



Maricopa County
Air Quality Department

Number: PP-2011-XXX

Title: **Notices to Comply - DRAFT**

Author: Dennis Dickerson

Issue Date:

Revision Date

Review Date:

Approved by:

William D. Wiley, Director

Purpose

This document is intended to ensure that Notices to Comply are uniformly and fairly used to bring minor violations into compliance.

Background

The purpose of the Notice to Comply (NTC) is to achieve compliance by using an enforcement action appropriate to the severity of the violation. The NTC is to be used instead of a notice of violation where an identified violation meets the requirements set forth in this policy. In almost all cases, these violations will involve procedural, administrative or recordkeeping omissions that do not conceal a violation or involve de minimis emissions.

Definitions

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.

Recurring non-compliance is defined as two or more violations for a same or similar non-compliant event within any three year consecutive period. 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.

Statement of Policy

An NTC will be used to afford an opportunity to correct for those violations that meet the criteria listed in the section defining minor violation below. This policy will include a section that lists specific minor violations that will, in most cases, meet the definition of minor violation and for which an NTC will be used. An NTC will also be used for any other violation that meets the requirements of the definition of minor violation, even if the violation is not of a type listed in the specific minor violations section.

If a party fails to correct the non-compliant condition within the allowed time period, the Notice to Comply will no longer apply and a Notice of Violation (NOV) will be issued effective on the date of the original observation of non-compliance.

An NOV will be used for those violations for which penalties will be pursued.

Minor Violation

A minor violation must meet all of the following:

1. The violation was unintentional.
2. The violation poses a minimal or non-existent risk to any person, the public health, safety, welfare or the environment.
3. The violation can be corrected within a period of 24 hours if involving a de minimis level of emissions or within 10 days if the violation is administrative in nature and involves no increased emissions.
4. There is not increase in 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.
5. The violation does not cause or contribute to a violation of any National Ambient Air Quality Standard.
6. The violation does not interfere with the department's ability to determine compliance with other state or federal requirement, Maricopa County Air Pollution Control Rules and Regulations, administrative or procedural plans or permit conditions, or requests for information or records.
7. Excess emissions are de minimis.
8. The violation does not benefit the violator economically, either by reducing costs or conferring a competitive advantage.
9. The violation does not occur at a facility with a history of recurring non-compliance.
10. The violation at a facility is not indicative of a systematic failure to comply at the corporate level, i.e. facilities are not given adequate resources to comply.
11. Multiple non-compliant conditions are not observed which would indicate a disregard of the permit or applicable rules.
12. The violation does not result in a nuisance.

Specific Minor Violations for Which an NTC May Be Issued

The following violations have been determined to be minor violations for which an NTC will be used provided all the requirements listed in the Minor Violation Defined section above are met:

A. Permits, Registration and Certification

1. Operation of an existing facility by a new owner without transfer or submittal of a permit application within thirty calendar days of the ownership transfer

***DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*

2. Failure to keep a complete valid permit clearly visible and accessible if the permit is 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. Basic Dust Control Training certification expired 30 calendar days or less.
5. Comprehensive Dust Control Training certification expired 30 calendar days or less.
6. Basic Dust Control Certification for new employees hired within the last 30 days.

B. Records

Failure to submit and/or provide requested or required records by the submittal deadline, but no more than three business days after submittal deadline.

C. Testing

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

D. Gasoline Dispensing Facilities

1. Non-gasoline liquid in one spill containment receptacle at a gasoline dispensing facility measuring less than one inch in depth 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 one spill containment receptacle 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:

DISCLAIMER: *The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*

- a. The material in the containers are involved with production activities (i.e. not in storage) and are not left unattended for an extended duration; and
- b. The container capacity is less than one gallon; and
- c. The container is covered immediately in the presence of the inspector.

Note: Containers that are not sealed or airtight, but are covered are not considered "open". 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 or mix rooms are subject to an NOV, not an NTC.

4. An insignificant number of solvent laden cloths left exposed in one work area that are removed immediately in the presence of the inspector, into a closed, leak-free container. In contrast a barrel or drum full of solvent-laden cloths would not qualify for an NTC.

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

5. Cold 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) and where the initial boiling point exceeds the maximum ambient operating temperature by 100°C (180°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.
2. Tile cutting on a pitched roof if the opacity is greater than 20% either when using or not using control measures.
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 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.)

DISCLAIMER: *The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*

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);
 - 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.
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.

DISCLAIMER: *The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*