

**COMPLIANCE ASSURANCE AND MUTUAL SETTLEMENT
AGREEMENT PROGRAM PROCEDURES AND
GUIDELINES HANDBOOK**

**Stationary Source Program
Air Pollution Control Division**

**Prepared by the
Regulatory and Compliance Support Unit and
Compliance, Monitoring and Enforcement Unit
Stationary Source Program
Colorado Air Pollution Control Division
1998-1999**

DISCLAIMER

The procedures and guidelines set forth in this document are intended solely as a guide for government personnel to use in compliance assistance and enforcement efforts. The procedures and guidelines cannot be used to establish new standards or limits, are not binding on any party, and cannot be relied upon to create any rights enforceable by any party. The Air Pollution Control Division of the Colorado Department of Public Health and Environment reserves the right to change these procedures and guidelines at any time without public notice.

GOALS

- # **Promote compliance by using a broad range of tools including pollution prevention, compliance and technical assistance, compliance monitoring and reporting, effective permitting, and enforcement.**
- # **Work with regulated entities in a collaborative fashion whenever possible. Provide incentives for entities to not only be in compliance, but to go beyond compliance by offering programs like the Environmental Leadership Program and Supplemental Environmental Project Program.**
- # **Assure public health and environmental protection by achieving and maintaining compliance with state and federal public health and environmental protection laws and regulations.**
- # **Provide fair and equitable treatment of all sources in noncompliance.**
- # **Encourage settlement negotiations and minimize litigation and prosecution of sources in noncompliance.**
- # **Reduce resources expended on and the time between the violation, imposition of a penalty, and the resolution of a case.**
- # **Recognize and respect the continuing nature of the relationships between the APCD, sources, and the public.**

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... WE MUST ENCOURAGE INNOVATION BY PROVIDING FLEXIBILITY WITH AN INDUSTRY-BY-INDUSTRY, PLACE-BY-PLACE APPROACH TO ACHIEVING STANDARDS[.] BUT WE WILL REQUIRE ACCOUNTABILITY THAT SUCH STANDARDS BE MET. RATHER THAN FOCUSING ON POLLUTANT-BY-POLLUTANT APPROACHES, ATTENTION MUST SHIFT TO INTEGRATED STRATEGIES FOR WHOLE FACILITIES, WHOLE ECONOMIC SECTORS, AND WHOLE COMMUNITIES. [EXCERPT FROM PRESIDENT CLINTON'S "REINVENTING ENVIRONMENTAL REGULATION," MARCH 16, 1995.]

1 INTRODUCTION

The Colorado Air Pollution Control Division (APCD) is tasked with protecting the public health and the environment of Colorado through protection of its air resources. Laws and regulations exist to provide the APCD with the guidance and tools needed to ensure that the environment is protected and that the quality of life in Colorado is preserved and enhanced.

Historically the Colorado Department of Public Health and Environment (Department) and its divisions fulfilled their mission through the command-and-control of regulated entities. The focus of the regulatory scheme was on process; this has not always equated to progress. Today, the APCD is working to transform itself into a more efficient agency that focuses on environmental outcomes, common sense solutions, and an approach to broaden our regulatory and enforcement "tool box" to include more innovation and less command-and-control. The guiding concepts for the APCD include prevention, assistance, and collaboration. A strong enforcement program is maintained to ensure compliance by those entities with whom a mutually-agreed upon solution is not reachable.

2 GENERAL PROVISIONS

2.1 Purpose

The APCD recognizes the need to experiment with new approaches to improve Colorado's environment. These new approaches can help identify cleaner, cheaper, smarter ways to ensure that all Coloradans enjoy a clean environment and healthy ecosystems. Partnerships between the State, local health departments, regulated communities, and citizens and communities are encouraged; persons and entities that are closest to environmental problems can often develop the most practical solutions. They are encouraged to seek innovative solutions that may not fit within the traditional approaches. Our efforts to promote innovation must, in the end, be directed toward achieving our public health and environmental goals in a more efficient and effective manner.

This document describes some of the innovative practices and programs undertaken by the Department, including the early settlement program, Environmental Leadership Program, the Pollution Prevention Program and its regulatory integration efforts, the Small Business Assistance Program, Supplemental Environmental Projects, and other compliance assistance efforts, and an invitation to consider and undertake innovations that make sense in given situations.

Accountability remains an important component of the APCD's regulatory programs. An effective and flexible noncompliance response policy is an important component of that flexibility. This document also establishes procedures and guidelines for the detection, enforcement, resolution, and settlement of noncompliance events and Notices of Violations (NOVs) issued pursuant to the Colorado APCD's authority under § 25-7-115(2), C.R.S. The procedures described and guidelines stated herein are intended to support compliance with the Colorado Air Pollution Prevention and Control Act, § 25-7-

101, *et seq.* (State Act), and supporting regulations, and to expedite resolution of disputed claims whenever possible without the necessity of litigation while assuring consistent treatment of all persons. This document does not cover the administration and enforcement of the Asbestos Abatement Program, found in Part 5 of the State Act, and the Lead Abatement Program, found in Part 11 of the State Act.

Section 3 of this guidance document, contains definitions and Section 4 describes the range of compliance assurance tools used by the APCD. These tools include incentives and rewards for facilities that achieve performance greater than required environmental standards, pollution prevention opportunities and alternatives to regulation, and compliance assistance activities. The remainder of the document, Sections 5 through 14, describes the compliance monitoring and noncompliance response activities undertaken by the APCD. Included in these sections is a discussion of the APCD's mutual settlement agreement program that offers resolutions to noncompliance events in a non-litigious setting. Appendix A includes a flow chart to assist the user of this document in understanding the overall enforcement and settlement program.

2.2 Administration

The provisions of this document are to be administered by the APCD under the direct control of the Manager of the Stationary Source Program. Consistent with these guidelines, the APCD's Compliance, Monitoring, and Enforcement Unit may initiate informal and formal enforcement and settlement procedures with persons served with informal notices of noncompliance and/or NOV's for the purpose of fully settling NOV's without the necessity of litigation.

3 DEFINITIONS

As used herein, the terms identified in Section 3.1 through 3.31 shall have the following meanings:

- 3.1 APCD. The term APCD means the Air Pollution Control Division of the Colorado Department of Public Health and Environment. The APCD is responsible for the administration of the air pollution rules and regulations, as set forth in § 25-7-111, C.R.S. (as amended). The APCD has responsibility for issuance, denial, modification, revocation, and enforcement of construction, operating, and open burning permits. The APCD is also responsible for compliance monitoring and enforcement activities under the State Act.
- 3.2 AGO. The term AGO means the Colorado Attorney General's Office, the legal representative of the APCD and AQCC.
- 3.3 AQCC. The term AQCC means the Colorado Air Quality Control Commission. The AQCC is created by State statute and consists of nine members appointed by the governor with the confirmation of the senate. The AQCC is authorized to adopt, modify, and repeal regulations for the prevention, control and abatement of air pollution. The AQCC also serves as the appellate body for appeals of Compliance Orders and assessments of civil penalties, as well as permitting decisions, by the APCD.
- 3.4 Case. The term case means the matter of facts involved and parties responsible for violation(s) charged in an informal notice of noncompliance or an NOV.

