) Policy October 4, 2011

The Maricopa County Air Quality Department has scheduled a second workshop on proposed revisions to its Notice to Comply (NTC) policy on Tuesday, October 11, 2011 at 1:30 pm in the 9th floor classroom, 1001 N. Central Avenue, Phoenix, AZ 85004. To be consistent with statute, the name of the draft policy has been changed to Draft Opportunity to Correct (OTC) Policy.

The purpose of the OTC policy is to ensure that OTCs are uniformly and fairly used to bring minor air quality violations into compliance. An OTC provides an opportunity to correct minor violations meeting specified criteria listed in the policy. The department is revising the policy to be consistent with statutory changes enacted in HB2665 earlier this year.

In response to comments, the department has incorporated a number of changes to the draft policy. Major changes include:

- Changed the name of the policy to Opportunity to Correct (OTC) Policy to be consistent with statute.
- Clarified the policy's applicability to Maricopa County Ordinances.
- Revised the definition of "recurring noncompliance".
- Revised Section IV discussing what qualifies as a minor violation to be consistent with statute.
- Added, clarified and removed examples of specific minor violations in Section V.



Maricopa County
Air Quality Department

Number: PP-2011-XXX

Title: **Opportunity to Correct - DRAFT**

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Issue Date:

Revision Date

Review Date:

Approved by:

William D. Wiley, Director

I. Purpose

The purpose of the Opportunity to Correct (OTC) is to achieve compliance by uniformly and fairly using an enforcement action appropriate to the severity of noncompliance. The OTC is to be used instead of a Notice of Violation (NOV) where the noncompliance meets the requirements set forth in this policy. Potential violations of various Maricopa County ordinances are not covered by this policy as they are subject to applicable statutory provisions in the Arizona Revised Statutes, provisions contained in a specific ordinance, and/or to an ordinance specific enforcement policy.

II. Statement of Policy

An OTC may be used to afford an opportunity to correct for those instances of noncompliance that meet the criteria listed in the minor violation section below. This policy also includes a section that lists specific instances of noncompliance that will, in most cases, meet the department’s definition of minor violation and for which an OTC will be used. An OTC may also be used for any other instance of noncompliance that meets the definition of minor violation, even if the noncompliance is not of a type listed in the specific minor violations section. If a party fails to correct the noncompliant condition within the allowed time period, the OTC will no longer apply and an NOV will be issued effective on the date of the original observation of noncompliance.

III. Definitions

- A. **Minimal or non-existent risk** is defined as when there is no reasonable probability of material harm to any person, the public health, safety, welfare or the environment, or the inability to make a reasonable determination of the harm resulting from the violation.
- B. **Recurring noncompliance** is defined as a violation, either an OTC (formerly Notice to Comply) or an NOV, for a same or similar noncompliant event within the past two years or during the prior inspection if the inspections occur more than two years apart. Where multiple facilities exist within Maricopa County under common ownership or common operation, each facility will maintain an independent record of compliance for purposes of this policy recognizing that generally each facility may be operated with unique conditions and by disparate staff.

IV. Minor Violation

An instance of noncompliance may be classified as a minor violation unless the department determines that the noncompliance meets the criteria and considerations listed Sections IV.A and IV.B below. Instances of violation not prohibited from being considered minor under Section A will be further evaluated under the considerations listed in Section B.

A. Statutory criteria

The statutory criteria in A.R.S. §49-471.03 and A.R.S. §41-1009 E. will be applied for the initial evaluation to classify an instance of noncompliance. An instance of noncompliance may be classified as a minor violation unless the department determines that the noncompliance is:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance.
4. A risk to any person, the public health, safety or welfare or the environment.

B. Other Considerations

A further evaluation of those instances of noncompliance, not excluded by the statutory criteria in Section A, will consider the factors listed below. An instance of noncompliance may be classified as a minor violation unless the department determines that the noncompliance:

1. Is not correctable within a period of 24 hours upon discovery if involving emissions that pose a minimal or non-existent risk or within 10 days if the noncompliance is administrative in nature and involves no increased emissions.
2. Causes emissions of hazardous air pollutants in excess of any emission standard, limitation or other state or federal requirement that is applicable to that hazardous air pollutant.
3. Causes or contributes to a violation of any National Ambient Air Quality Standard.
4. Interferes with the department's ability to determine compliance with other state or federal requirements, Maricopa County Air Pollution Control Rules and Regulations, administrative or procedural plans or permit conditions.
5. Interferes with the department's ability to perform an assessment of risk to any person, the public health, safety or welfare or the environment as a result of the violation.
6. Results in an economic benefit by reducing costs, deferring costs or conferring a competitive advantage.
7. Is indicative of a systematic failure to comply at the corporate level, e.g. facilities are not given adequate resources to comply.
8. Is evidence of a pattern of noncompliance because there are multiple instances of non-compliance that indicate a general disregard for permit conditions, administrative or procedural plans or applicable rules.
9. Results in a nuisance.

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V. Specific Minor Violations for Which an OTC May Be Issued

The following instances of noncompliance have been determined to be minor violations for which an OTC may be used provided all the requirements listed in the minor violation section above are met:

A. Permits, Registration and Certification

1. Operation of an existing stationary source by a new owner without transfer or submittal of a permit application within thirty calendar days of the ownership transfer.
2. Failure to keep a complete valid permit clearly visible and accessible at the site.
3. Failure of subcontractors who are working on job sites that have a Dust Control Permit/Plan to register with the MCAQD.
4. Subcontractor registration expired 30 calendar days or less.
5. Basic Dust Control Training certification expired 30 calendar days or less.
6. Comprehensive Dust Control Training certification expired 30 calendar days or less.
7. Failure of water truck drivers, water pull drivers, site superintendents or other designated on-site representative to complete Basic or Comprehensive Dust Control Training certification.

