



NYE COUNTY PAHRUMP REGIONAL PLANNING DISTRICT

AIR QUALITY COMPLIANCE PROGRAM ENFORCEMENT PROCEDURES

FEBRUARY 2009

INTRODUCTION

Enforcement of dust control regulations and requirements is an important element in achieving compliance with the Nye County Air Quality program. Without adequate enforcement, the incentive to achieve compliance is greatly diminished. A consistent and even approach of enforcement is necessary to prevent economic disadvantages for those that operate in compliance. A summary of the process is shown schematically in a flow chart presented in the Appendix to this document.

All Air Quality Compliance Officers (AQCO) are responsible for bringing issues of noncompliance to the attention of the Nye County Air Quality Program Administrator (AQPA). After a decision is made to pursue an enforcement action, the respective AQCO follows the enforcement procedure throughout the entire process.

ENFORCEMENT PROCEDURES

The AQCO has 14 calendar days to prepare a written inspection report once an inspection has been conducted. This period may be extended upon prior approval by the AQPA, if necessary.

When a violation is documented by the AQCO through an inspection, the AQPA determines if an enforcement action will be pursued. The AQCO will, when feasible, notify the owner/operator or representative (in the case of an inspection, if possible, before he leaves the site) that an alleged violation has been documented and that the matter will be referred to the AQPA. Any questions by the owner/operator concerning the alleged violation or a possible action by Nye County must be referred to the AQPA.

If the violation is imminent, or very minimal, non-repetitive, self reported by the owner/operator, and the facility has quickly returned to compliance, a Warning Letter is issued to assist the owner/operator in returning to compliance. A follow-up inspection, a follow-up telephone call, or written correspondence from the owner/operator is used to document a return to compliance. A Warning Letter does not constitute a Code Violation and does not include monetary penalties. If a warning letter is not complied within 30 calendar days after receipt, a Warning Notice of Alleged Violation (WNOAV) will be issued.

If a violation is determined to be either; a first time violation that does not adversely impact human health and safety; or is administrative and does not involve the emission of fugitive dust, a WNOAV will be issued. A WNOAV qualifies as a Code Violation but does not have monetary penalties. If a WNOAV is not complied within 30 calendar days after receipt, a Notice of Alleged Violation (NOAV) will be issued.

If a violation is determined to present a hazard to public health and safety or is a repeat violation, a NOAV will be issued by the AQPA. The NOAV will include a list of alleged violations, the associated penalty and compliance deadline.

In the event a public health or safety issue is identified (via an inspection, or other means), a verbal Stop Order will be issued immediately by the AQCO followed by a written Stop Order by the AQPA. Under the terms of a Stop Order, construction operations, with the exception of dust control measures, are prohibited. In most cases, the owner/operator corrects the violation within 24 hours of the inspection, or by the enforcement conference date depending on the circumstances. In those instances where equipment replacement is required, a compliance schedule is negotiated and documented in a Corrective Action Order. The AQCO who documented the violation will perform a follow-up inspection or other appropriate method to verify completion of corrective actions required by an order. If the violation has not been corrected in accordance with the compliance schedule, the matter will be handled as a new documented violation. Additional NOAVs may also be considered if other violations are discovered.

ADMINISTRATIVE FINES OR PENALTIES

If an alleged violation is documented, a NOAV will be issued with a proposed penalty determined pursuant to Nye County Code 15.28 using the Penalty Policy Guidance Document.

NOTICE OF ALLEGED VIOLATION PROCESS

Upon observation and documentation of a potential NOAV, an enforcement conference can be scheduled with the owner/operator and the AQCO who documented the alleged violation. The enforcement conference should be scheduled within 14 calendar days of the AQCO completely documenting an alleged violation. The enforcement conference is an informal discussion, usually without legal counsel, to review the circumstances surrounding the alleged violation and corrective actions that can be (or have been) implemented. The AQCO will determine during the enforcement conference whether sufficient information exists to support a NOAV, or whether additional information is needed to determine the owner/operators compliance status.