- 3.5 Compliance Order on Consent. The term Compliance Order on Consent means the settlement agreement or express terms, mutually agreed upon in writing, between the recipient of an informal notice of noncompliance or NOV and the APCD, resolving the consequences of the discovered noncompliance. A Compliance Order on Consent may also resolve contested matters in a final compliance order issued by the APCD
- 3.6 COC. The term COC means a Compliance Order on Consent.
- 3.7 Department: The term Department means the Colorado Department of Public Health and Environment. The APCD is a division within the Department. The Department also includes divisions for water, hazardous waste, solid waste, and other human health related divisions.
- 3.8 Enforcement Section. The term enforcement section means the Compliance, Monitoring and Enforcement Unit of the APCD.
- 3.9 EPA. The term EPA means the United States Environmental Protection Agency.
- 3.10 Federal Act. The term Federal Act means the Federal Clean Air Act, 42 U.S.C. § 7401, *et seq.*
- 3.11 Handbook: The term Handbook means this Compliance Assurance and Mutual Settlement Agreement Program Procedures and Guidelines Handbook.
- 3.12 Informal Notice of Noncompliance. The Informal Notice of Noncompliance means the notice to a source owner or operator, before a formal “Notice of Violation” is sent, that a noncompliance event was discovered during a monitoring or inspection activity. The informal notice of noncompliance may result in the case being referred to the Mutual Settlement Agreement Program.
- 3.13 Inspector. The term inspector means a compliance officer of, or a duly delegated representative of, the APCD, charged with conducting inspections and determining the compliance status of stationary sources. The inspector may also provide compliance assistance to a source in appropriate situations.
- 3.14 Legal Administrator. The Legal Administrator, or his or her designee, is the APCD staff person charged with reviewing the legal and factual basis for pursuing an informal or formal enforcement action and making recommendations in this regard, reviewing documentation for adequacy and form, providing support to the Compliance, Monitoring, and Enforcement Unit of the APCD, and conducting negotiations for the units.
- 3.15 Major Violation. The term major violation means any violation which is not a minor or moderate violation and includes all violations for which a noncompliance penalty must be calculated pursuant to § 25-7-115(5), C.R.S., and 42 U.S.C. § 7420. These violations include any violation of New Source Performance Standards (42 U.S.C. § 7411); National Emission Standards for Hazardous Air Pollutants (42 U.S.C. § 7412), State Implementation Plan requirements by a major source, New Source Review Permit requirements for major sources(42 U.S.C. §§ 7470-79 and § 7501-15), Operating Permit requirements (42 U.S.C. § 7661), and

Acid Rain requirements (42 U.S.C. § 7651). Any violation of an emissions or production limit that is voluntarily accepted by a source to avoid any major requirements of the Federal Act (“synthetic minor limitations”) are major violations.

- 3.16 **Minor Violation.** The term minor violation means any violation where the monetary component of the proposed settlement agreement is in an amount less than or equal to One Thousand Dollars (\$1,000.00), and as further defined in Section II.A. of this Handbook.
- 3.17 **Moderate Violation.** The term moderate violation means any violation that is not a major or minor violation and generally includes violations of state-only regulations, and State Implementation Plan requirements by minor sources.
- 3.18 **Mutual Settlement Program.** The term mutual settlement program means the process by which violations are informally resolved by the APCD and a source as outlined in this handbook.
- 3.19 **NCP.** The term NCP means a noncompliance penalty, assessed pursuant to § 25-7-115(5), C.R.S., to ensure a source does not reap the economic benefit of noncompliance with a federal requirement, as required under 42 U.S.C. § 7420.
- 3.20 **NFA.** The term NFA means “no further action.”
- 3.21 **NOV.** The term NOV means Notice of Violation issued by the APCD.
- 3.22 **Penalty.** The term penalty means the dollar value of an assessment calculated for a violation.
- 3.23 **Pollution Prevention:** The term pollution prevention or P2 means any practice which reduces the use of any hazardous substance or amount of any pollutant or contaminant prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the use or release or both of such substances, pollutants, or contaminants. (§ 25-16.5-103(6), C.R.S.)
- 3.24 **Regulations.** The term regulations means the regulations duly adopted by the AQCC.
- 3.25 **Settlement Conference.** The term settlement conference means a voluntary meeting between the Enforcement Section of the APCD and a source for the purpose of reaching a mutual settlement to resolve the informal notice of noncompliance or NOV.
- 3.26 **Settlement Proposal Letter.** The term settlement proposal letter means the offers and proposed acceptance forms issued by the APCD to resolve minor and moderate violations.
- 3.27 **Source.** The term source means any recipient of an informal notice of noncompliance or NOV issued by the APCD.
- 3.28 **State Act.** The term State Act means the Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, *et seq.*

- 3.29 SEP. The term SEP means supplemental environmental project, an environmentally beneficial expenditure or activity undertaken by a source to mitigate some or all of a civil penalty in accordance with guidelines in this handbook.
- 3.30 Violation. The term violation means any event of noncompliance by a source with the State Act or regulation enforced by the APCD.
- 3.31 Warning. The term warning means a written notification to the Source that a violation was documented, that further recurrence could result in enforcement action being taken, but that no further enforcement action will result directly from the instant violation.

4 INNOVATIVE COMPLIANCE PROGRAMS AND COMPLIANCE ASSISTANCE

4.1 Purpose

The APCD recognizes the need to experiment with new approaches to improve Colorado's environment. These new approaches can help identify cleaner, cheaper, smarter ways to ensure that all Coloradans enjoy a clean environment and healthy ecosystems. Partnerships between the State, local health departments, regulated communities, and citizens and communities are encouraged; persons and entities that are closest to environmental problems can often develop the most practical solutions. They are encouraged to seek innovative solutions that may not fit within the traditional approaches. Our efforts to promote innovation must, in the end, be directed toward achieving our public health and environmental goals in a more efficient and effective manner.

This document describes some of the innovative practices and programs undertaken by the Department, including the early settlement program, Environmental Leadership Program, the Pollution Prevention Program and its regulatory integration efforts, the Small Business Assistance Program, Supplemental Environmental Projects, and other compliance assistance efforts, and an invitation to consider and undertake innovations that make sense in given situations.

4.2 Environmental Leadership Program

The 1998 Colorado Legislature created the Environmental Leadership Program, §§ 25-6.7-101, *et seq.*, C.R.S., to encourage regulated facilities to achieve environmental results that are significantly better than otherwise provided by law. The Department encourages facilities to use innovative environmental approaches or strategies to accomplish these goals. There is a growing recognition by government, industry, and environmental groups that: (1) the existing regulatory system often does not encourage or reward environmental stewardship; (2) many environmental issues cannot or will not be adequately addressed solely by regulatory means; (3) voluntary, market-driven, outcome-based approaches can be effective in accomplishing desired environmental results; and (4) many companies have the knowledge and resources to significantly reduce environmental impacts.

Key principles of the Environmental Leadership Program are:

- Compliance with environmental standards is the baseline. Environmental performance exceeding that required to meet minimum compliance requirements is expected.

- Significant and measurable environmental performance goals must be established. Accomplishments by facilities should result in real and quantifiable gains. In addition to outstanding performance in emission or waste reduction, the project may recognize gains in areas not traditionally covered by regulatory permits.
- Meaningful stakeholder involvement is expected. In addition to superior environmental performance, facilities are expected to demonstrate efforts to inform and involve concerned members of the community regarding environmental issues.