B. Records

1. Failure to submit and/or provide requested or required records by the submittal deadline, but were submitted no more than three business days after submittal deadline.
2. Inadvertent omissions or deficiencies in recordkeeping, either a missing element on any day or any few missing days, that do not prohibit an overall compliance determination. The weight of evidence should indicate compliance.

If mass emissions, usage, VOC content, mix ratios, etc., can be estimated for the period of missing records using available data and the typical historical information (mix ratios, VOC contents, etc.), and the estimate does not show an exceedances of a limit, an OTC may be issued.

The inspector must be able to determine compliance, even with the omissions in recordkeeping, in order to issue an OTC. If compliance with the regulation cannot be determined, the inspector should issue a Notice of Violation (NOV).

Note: If other sources of information indicate that production was abnormally high during the period, or that mix ratios, and/or VOC content varied significantly, then the violation should be issued under the standard procedures for an NOV.

3. Failure to maintain an updated list of all trades and subcontractor registration numbers.

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C. Testing

1. Failure to submit a test protocol by the submittal deadline, but submitted no more than seven calendar days after the submittal deadline.
2. Failure to provide notice of a test date by the notification deadline, but submitted no more than seven calendar days after the notification deadline.
3. Failure to submit a test report by the submittal deadline, but submitted no more than 14 seven calendar days after submittal deadline.

D. Gasoline Dispensing Facilities

1. Non-gasoline liquid in fill pipe spill containment receptacles at a gasoline dispensing facility provided the owner/operator can demonstrate they conducted an inspection within 24 hours prior to the most recent gasoline delivery.
2. Dry foreign material in fill pipe spill containment receptacles at a gasoline dispensing facility provided the owner/operator can demonstrate they conducted an inspection within 24 hours prior to the most recent gasoline delivery.

E. VOC Containment

1. Failure to mark maximum fill capacity on cold solvent cleaners provided they meet the freeboard requirements.
2. Failure to have proper labeling on a single vapor solvent cleaner, conveyORIZED solvent cleaner and/or cold cleaner at the facility.
3. Failure to cover a container of VOC containing material if all the following conditions are met:
 - a. The container capacity is less than one gallon; and
 - b. The container is covered immediately in the presence of the inspector.

Note: The volume of liquid in all containers should not be added for the purposes of comparison with the less than one-gallon criteria. Containers that are not sealed or airtight, but are covered are not considered "open". Bung holes or funnel attachments which allow solvent to be poured into the container are acceptable. Discretion must be used to determine that a good-faith effort has been made on the part of the operator to prevent emission of VOCs into the atmosphere. Open containers located in storage areas are subject to an NOV, not an OTC.

4. An insignificant number of solvent laden cloths, brushes, or stir sticks left exposed in one work area that are removed immediately in the presence of the inspector, into a closed,

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leak-free container. In contrast a barrel or drum full of solvent-laden cloths would not qualify for an OTC.

Note: Cloths laden with nonvolatile oils or greases should not be considered a violation; neither an OTC nor an NOV should be issued.

5. Batch loaded, non-boiling solvent cleaners left uncovered when not in use, provided the solvent is a low volatility solvent that has an initial boiling point greater than 120°C (248°F).

F. Dust Generating Activities

1. Implementation of a control measure 60 days to 74 days of initial discovery in an open area and/or vacant lot subject to Rule 310.01.
2. Failure to comply with the project information sign requirements (Rule 310, Section 308) or the facility information sign requirements (Rule 316, Section 308).
3. First-time violation to a permittee for not implementing fugitive dust control measures on a job site if the permittee can document trespassers are the source of the surface disturbances and/or fugitive dust emissions.
4. First-time opacity violation to the owner/operator of any operation not requiring an air quality permit.
5. First-time violations for failure to stabilize or implement controls to the owner/operator of an unpaved parking lot and unpaved road at any operation not requiring an air quality permit.
6. First-time violation of visible emissions crossing the property line if dust control measures are being applied to the specific operation generating the dust and appropriate permits have been obtained (if permits are required.)

G. Asbestos

1. The only documented violation at the facility is a failure to thoroughly inspect the facility for the presence of asbestos, including Category 1 and Category 2 materials (as defined in the federal regulations), within 12 months of the commencement of demolition or renovation activity, and the facility complies with the following:
 - a. All materials disturbed by the demolition or renovation activities remain secured onsite to be properly sampled;
 - b. A prompt (conducted within seven calendar days of the initial inspection by Maricopa County Air Quality inspectors and discovery of the violation) and thorough inspection of all suspect materials either disturbed or to be disturbed is conducted by a currently certified AHERA (Asbestos Hazardous Emergency Response Act) Building Inspector (as defined in Maricopa County regulations);

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- c. Upon completion of the inspection for the presence of asbestos, the report is submitted to Maricopa County for review and no Asbestos Containing Materials (ACM's) are identified including Category 1 or Category 2 materials.
 - d. No prior documented violations of the federal Asbestos NESHAP regulations or Maricopa County regulations Rule 370, Section 301.8 have been issued within 5 years of date of discovery to any/all of the applicable parties (owner/operator as defined in the federal regulations). If prior violations have been issued to any of the aforementioned parties the issuance of an OTC shall not be applicable.
2. Failure to make available worker color photo identification issued by an EPA accredited training provider on-site provided the company complies with the following:
- a. The color photo identification is made available to the inspector by the close of normal business hours the same day as the inspection; and
 - b. The color photo identification is on-site and available for inspection for the duration of the job.

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