If a recommendation is made to issue a NOAV, penalties are discussed with the owner/operator. The maximum penalty allowed by code is \$10,000 per day per violation. Preliminary discussions occur with the owner/operator using the Penalty Policy Guidance Document to develop a recommended penalty amount for the AQPA to include in the NOAV. Supplemental Environmental Projects can be considered in lieu of monetary penalties. Such projects must have substantively the same monetary value as the proposed penalty.

The NOAV is issued by the AQPA and is accompanied by an Option Letter through which the owner/operator can either accept or contest the NOAV. The owner/operator must return the completed Option Letter within 14 calendar days after receipt of the NOAV. The Option Letter allows the owner/operator to agree to the facts of the alleged violation and the identified penalty, or contest either the facts of the alleged violation and/or the penalty assessed. Failure to return the Option Letter in the allotted time is considered to be a non-contest of the NOAV.

When an owner/operator contests a NOAV, a meeting is scheduled with the Compliance Review Committee (CRC), which includes the Nye County Community Planner or designee, the Public Works Director or designee, and an ex officio representative of the Nevada Division of Environmental Protection (NDEP).

The CRC shall consider relevant matters, including but not limited to contests of Stop Orders and NOAVs. The AQCO will provide testimony as necessary regarding the contested violations to be discussed with the CRC. The owner/operator may present information and/or evidence as may be appropriate to support their position. The CRC shall make its finding(s) and recommendation(s), including possible dismissal, following discussion and consensus.

The Penalty Policy Guidance Document is used to calculate the recommended penalty. When an agreement has been reached regarding a recommended penalty or settlement, a Settlement Agreement is prepared and then issued. The Settlement Agreement details the violation, recommended penalty, corrective actions and compliance deadlines. If the owner/operator agrees to the details of the violation, they should sign and return one copy of the Settlement Agreement to the AQPA. The agreement is sent to the Hearing Officer for review and Adjudication at the next duly posted Air Quality Hearing. If the owner/operator does not agree with the details of the violation, they should return a Request for Hearing before Nye County Hearing Officer: Appeal of Notice of Alleged Violation form DCP 09. The NOAV will be scheduled to be heard on the next duly-noticed Air Quality Appeal Hearings and Adjudications. If the violator does not return either the signed Settlement Agreement or Request for Hearing, the case becomes non-contested and adjudicated as such. All proceedings, corrective actions, and recommended penalties are documented by the CRC in the meeting minutes and are placed in the case file.

Upon receipt of a Settlement Agreement, an owner/operator must comply with any corrective actions schedule(s) included therein. Any payments due are required within 5 calendar days after adjudication of the case by the hearing officer. An owner/operator may request a payment plan but must do so within five (5) calendar days of receiving the Order of Adjudication. The owner/operator must remit the first payment at the time the payment plan is negotiated.

APPEALS

If the owner/operator disagrees with the recommended action by the CRC (issuance of a NOAV, associated facts or penalties, or other directive) the owner/operator has 14 calendar days from the date of receipt of the Settlement Agreement to request an appeal hearing. A Hearing Notice Letter will be sent to the violator 10 calendar days prior to the scheduled hearing. A *de novo* hearing is held before the Hearing Officer to determine if the action should be dismissed, modified, or allowed to stand. During the appeal hearing, penalties can be revised (either upward or downward), and previous negotiations to determine a penalty recommendation may be upheld, dismissed, or revised. Every decision by the Hearing Officer shall be memorialized in an Order of Adjudication.

ADJUDICATION

All actions taken during the enforcement process by the AQPA, the CRC, or a Hearing Officer must be formally adjudicated during a publicly-noticed meeting by either: an independent Hearing Officer, or by the Board of County Commissioners. The adjudication proceeding must be noticed on the agenda in accordance with Nevada's open meeting law at either: a regularly scheduled Board of County Commissioners meeting, or at a Public Hearing scheduled in accordance with Nye County Ordinance No. 316 Section 6.A and Section 13.B. The classes of actions requiring adjudication are: (1) NOAVs that are not contested by the owner/operator; (2) NOAVs with Stipulation that are not contested by the owner/operator; (3) NOAVs for which the proposed penalties are being contested, and (4) NOAVs for which both the facts and penalties are contested, and (5) Dismissed NOAVs.