The Environmental Leadership Act limits eligibility to applicants that have an environmental compliance history that is free of serious environmental violations for a period of at least three (3) years. Applicants must also have an environmental management system, a compliance audit program, and a pollution prevention program in place. The Executive Director of the Department may establish other elective program elements, and the Executive Director reviews all applications to the program and selects participants in the program. Participants in the Environmental Leadership Program are chosen because of their commitment to meeting more stringent environmental standards than required under current law. In return, they are given rewards and incentives for participating. These rewards and incentives may include formal public recognition by the governor and the Department, awards, public announcements, and news releases; fewer inspections with greater reliance on self-monitoring, self-reporting, self-certification, or third-party certification to demonstrate compliance with environmental laws and permits; and permit fee credits.

The application and selection into the Environmental Leadership Program is intended to be an interactive process, and will result in a negotiated agreement that clearly articulates the rewards and incentives provided to the participant by the Department. Applications to the Environmental Leadership Program can be obtained by contacting the Program Administrator, Environmental Leadership Program, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, OPPI A-5, Denver, Colorado 80246-1530; telephone (303) 692-3477.

4.3 Pollution Prevention Program

In 1992, the Colorado Legislature enacted the Pollution Prevention Act (§§ 25-16.5-101 *et seq.*), C.R.S., establishing pollution prevention as the environmental management tool of first choice. Pollution prevention remains a high priority for the Department and the APCD; the Colorado Legislature recently reaffirmed its commitment to pollution prevention activities by authorizing low cost loans to companies that desire to employ pollution prevention, toxic use reduction, source reduction, resource recovery, and energy efficiency measures, under the Environmental Leadership Program.

The quantity of waste generated from a process provides an indication of the efficiency of that process: more waste is generated from a less efficient process. Reducing inefficiencies typically results in long-term cost savings for a company. Increasing process efficiency is a major component of pollution prevention activities. In many situations, pollution prevention is analogous to the business concept of continuous improvement. Many pollution prevention projects improve process efficiency and product quality, and save money. Pollution prevention not only improves a company's bottom line through reduced operating costs, but it also improves working conditions and environmental quality.

Therefore, common sense shows that pollution prevention should be integral to continuous improvement efforts.

It is the Department's policy that whenever feasible pollution or waste should be prevented or reduced at the source, including: (1) reduction in the production or use of hazardous substances; (2) pollution or waste that cannot be prevented should be recycled in an environmentally safe manner; (3) pollution or waste that cannot be prevented or recycled should be treated in an environmentally safe manner; and (4) disposal or other release into the environment should be employed as a last resort and should be conducted in an environmentally safe manner. Further, to preserve and make more efficient use of our limited natural resources, the use of recycled products rather than raw materials should be encouraged whenever feasible.

The Pollution Prevention Program staff encourages pollution prevention through its coordination with the Pollution Prevention Advisory Board, created by the 1992 Pollution Prevention Act, businesses, trade associations, academic institutions, environmental, nonprofit and citizen groups, and local governments. The staff have developed "Pollution Prevention Tool Kits" for various source categories, for example, metal finishers or automotive repair shops. These kits are available by contacting the Pollution Prevention Program, and are also distributed by APCD compliance assistance personnel during site visits to targeted businesses.

APCD staff are working with the Pollution Prevention Program staff to find ways to effectively integrate pollution prevention concepts into the air quality regulatory scheme. In many, if not most cases, a facility that implements pollution prevention projects as an alternative to traditional compliance requirements can reduce its regulatory compliance burdens. For example, under the "Wood Furniture NESHAP" emission standard, a facility that chooses to employ pollution prevention options can comply with the standard without having to install costly control technologies that also carry costly monitoring, recordkeeping, and reporting burdens. Where pollution prevention projects reduce emissions levels sufficiently, a given regulation may no longer apply to the facility.

More information on pollution prevention and the Department's pollution prevention initiatives and activities can be obtained by contacting Program Administrator, Pollution Prevention Program, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530; telephone (303) 692-2975. The APCD's Stationary Source pollution prevention coordinator can be reached at (303) 692-3255.

4.4 Compliance Assistance

The APCD strives to educate and assist the regulated community to be in compliance by offering pollution prevention assistance, incentives, and compliance assistance with the hope of working collaboratively with the regulated community toward the mutual goal of protecting the public health and environment of the State. Accurate and timely information is crucial to ensuring a higher level of compliance and better understanding of the air quality laws and regulations.

The APCD has historically conducted a large amount and wide variety of compliance assistance activities, in the form of telephone assistance, written information, workshops, site-visits, and pre-permit application meetings, website distribution of information, and other activities. These services have been performed by permit engineers as well as field inspectors. Although the APCD recognizes the valuable role these compliance activities play in overall compliance assurance, these activities have

not been well documented and tracked. The APCD is currently exploring ways to better document compliance assistance activities in an effort to better evaluate the role and effectiveness of compliance assistance in the overall regulatory scheme.

A Small Business Assistance Program (SBAP) was established in the APCD under authority found in Section 507 of the Federal Clean Air Act and § 25-7-109.2, C.R.S., of the State Act. The purposes of the SBAP is to help small businesses comply with air pollution regulations.

During fiscal year 1996-97, the Colorado SBAP recorded more than 3,000 hours of industry compliance assistance and education through mailings, one-on-one site or telephone assistance, and industry-specific workshops. The SBAP has drafted compliance information, plain-English guides, and compliance checklists for small businesses that must comply with air regulations. A current list, with downloadable documents, can be found on the APCD's website.

The SBAP encourages small businesses to get help by offering compliance assistance site visits. These visits allow a source to get necessary help in determining its compliance status without the threat of an enforcement action. Each request for assistance will receive a prompt response, usually within two (2) working days. Where a site visit is not necessary, responses can be given over the phone or in writing. Information provided can be about control technology, regulation interpretation, pollution prevention, or referral to other agencies. In addition, the SBAP regularly works with trade associations and other industry groups to help publicize the program as well as compliance requirements and tools made available for small businesses by the SBAP.

5 ENFORCEMENT PROGRAM INTRODUCTION

The APCD enforces air quality laws fairly and consistently. Enforcement actions are commensurate with the seriousness of the noncompliance. A fundamental precept to nearly all laws in our society is that significant violations of the law will result in some form of sanction. The APCD applies firm sanctions to those who have significant violations. Consistent enforcement of environmental laws should ensure a level playing field for all regulated entities.

The APCD's Inspection, Compliance Monitoring, and Enforcement Unit uses the full range of enforcement options available to achieve regulatory goals. The traditional tools of administrative, civil, or criminal enforcement actions and penalties are combined with approaches which emphasize problem-solving and creative settlements resulting in positive environmental outcomes. Where a source in noncompliance has achieved a distinct economic advantage from noncompliance, the APCD calculates penalties that are sufficient to offset the economic benefit gained by the source. The enforcement process is sufficiently flexible to allow for customized solutions appropriate to specific situations.

Enforcement activities are designed to achieve prompt compliance and serve as a deterrent to noncompliance or regulatory avoidance. Vigorous enforcement, including collection of substantial civil and criminal penalties as provided by law are used against those responsible for willful, deliberate noncompliance that endangers public health or the environment. Coordinated actions are used wherever possible where violations involve more than one regulatory program so that more thorough, consistent, and effective results are achieved.

5.1 Authority

The APCD's authority for enforcement, compromise and settlement of violations is contained in the following described sources.

5.1.1 Enforcement Authority

The APCD is required to enforce the State Act and regulations as set forth in § 25-7-115, C.R.S.

5.1.2 Settlement Authority

The APCD is empowered to settle violations of the State and Federal Acts pursuant to its enforcement authority, conditioned upon approval by the Manager of the Stationary Sources Program and APCD Director, or his or her designee.

