



## Notice of Violation Fact Sheet

### What is a Notice of Violation?

A Notice of Violation is the Air Pollution Control District's claim that District rules, and/or state or federal air pollution laws, have been violated. As provided in state law, a Notice of Violation may result in monetary penalties, civil suit, or in serious cases, criminal prosecution. Most violation settlements include some form of monetary penalty.

### What should I do if I receive a Notice of Violation?

First, take immediate corrective action to prevent the violation from continuing or recurring. Each additional day the violation is not corrected can be considered an additional violation.

After correcting the violation, advise the District in writing, within ten calendar days of the date the Notice of Violation was issued, of the action taken to correct the violation. You may send the response to the APCD Compliance Division at 10124 Old Grove Road, San Diego, CA 92131; fax it to (858) 586-2651; or email it to [apcdcomp@sdcounty.ca.gov](mailto:apcdcomp@sdcounty.ca.gov).

### What should my written response to a Notice of Violation include?

Explain what specific actions you took to come into compliance, or the reasons you believe a violation did not occur. The response should include proof of compliance (e.g. a work order, repair receipts, application copies and proof of fees paid). A statement that merely says "we repaired all violations" or "we fixed it" is not sufficient documentation of how the violation was corrected. The District needs to know the violation has ceased. This is very important because the law provides for additional penalties for each day of violation.

When the District makes a settlement offer or a court sets a penalty amount, the District or court will consider items such as the violation itself (extent of harm, its persistence and duration), the site's violation history, the innovative nature of the control equipment, the actions the facility took to ensure compliance (extent of mitigation, response time, inspection and maintenance program), and the financial resources of the violator. Make sure to address these items in the letter.

### What if I cannot fix the violation right away?

If, due to conditions beyond your reasonable control, you cannot correct the violation immediately and you must use the equipment or process that resulted in a Notice of Violation, you may seek a variance from the San Diego Air Pollution Control District Hearing Board. Variances cannot allow public nuisances or allow relief from the requirement to obtain a permit to construct or operate a process or equipment.

For information on how to apply for a variance, contact the District Compliance Division at (858) 586-2657 or (858) 586-2650, the District Small Business Assistance program at (858) 586-2656, or the Clerk of the Hearing Board at (619) 531-5434. Current forms may be downloaded from the District website at [www.sdapcd.org](http://www.sdapcd.org) (follow the menus to "I Want To ..." → "Apply" → "Variance").

## Notices of Violation

### What happens next?

Notices of Violation are handled in one of three ways:

- 1) **Violation Settlement Program** - The majority of cases are handled through the Violation Settlement Program. If a Notice of Violation is referred to this program, a letter is sent from the District offering to settle the violation rather than going to court. After considering factors such as the proof of correction, nature of the violation, violation history, and current compliance with the violated rule, the District prepares a letter with settlement terms, including a penalty amount. Maximum civil penalties established by the California Health and Safety Code range from \$5,000 to one million dollars per day of violation. A list detailing the maximum penalties for violations of state law is available on the District's website at [www.sdapcd.org](http://www.sdapcd.org) (follow the menus to "Citizens & Businesses" → "Violation Information").
- 2) **Civil action** - If the matter is not resolved through the Violation Settlement Program, it may be resolved through a small claims court action or referred to County Counsel for a civil suit.
- 3) **Criminal prosecution** - A serious violation may result in criminal prosecution. This may result from either substantial pollution that could have been prevented or willful disregard of the District's rules. In such cases, the District will refer the case to the local city attorney or district attorney's office, or the U.S. Attorney's Office. Maximum fines for criminal violations of state law (misdemeanors) are the same as those in civil actions, except that a jail term of up to one year for each day of violation may be added. Federal criminal violations are felonies and may carry harsher sentences. A detailed list of criminal penalties for violations of state law is available on the District's website at [www.sdapcd.org](http://www.sdapcd.org) (follow the menus to "Citizens & Businesses" → "Violation Information").

### What about rule changes?

Rule changes can affect a regulated business, and it is the operator's responsibility to know the current rules. The District holds at least one public workshop and one public hearing before any rule is changed.

In addition, the District attempts to notify affected businesses of a rule change by mailing "advisory" notifications. Copies of current rules are available on the District web site at [www.sdapcd.org](http://www.sdapcd.org) (follow the menus to "Citizens & Businesses" → "Rules & Regulations").

When a business receives a new or modified permit from the District, the business is responsible for complying with all the permit conditions. Regulated businesses must be familiar with all the permits required and permit conditions. For further information on permits, call (858) 586-2600.

### Who can I call for further help?

This fact sheet provides general information about Notices of Violation. For more information or specific questions about a particular Notice of Violation, contact the District's Compliance Division at (858) 586-2650.