STEPS TO DETERMINE AN ENFORCEMENT ACTION

The specific steps in pursuing an enforcement action are:

- If an enforcement action is to be pursued, the AQCO will inform the owner/operator about the possible violation and, if requested by the owner/operator, schedule an informal meeting to discuss the alleged violation and proposed penalty. The AQCO should contact the AQPA if any additional issues arise from the discussions before proceeding forward.
- Upon receiving information, or observing and documenting a possible violation, the AQCO discusses the information with the AQPA. A Warning NOAV, NOAV or Stop Order will be issued only if the AQPA determines it to be warranted following review of the completed inspection report.
- If the owner/operator contests either the facts of the violation and/or the penalty, they may request that the case be presented before the CRC.
- The CRC reviews the evidence presented by the AQCO and the cited party. A penalty is calculated using the Penalty Policy Guidance Document. A Settlement Agreement is prepared stating the CRC's findings and recommendations and issued to the owner/operator.
- The owner/operator has 14 calendar days to either accept the terms of the Settlement Agreement or request a hearing before an independent Hearing Officer. If neither is done by the owner/operator, it becomes a non-contested case for adjudication.
- If the owner/operator accepts a Settlement Agreement it is forwarded to the Hearing Officer for

adjudication. Payment of any fines is due five (5) calendar days after the date of adjudication.

- Or, an owner/operator may request a payment plan within five (5) calendar days after issuance of the Order of Adjudication. The first payment must be remitted when the payment plan is established.
- If an enforcement action is appealed by an owner/operator, the Hearing Officer will hear the case *de novo*.
- The Hearing Officer will review the case and staff recommendations, and may either accept or dismiss the NOAV based on the facts of the alleged violation. Similarly, the Hearing Officer may accept, dismiss, or revise the penalty assessed.
- The owner/operator must remit payment within five (5) calendar days of their imposition by the Hearing Officer.
- The owner/operator has 10 calendar days from the date of service of the Order of Adjudication in which to appeal the decision of the Nye County Hearing Officer.
- If an Order of Adjudication is appealed by an owner/operator, the Board of County Commissioners will hear the case *de novo*.
- The Board of County Commissioners will review the case and staff recommendations, and may either accept or dismiss the NOAV based on the facts alleged. Similarly, the Board of County Commissioners may accept, dismiss, or revise the penalty assessed.