5.2 Review of Violation

All violations are reviewed by the APCD in the following manner.

5.2.1 Review by APCD

All documentation concerning violations that is entered into the Enforcement and Mutual Settlement Agreement Program is reviewed by the Supervisor of the Enforcement Section and Legal Administrator for the APCD to determine whether there is sufficient basis to reasonably conclude that a violation has occurred. If, after review, the APCD determines that there is not a sufficient basis to reasonably conclude that a violation has occurred, no further action is taken and the source will be notified. If, after review, the APCD determines that there is sufficient basis to reasonably conclude that a violation has occurred, the APCD will take one of the following actions: (1) issue a warning letter, if appropriate, to the source with documentation of the warning placed in the case file with no further enforcement action taken; (2) process the violation through the Mutual Settlement Agreement Program; (3) refer the case for formal enforcement process; or (4) refer the case to the AGO for action before the AQCC or district court, as appropriate.

5.2.2 Basis for Determination by the APCD

5.2.2.1 NFA

The APCD shall close a case upon a determination of no further action (NFA) necessary. A determination of NFA shall be based upon a review of the field report or other supporting documentation and upon a finding by the APCD that: (1) no basis exists to reasonably conclude that a violation has occurred; or (2) that the violation was inadvertent and insignificant or immaterial (in which case a warning letter shall be issued).

In general, a matter is considered insignificant if it has no specifically identifiable impact on air quality (e.g., no violation of an emission standard). In general a matter is considered immaterial if it has, at most, a very limited adverse effect on the APCD's ability to administer Colorado's air quality programs (e.g., is not a violation of the requirement to obtain a New Source Review or Operating Permit).

5.2.2.2 Warning

A source shall receive a warning as a consequence of a NOV, or in lieu of a NOV, when it is determined by the APCD that the acts constituting the violation were inadvertent, and immaterial or insignificant, and were not intended to violate the State or Federal Acts and regulations.

5.2.2.3 Penalty

The APCD will impose a penalty against a source when the APCD determines that: (1) a violation has occurred; (2) the source is liable for such violation; (3) it appears that such action is in the best interests of the public to punish and deter future violations; and (4) to ensure consistent treatment of all violations. The penalty may be resolved in its entirety through the Mutual Settlement Agreement Program.

5.2.2.4 EPA

The APCD will refer a source's case to the EPA where it is determined that the EPA is the appropriate jurisdictional authority or as otherwise required under the State-EPA Enforcement Agreement then in-existence.

5.2.2.5 AGO

The APCD will refer a source's case to the AGO for appropriate action either before the AQCC or in district court, where necessary and settlement is not forthcoming, or where the violation is criminal in nature.

5.2.2.6 Documentation to Accompany Each Case

To the extent reasonable, each case will contain the following documentation: (1) an inspection report, including any witness statements, laboratory reports, photographs, samples, and staff assessments; (2) the name, address, and telephone number of each witness; (3) complainant statements; (4) the name, title, telephone number of all consultants/experts who have reviewed this matter for either the APCD or source; (5) copies of all reports issued by consultants/experts; (6) copies of all correspondence between the APCD and source; (7) a detailed summary of all settlement efforts engaged in by the APCD, if any; (8) the NOV where issued; (9) NOV conference tapes; and (10) the resulting Compliance Order, settlement proposal letter, or COC.

6 INSPECTION AND COMPLIANCE MONITORING ACTIVITIES

Compliance tracking and enforcement of Colorado's air quality regulations are the responsibility of the APCD. EPA provides oversight to ensure that the program is administered in accordance with delegation agreements and policies. The APCD's compliance and enforcement programs include many aspects which are outlined below in Table 6-1.

6.1 Compliance Screening

Compliance screening is the initial in-house review of quarterly excess emission reports, semi-annual monitoring results and annual compliance certifications submitted by sources subject to the operating permit program, sources subject to Maximum Achievable Control Technology (MACT) standards, New Source Performance Standards (NSPS), and other regulatory requirements containing reporting requirements. The compliance screening process verifies that reports are: (1) submitted on schedule; (2) cover the proper time period; (3) include all required information; (4) demonstrate compliance with the requirements; and (5) are accurate and are properly signed. It is important to note that the APCD uses the compliance screening as a detection process to sort out instances of noncompliance and to identify and target large sources for further evaluation. Evaluation for, and determination of, appropriate follow-up enforcement action occurs later during the enforcement evaluation process. Table 6-2 provides details on the APCD's use of compliance screening.

**TABLE 6-1
ASPECTS OF ENFORCEMENT PROGRAM**

ACTIVITY	COMPONENT
Compliance Screening and Monitoring	<ul style="list-style-type: none"> --Final Approval Compliance Certifications --Final Approval Inspections --Routine Inspections --Complaint Inspections --Surveillance Inspections --Title V Semiannual Monitoring Reports --Title V Annual Compliance Certifications --Quarterly Excess Emissions Reports --MACT Compliance Certifications --NSPS Compliance (including reports and recordkeeping) --SB 139 Submittals --Inspections and Reports
Preliminary Response to Noncompliance	<ul style="list-style-type: none"> --Telephone calls to Violator --Warning Letters --Field Compliance Advisories --Section 111 Information Requests --Referrals to SBAP --Referrals to Pollution Prevention Program --NFA letters for SB 139 Submittals as Appropriate
ENFORCEMENT RESPONSE	
Administrative Pre-Formal Enforcement	<ul style="list-style-type: none"> --Offers to settle in minor and moderate path prior to issuing NOV --Offers to conduct settlement conference prior to issuing NOV in major violation path
Administrative Enforcement	<ul style="list-style-type: none"> --Notices of Violation --Compliance Orders --Cease & Desist Orders
Civil Enforcement	<ul style="list-style-type: none"> --Referrals to AGO for district court filings --Referrals to AGO for emergency filings under §§ 112 and 113
Criminal Enforcement	<ul style="list-style-type: none"> --Referrals to AGO

**TABLE 6-2
COMPLIANCE SCREENING AND REVIEW**

INDICATION	ACTION TO BE TAKEN	TIME CONTROL GOAL	RESPONSIBLE PERSON(S)
Report not received within 7 days following due date	Send a delinquent letter to source. Note delinquency in computerized file and indicate action taken.	Within 5 days following determination.	MACT: RSCU Other Reports: FSU Inspector
Report received. Review to verify that it has been properly signed.	If report is not signed, return to source for proper completion.	Finish completeness review within 5 days of receipt from source. Return report without signatures within 3 days of final review.	FSU Inspector
Review report for completeness; compare data in report with applicable requirements.	Review report to verify reporting or emission standard violations. Where a significant reporting violation is noted, a failure to report letter is sent with notice that continued submittal of incomplete report may result in an enforcement action.	Review report within 30 days of receipt. Send failure to report letter within 3 days of final review.	FSU Inspector
If report shows numeric violations, determine significance.	Emission standard violations are categorized as minor, moderate or major (high priority violators) in accordance with EPA/APCD policy. One of 3 types of settlement offer letters may be sent depending on type of violation and recent compliance history.	Send settlement offer letter within 3 days of final review. See Section 5 for discussion.	Legal Administrator
Semiannual compliance report under Operating Permit Program - source certifies it is not in compliance with applicable requirements.	Determine whether the report shows a failure to monitor on continuous or period basis.	Send settlement offer letter within 3 days of final review. See Section 5 for discussion.	Legal Administrator

6.2 Delinquent Fees

The APCD's policy on delinquent permit and annual fees is explained as follows in this section.

- 6.2.1 Approximately 30 days after the date the fee is due the source will receive written notification that payment must be made immediately or the APCD will initiate an enforcement action and pursue imposition of civil penalties.
- 6.2.2 If payment is not received within a reasonable period (30 days maximum), the APCD will prepare an NOV which requires that payment of the delinquent fee be made within 30 days; failure to do so may subject the permit to revocation.
- 6.2.3 If payment is not made, the APCD will proceed with the enforcement action. In no event will the APCD issue or reissue a permit if payment has not been received from the source.

6.3 Compliance Monitoring Inspections

Compliance monitoring inspection is a general term covering a variety of inspection activities conducted by an inspector. These inspections are generally conducted on-site at the facility under the authority of the State Act, as amended. The general purpose of the inspections is for the APCD to assess the source's compliance with applicable laws, regulations, and permit conditions, and to provide prompt notice to the source of any deficiencies noted or noncompliance observed. The reliability of a source's self-monitoring reports and compliance certifications is also checked. The APCD's "Inspection Policies" are attached as Appendix B and provide a description of the various compliance monitoring inspections conducted by the APCD and documentation required as part of the inspection activity. The EPA's Inspection Protocol, found in Appendix C, also forms a basis for the APCD's inspection process and evaluation. The minimum documentation needed for various types of noncompliance is briefly summarized in Table 6-3 below.

In preparation for the actual inspection, the APCD will ensure that the following activities will occur:

- The inspector reviews the source's permit, most recent inspection report, and/or any requirements applicable to the source, along with reports submitted to the APCD since the last inspection to determine appropriate emission limitations, control equipment, operating and maintenance practices, special conditions, emission violations, reporting deficiencies, and so forth.
- The inspector may prepare a pre-inspection summary, and where available, obtain a compliance assistance and/or inspection checklist prepared by APCD staff, to help the inspector prepare for the inspection and to ensure that the inspection focuses on specific items of interest. The summary may include diagrams of the facility, checklists, copies of recent

**TABLE 6-3
REQUIRED DOCUMENTATION**

TYPE OF NONCOMPLIANCE	DOCUMENTATION NEEDED
Opacity	Method 9 or 9B observation detailed on Visible Emission Report ¹ ; Excess Emission Report; CEM or COM data
Odor	Odor observation according to Regulation No. 2 detailed on Odor Report form ²
Excessive Pollutant Emissions	Calculation and/or stack test report, Excess Emission Reports
Permit Condition Violation, Including Reporting and Recordkeeping Violations	Method 9 observations, odor observations, calculations, production information, stack test, CEM or COM data, Excess Emissions Reports, and memorandum and inspection reports documenting the violation
Open Burning	On-site inspection report documenting open burning or evidence of burning; witness/complaint statements; description of evidence and witness statements that assist in determination of whether burning is done for commercial or noncommercial purposes
Operating Without Permit	In-house screening of APEN information and/or on-site inspection documenting that source is either operating or has been constructed without a permit; or is major and is operating without an Operating Permit
Excessive Fugitive Particulate Emissions	On-site inspection documenting that emissions are in excess of limits in guidelines found in Regulation No. 1

¹ Only one (1) Method 9 observation (consisting of one observation for six [6] consecutive minutes) is needed to determine noncompliance, but whenever possible additional Method 9 observations should be made. Additional observations will document the nature of the problem and provide information when an upset exemption is claimed. A copy of the Visible Emissions Report must be given to and signed by a source representative upon completion of the readings. If the representative refuses to sign the report, this should be noted on the report.

² Only one (1) odor observation, consisting of two (2) odor measurements within one (1) hour, separated by at least five minutes, is needed to determine noncompliance, but whenever possible, additional observations should be made. Additional observations will document the continuing nature of the problem and provide information when a upset exemption is claimed. A copy of the odor report must be given to and signed by the source's representative upon completion of the readings. If the source's representative refuses to sign the report, this should be noted on the report.

enforcement actions or noncompliance events, a list of all emission points and any applicable standards or limits, any requirements agreed to in a COC or judicial consent decree, and a list of questions to be asked at the inspection.

- The inspector develops a trip itinerary and schedule, which should allow ample time for orientation at the site prior to inspection and travel time between facilities.
- The inspector must take all safety equipment necessary to perform the inspection (safety hats, safety glasses, steel-toed shoes, protective outerwear, earplugs, etc.).
- The inspector should generally not contact a facility representative prior to the inspection visit unless the facility is not staffed full time, or other circumstances exist that make prior contact advisable. Under certain circumstances it may be advisable to contact the facility in order to facilitate the inspection.

Upon arriving at the facility, the inspector will use the following as guidance in performing the inspection:

- Present credentials to the appropriate facility representative and inform him/her of your purpose at the facility, ask to speak with a foreman, supervisor, or other responsible official before proceeding with the inspection.
- Remember to take safety precautions and obey safety rules of the facility at all times. DO NOT, under any circumstances, sign a waiver releasing the facility from any liability for negligence, injury, and the like, or with respect to enforcement of violations discovered during the inspection. If the facility refuses entry, on this or any other basis, contact the APCD's Legal Administrator for assistance from the AGO in obtaining a search warrant to enter and inspect the premises.

The inspector must complete inspection and compliance advisory forms in a timely manner. Field Inspection Report forms are found in Appendix D. Wherever possible, compliance advisories should be delivered to the source upon completion of the inspection, with copies to the Supervisor of the Compliance, Monitoring and Enforcement Unit and the Legal Administrator.

6.4 Enforcement Evaluation

Enforcement evaluation is the process whereby the violations and discrepancies that were identified by the APCD during the compliance screening and inspection processes are reviewed to evaluate the type of enforcement response needed. This review is normally conducted by APCD and local agency personnel, although legal consultation with the AGO may be necessary in some cases. In determining the appropriate response, consideration is given to:

- The nature of the violation(s):
 - reporting (late or deficient),
 - numeric violations (emission standard violations);
 - enforceable compliance schedule, and
 - other;

- The duration of the violation(s);
- The frequency of the violation(s) (isolated or recurring);
- The potential impact on public health or the environment as a result of the violation(s);
- The attitude of the violator (cooperative, responsive, takes immediate remedial steps, etc.); and
- The violator's past compliance history.

6.5 Determination of Compliance Status

A source that is found to be in noncompliance is one that is not meeting all applicable Colorado AQCC regulations or all permit conditions. There are several methods that can be used to determine the compliance status of a source. The methods most commonly used include:

- On-site inspections:
 - opacity observations,
 - odor observations,
 - excessive pollutant emission rates,
 - permit condition violations,
 - control equipment problems, and
 - other evidence of emissions, e.g., visual observations of dust, open burning, review of CEM or COM logs and records;
- Calculations of source emission rates:
 - data collected during inspection,
 - source test data;
- Excess emission reports;
- Operating Permit monitoring data, compliance reports, or other data submitted by the source;
- Upset and malfunction reports; and
- Identifying sources operating without permits:
 - lists from building departments,
 - drive-by inspections,
 - complaints,
 - information from source business competitors,
 - annual inspections may reveal new unpermitted equipment at existing sources,
 - lists from other regulatory agencies (mined land reclamation, water quality, hazardous waste, solid waste, etc.), and
 - newspaper articles.

7 ENFORCEMENT RESPONSE GUIDE

7.1 Range of Enforcement Response

In order to achieve a maximum degree of compliance with the air pollution laws, the APCD uses a variety of enforcement mechanisms. These can be placed into two categories: (1) informal enforcement activities; and (2) formal enforcement activities. Compliance Advisories are used as a prerequisite to conducting activities in either of the two categories.