ISSUING WARNING LETTERS, WARNING NOAVS, AND NOAVS

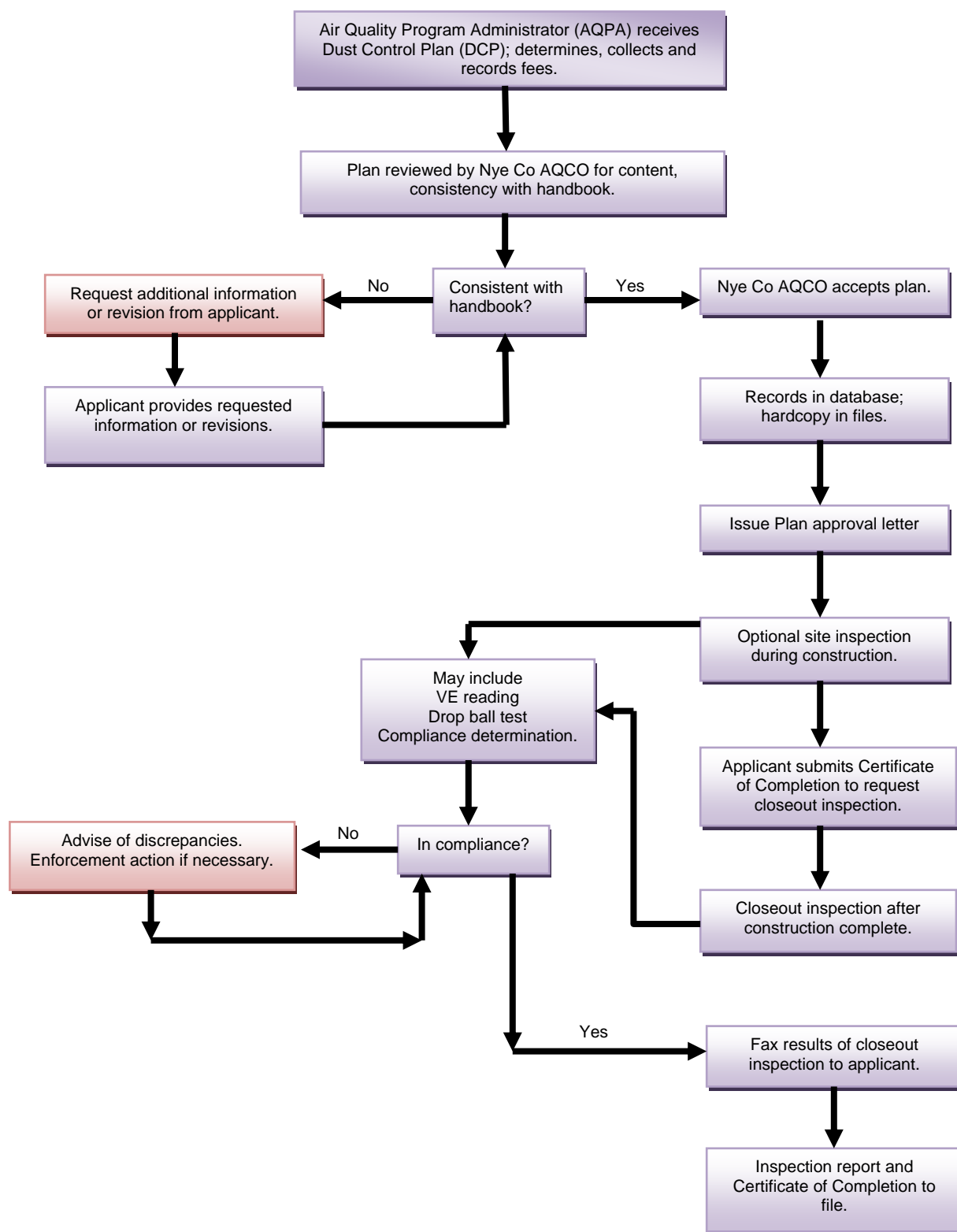
- The preparation of Warning Letters, Warning NOAVs, and NOAVs has been simplified by the use of form Letters in the Air Quality database.
- As directed by the AQPA, the AQCO will register the enforcement document number in the database.
- When completed, the enforcement document is signed by the AQPA. The inspection report, signed by the AQCO, should be included in the package.
- If a Stop Order was also required, it should be part of the document package.
- If a penalty was assessed, the penalty amount should be included in the document and the Penalty Calculation worksheet should be included. An Option Letter should also be enclosed in the package.
- Be sure to provide cc's to the appropriate parties.
- Once the NOAV and packet is signed, it is ready for copying, mailing via certified mail, distribution and filing.
- The violator has 30 calendar days from the date of issuance of the NOAV to demonstrate a good faith effort to achieve compliance. If no corrective action is taken within 30 calendar days of the NOAV, the violator will be found to be in violation of the NOAV's corrective action provisions and a new NOAV may be issued.

ACCOUNTABILITY AND FOLLOW-UP

All NOAVs are sequentially numbered in the database to provide accountability. The enforcement process from date of inspection and NOAV issue date through date of return to compliance is tracked and documented in a NOAV Tracking System database. This system ensures enforcement time lines are met and proper documentation has been completed. Hard copies of NOAVs are filed in the NOAV file (by calendar year) along with inspection reports, Compliance Review Committee meeting minutes, Settlement Agreements, Adjudicated Orders, and any other relevant documentation.

Appendix - Work Flow Diagram for Implementation and Enforcement of Nye County Dust Control Program

Dust Control Plan Review and Implementation



Enforcement Process