Informal resolution, described in Section 10, includes the APCD's: (1) verification that problems have been corrected and sending written acknowledgment to the facility; (2) establishing with the source a compliance schedule with subsequent verification of compliance by the APCD and written acknowledgment; (3) providing a settlement offer letter to the facility with established time frames for settlement; (4) providing written acknowledgment where the facility demonstrates that no violation occurred; and (5) issuing a "No Further Action" letter to the facility where compliance has been demonstrated and the APCD determines that there is no need to pursue any other action.

Formal enforcement actions include the APCD: (1) issuing COCs or other settlement document with compliance schedule and/or penalty settlement; (2) issuing NOVs and holding subsequent NOV conferences; (3) issuing COs with or without penalty assessment where mutually agreed resolution is not reached; (4) issuing administrative cease and desist orders where injunctive remedies are necessary to speed compliance and/or to protect public health or welfare; (5) requesting that the AGO file civil suits for injunctive relief or penalties; and (6) request that the AGO prosecute the source for criminal acts.

7.2 Enforcement Response Guide

The APCD has developed an enforcement response guide to serve as a reference in determining the course and appropriate level of action to be taken for specific violations, along with time frames for completion. Table 7-1 contains the APCD's enforcement response guide. Upon evaluation of the facts of a specific case, and in the case of criminal violations, deviations from this guidance may legitimately occur and will be explained and justified by the APCD in the permanent record. The enforcement response includes: (1) Compliance Advisories; (2) Mutual Settlement Path Actions; and (3) formal enforcement actions. In addition to these activities, an enforcement response may include Information Request Letters to assist in gathering additional evidence of compliance or noncompliance, and warning letters. Information Request Letters are discussed in Section 8. Compliance Advisories are detailed in Section 9. The Mutual Settlement Agreement Program options are detailed in Section 10. The Formal Enforcement activities are detailed in Section 14. The APCD and the local agencies with whom it contracts for inspection and enforcement activities have negotiated a memorandum of understanding (MOU) for the commencement and completion of formal enforcement actions. This MOU is contained in this handbook at Appendix E.

**TABLE 7-1
ENFORCEMENT RESPONSES**

TYPE OF NONCOMPLIANCE	AGENCY RESPONSE
Opacity	Compliance Advisory + Offer to Settle ³
Odor A. First violation B. Subsequent violations	Compliance Advisory + Offer to Settle, no assessment of penalties for 1st violation Compliance Advisory + Offer to Settle +/- or formal enforcement, depending on severity of violation
Excess Emissions determined by in-house calculation or records review	Compliance Advisory + Offer to Settle (may request stack test prior to informal enforcement)
Excess Emissions determined by stack test	Compliance Advisory + Offer to Settle +/- or formal enforcement, depending on severity of violation
Permit Condition Violation - Initial Permit A. Does not directly affect emissions B. Directly affects emissions	Compliance Advisory + Warning Letter (if compliance not demonstrated within 30 days, commence enforcement) ⁴ Compliance Advisory + Offer to Settle +/- or formal enforcement, depending on severity of violation
Permit Condition Violation -Final Permit A. Does not directly affect emissions B. Directly affects emissions	Compliance Advisory + Warning Letter (if compliance not demonstrated within 30 days, commence enforcement) Compliance Advisory + Offer to Settle +/- or formal enforcement, depending on severity of violation
Compliance Order (or COC) Violation	Compliance Advisory + Offer to Settle +/- or formal enforcement, depending on severity of violation
Operating Without Permit A. New Source Review B. Operating Permit	Compliance Advisory + Offer to Settle (offer must include instructions to cease operation or to limit emissions and to obtain permit expeditiously) Compliance Advisory + Offer to Settle (offer must include instructions to cease operation or to limit emissions and to obtain permit expeditiously)
Open Burning	Compliance Advisory + Warning Letter or Offer to Settle and/or formal enforcement (where there are potential health or welfare impacts due to composition or location of burning)

³ For permit condition violations, formal enforcement actions include, in addition to those described in Section 14, per a letter stating the APCD's intent to revoke a source's permit precedes, by at least 20 days, the formal notice of revocation.

⁴ For permit condition violations, formal enforcement actions include, in addition to those actions described in Section 14, per a letter stating the APCD's intent to revoke a source's permit precedes, by at least 20 days, the formal notice of re

TYPE OF NONCOMPLIANCE	AGENCY RESPONSE
Excessive Fugitive Particulate Emissions	Written request for Control Plan; if control plan is in place and is being followed but is inadequate to control fugitive emissions, request modification to plan within 30 days; if plan is not being followed or is not submitted upon request, issue Compliance Advisory + Offer to Settle +/- or formal enforcement, depending on severity of violation
No APEN on File (with no attendant permit violations or failure to obtain permit(s))	Warning Letter requesting APEN to be filed within 30 days; if no response, commence formal enforcement
Failure to Respond to Request for Information Letter under § 25-7-111(2)(i), C.R.S.	Warning Letter requiring response within 10 days; if no response, commence formal enforcement. Depending on need for immediate response, may immediately seek AGO assistance in obtaining a district court subpoena to require response

8 REQUEST FOR INFORMATION LETTERS

Request for information letters are utilized by the APCD as an official method of gathering additional information concerning suspected or documented violations of a permit or the State Act. In most cases, the purpose of the request for information letter and its required response is to provide the APCD with a direct written reply from a permittee, or a responsible non-permitted party, that will provide sufficient information to determine what follow-up action is required (e.g., no further action, an on-site visit, warning letter, enforcement response). The APCD's request for information letter can constitute the first step in enforcement against a facility, but the issuance of the request for information does not toll the 18-month statute of limitations for commencing an enforcement action after discovery of the violation. Note also that the letter itself can only request information and it cannot be used to require compliance with any portion of the State Act or with permit requirements.

Request for information letters will be sent by certified mail and will generally contain the following items:

- name of facility and permit number, if any;
- citation to the APCD's legal authority to issue the letter (§ 25-7-111(2)(i), C.R.S.);
- specific description of the information that the APCD is requiring the recipient to submit;
- notification that failure to respond may result in enforcement action or resort to court-ordered subpoena to compel response;
- deadline for compliance with information request;
- APCD contact to receive requested information and to answer questions; and
- a certification form to be signed by the respondent.

The Request for Information Letter is an appropriate vehicle for ordering a source to conduct performance tests to provide the APCD with emissions information concerning the source. The following is a sample paragraph that is included in a Request for Information Letter for this purpose:

In accordance with the Division's authority found in Air Quality Control Commission Common Provision Regulation Section II.C. and Section 25-7-111(2)(i), C.R.S., within _____ (__) days of receipt of this letter, (company) shall conduct a performance test on the (description of emission unit). The testing shall meet the requirements described in (cite an approved reference test method, if any). Testing conditions must be representative of maximum operating conditions. No more than ten (10) days before conducting the performance tests, (company) must notify the Division of the proposed test date to provide the Division an opportunity to observe the performance tests.

(Company) shall submit an adequate test protocol to the Division at least fifteen (15) days prior to conducting the performance tests. The protocol must indicate compliance with the testing methods and procedures specified in (cite applicable approved reference test method or regulatory provision). The protocol should also specify the proposed operating conditions during the tests. If testing is to be conducted at more than one operating condition, all relevant operating conditions shall be indicated. Failure of (company) to submit an adequate test plan to the Division may subject (company) to enforcement action or court-ordered subpoena to compel, but does not constitute sufficient reason to delay the required performance test.

(Company) shall submit the results of all emission testing conducted in accordance with this Request for Information in the form of a bound report to the Division within thirty (30) days after the testing. The report shall contain the results of the testing (including raw data sheets) and include all applicable operating parameters. The report shall contain emissions data in (however the applicable requirement measures emissions).

A sample Request for Information Letter (section 111 Letter) is found at Appendix F.

9 COMPLIANCE ADVISORIES

The APCD issues Compliance Advisories to serve as a means to provide timely notice to a facility of apparent violations found during an inspection. Noncompliance events described in an Compliance Advisory may or may not be pursued by the APCD through a formal enforcement action, depending on the type of violation and the response of the facility to the advisory. The Compliance Advisory forms serve as the cover sheet for the field inspection reports and are provided in duplicate. One copy of the completed Compliance Advisory form will be provided to the facility, one to the APCD, Supervisor of the Enforcement Section, and one for local agency files. The Compliance Advisory can be issued either in the field at the time of the inspection or soon after an inspection. Facilities that receive clear, written notice of problems at the time of the inspection have the opportunity (and are more likely) to take steps to remedy the problems.

The Compliance Advisory serves several purposes. First, the Compliance Advisory provides notice of the following items:

- deficiencies that inspectors believe are violations of air pollution laws and regulations;
- areas of compliance evaluation that have not been completed;
- required submittals or actions by the facility;
- concerns or issues that may result in violation of the air pollution requirements or may be violations under other laws or regulations (e.g., hazardous waste or water quality laws);
- availability of compliance assistance through, and referral to, the SBAP where appropriate; and
- availability of Pollution Prevention options and referral to the CDPHE's Pollution Prevention Program where appropriate.

Second, the Compliance Advisory may speed resolution of the violations where the facility and inspector can agree on a course of action to correct the violations. Additionally, the Compliance Advisory informs the facility of a process to reach resolution and potential consequences for continued noncompliance.

9.1 Issuance of Initial Compliance Advisory

The Compliance Advisory is intended to be either issued in the field by an authorized inspector or from the office soon after the inspection. Field issuance by the inspector may occur where further evaluation or discussion with supervisory or other staff is not necessary, but the option for subsequent issuance is necessary to allow inspectors to evaluate each situation and discuss matters with supervisors where necessary.

The inspector should discuss to, the extent possible, the violations and potential violations with the facility representative at the end of the inspection. Any areas requiring further evaluation by the inspector or any required actions or submittals by the facility will also be discussed at that time. Inspectors will encourage the facility to resolve the violations and potential violations through further discussion to identify required actions and schedules for completion. The inspectors will explain the procedure for resolving the issues raised in the Compliance Advisory, and include any identified required actions and time frames for completion.

Where a facility representative and the inspector are able to identify and agree on steps to be taken to remedy areas of noncompliance, they may develop, a Schedule of Correction at the end of the inspection. Also, inspectors may determine that the facility could benefit from compliance assistance from the APCD or pollution prevention assistance from the Department's Pollution Prevention program, and suggest that the facility representative contact a program representative. If time allows, inspectors may choose to provide compliance assistance while they are on site, or they may recommend that the facility contact the APCD, or the SBAP, later to set up a compliance assistance visit by APCD staff. Compliance assistance efforts should be noted on the Compliance Advisory form. The inspector may have brought pollution prevention information to the facility as a pro forma part of the inspection, and should note delivery of the pollution prevention packet on the Compliance Advisory form. In the event the source requests further pollution prevention information, referral to the Department's Pollution Prevention Program should be made and noted on the inspection report form. A Compliance Advisory form is attached as Appendix G.

9.2 Final Compliance Advisory

A final Compliance Advisory may be issued by the APCD where further review of inspection findings, along with review of submittals or other facility actions that take place as a result of the inspection, occur after the field inspection. The final Compliance Advisory will confirm or clarify violations noted on the initial or previously-issued advisory and will detail any additional violations resulting from the subsequent review. If the APCD has sufficient information, the final Compliance Advisory may propose a schedule for correction of the violations. If any deficiencies noted on the initial advisory have been shown to not be violations of air pollution requirements, the APCD will so state in the final Compliance Advisory.

9.3 Compliance Advisory Follow-up

9.3.1 Facility Response

In most cases, it is expected that facilities will provide a response to the APCD soon after receiving a Compliance Advisory. The nature of the deficiencies noted and the response by the facility will in large part determine the path for resolution of the issues raised in the Compliance Advisory.

The responses by a facility make take several forms (not necessarily exclusive):

- perhaps the simplest response is for the facility to provide documentation that problems have been corrected and steps taken to prevent recurrence;
- for longer term issues, the facility may indicate the progress that has been made according to a previously established schedule or may propose a schedule for remedying the problems;

- in some instances the facility may provide information documenting that the issues raised were not violations of air pollution requirements; or
- the facility may request an informal conference or further clarification of the matters covered in the Compliance Advisory.

9.3.2 Informal Conference

After receipt of a Compliance Advisory, a facility may request an Informal Conference with the APCD. The Informal Conference provides an opportunity to the facility to discuss the issues noted in an Compliance Advisory and means of resolving them. The facility may present information not previously available to the APCD and discuss appropriate ways to correct the deficiencies. The Informal Conference may also serve as a forum for establishing mutually agreed upon compliance schedules. Typically, an Informal Conference will also include discussion of the administrative process to be used to resolve the Compliance Advisory, including pre-enforcement settlement path discussions and/or formal enforcement.

9.3.3 Agency Action

Based on the findings of the inspection and any subsequent communications with the facility, the APCD may determine that it is appropriate to resolve the violations noted in the Compliance Advisory through either informal settlement process or through formal enforcement action. The nature of the APCD's actions would be governed by Department and APCD enforcement policy and guidance, and consistent with Colorado's enforcement agreement with EPA Region VIII (attached as Appendix H). The decision to resolve a noncompliance event through formal enforcement process will usually rest on: (1) an inability of the APCD and facility to resolve the matter through the mutual settlement path; (2) the failure or refusal of a recipient of a compliance order or compliance order on consent to return to compliance; or (3) the seriousness and/or repetitive or continuing nature of the noncompliance. This decision ultimately resides in the Supervisor of the Compliance, Monitoring and Enforcement Unit, with the concurrence of the Program Manager.

Informal resolution includes: (1) verification that problems have been corrected and sending written acknowledgment to the facility or, as appropriate, reinspection by the APCD; (2) establishing a compliance schedule with subsequent verification of compliance by the APCD and written acknowledgment; (3) a settlement offer letter by the APCD to the facility with established timeframes for settlement; (4) written acknowledgment by the APCD where the facility demonstrates that no violation occurred; and (5) a "No Further Action" letter to the facility from the APCD where compliance has been demonstrated and there is no need to pursue any other action.

Formal enforcement actions include the APCD: (1) signing COCs or other settlement documents with compliance schedules and/or penalty settlements; (2) issuing NOV's and holding subsequent NOV conferences; (3) issuing CO's with or without penalty assessment where mutually agreed resolution is not reached; (4) issuing administrative cease and desist orders where injunctive remedies are necessary to speed compliance and/or to protect public health or welfare; (5) requesting the AGO initiate civil suits for injunctive relief or penalties; and (6) requesting the AGO initiate prosecution for criminal acts.

10 MUTUAL SETTLEMENT PROGRAM

10.1 Minor Violations

The minor violation path of the mutual settlement program consists of the issuance of the Settlement Proposal Letter and the resolution as set forth in a settlement document. Violations under this path include:

- failure to file APEN (with no attendant permit violation or failure to obtain a permit);
- failure to obtain open burning permit for noncommercial burning;
- failure to file relocation notices (with no attendant permit, NSPS, or MACT violations);
- failure to pay fees by non-Title V sources;
- single opacity violations by minor sources;
- CFC registration violations;
- odor violations (first violation); and
- fugitive particulate matter guideline violations.

If a source has a history of repeated or continuing minor violations, the APCD, in its discretion, may choose to follow the Moderate Violation path described below.

10.1.1 Settlement Proposal Letter for Minor Violation

Minor violations will result in the issuance of a settlement proposal letter, transmitted by certified mail, return receipt requested. The purpose of the settlement proposal letter is to inform the source of the facts associated with the discovery of a violation(s), specify the penalties prescribed by the State Act and APCD's Penalty Policies (Appendix H), propose the terms upon which the APCD would be willing to resolve the violation, including the monetary component term which shall be based upon the APCD's penalty policy with consideration for early settlement. The terms contained in the settlement proposal letter must be approved in advance of their transmittal to the source by the settlement authority as described in Section 1.4 of this handbook. The settlement proposal letter will specify 20 days during which the source may consider and either accept or reject the settlement proposal, after which time, if no response is received from the source, the APCD shall deem the settlement offer rejected and will proceed to formal enforcement process. A NOV will be issued at the end of the 20-day period specified in the settlement proposal letter and will establish a date and time for the required NOV conference. Any resulting CO shall not contain a reduced civil penalty in consideration of early settlement. Appendix I contains a sample minor violation settlement letter.

10.1.2 Resolution

In the event the source accepts the APCD's settlement proposal, it shall not be binding until the source signs and returns the settlement offer, makes the required demonstration of compliance, and civil penalty payment to the APCD. Resolution through the minor settlement path will not be deemed an admission of liability by the source, but will be considered a part of the source's compliance history for any purpose for which such history is relevant under the State or Federal Acts.

10.2 Moderate Violations

Moderate violations are those that are not considered minor as described above nor as “high priority violators” (previously known as “significant violators”) under the Federal Act as set forth in 42 U.S.C. § 7420 (those violations for which a noncompliance penalty is required to be calculated). Examples of moderate violations include:

- repeat opacity violations by minor sources;
- violations of CFC requirements by minor sources that are not covered by the Minor Violation path;
- failure to obtain an open burning permit for commercial purposes;
- second and subsequent odor violations;
- failure to obtain a new source review permit by a minor source;
- failure to submit a new or revised fugitive dust control plan upon request, or to implement the plan, under Regulation No. 1; and
- violations of state-only New Source Performance Standards, Regulation No. 6, Part B.

10.2.1 Settlement Proposal Letter for Moderate Violation

Moderate violations will result in the APCD issuing a settlement proposal letter, transmitted by certified mail, return receipt requested. The purpose of the settlement proposal letter is to inform the source of the facts associated with the discovery of a violation, specify the penalties prescribed by the State Act and APCD’s Penalty Policy, propose the terms upon which the APCD would be willing to resolve the violation, including the monetary component term based upon the APCD’s penalty policy with consideration for early settlement, and shall invite the source to discuss the settlement proposal at a settlement conference, if so desired, to be held within 20 days of receipt of the letter. The terms contained in the settlement proposal letter must be approved in advance of their transmittal to the source by the settlement authority as described in Section 1.4. of this handbook.

The settlement proposal letter shall specify 20 days during which the source may consider and either accept or reject the settlement proposal, or schedule a settlement conference, after which time, if no response is received from the source, it shall be deemed rejected and the matter shall proceed to formal enforcement process. The APCD will issue a NOV at the end of the 20-day period specified in the settlement proposal letter which will establish a date and time for the required NOV conference. In the event the APCD and source reach a settlement or are nearing a settlement, the APCD will delay the issuance of the NOV as necessary, to continue to allow a defined time for continued negotiations or preparation of settlement documents. In the event a settlement is not reached within 20 days of receipt of the settlement proposal letter, or within a defined short period of time after the 20-day time frame that allows for continued discussions, the APCD will issue an NOV promptly after the it has determined that continuing negotiations will not result in settlement. Any resulting CO shall not contain a reduced civil penalty in consideration of early settlement. Appendix I contains a sample moderate violation settlement letter.

10.2.2 Settlement Conference

The settlement conference in a moderate violation case is an informal meeting between the APCD and the source. The purpose of the meeting is to openly share with the source documentary and other support for the violation in an effort to mutually resolve the violation. The source may, but is not required, to present evidence in defense or mitigation. If the source is able to establish to the reasonable

satisfaction of the APCD that a moderate violation was not the result of intentional or negligent conduct, the APCD may reduce the civil penalty offer or issue a NFA decision. The APCD will take into consideration all evidence presented by the source during the course of the settlement conference in evaluating the terms of its proposed settlement as required in determining the monetary component of the settlement agreement. Information produced at the settlement conference may cause the APCD to amend its proposed settlement which shall be communicated to the source within 15 days. Such amended settlement proposal shall specify 15 days during which the source may consider and either accept or reject the proposed settlement, and if no response is received from the source within such time, the proposed settlement shall be deemed rejected. If the source rejects or the APCD deems that the source has rejected the settlement proposal the APCD will refer the case for formal enforcement action.

10.2.3 Resolution

In the event a mutual settlement is reached, it shall not be binding on either party until the terms thereof shall be reduced to writing and signed by the source and the appropriate settlement authority official as described in Section 1.4. of this handbook. Resolution of the NOV through a mutual settlement agreement or COC shall not be deemed an admission of liability by the source, but shall be considered a part of the source's compliance history for any purpose for which such history is relevant under the State and Federal Acts.

10.3 Major Violations

Major violations, for purposes of this mutual settlement program, are those violations that are considered significant violations under 42 U.S.C. § 7420 (violations for which a noncompliance penalty calculation is required), that are continuing in nature, repeat violations, or that are otherwise deemed to be a threat or result in harm to the public or the environment. A violation of a permit condition that establishes a synthetic minor emissions limitation is also considered a major violation. The major violation path of the mutual settlement program consists of the settlement conference letter, settlement conference, settlement proposal letter, and resolution as set forth in the COC. In the event that the settlement conference offer is rejected by the source, or if the settlement conference does not result in a prompt settlement of the violations, the APCD will refer the matter to the formal enforcement process, initiated with the issuance of a NOV, or, if appropriate, referral to the AGO for district court filing. Criminal matters shall not be included in the settlement path. A sample letter for major violations is included in Appendix J.

10.3.1 Settlement Conference Letter

Major violations shall result in the APCD sending a settlement conference letter to the source by certified mail, return receipt requested. The settlement conference letter is to inform the source of the facts of the violation, specify the penalties prescribed by the State Act and APCD's penalty policy for the violation of the regulations, and invite the source to discuss the major violation at an office conference, if so desired. The settlement conference letter shall specify 20 days during which the source may consider and either accept or reject the invitation for the settlement conference, after which time, if no response has been received from the source, the invitation will be deemed rejected. Rejection of the invitation for a settlement conference by the source will result in the APCD referring the case for formal enforcement resolution. The settlement conference letter shall state this fact to the source. The

settlement conference letter shall be in a form substantially similar to that found on the pages following discussion of the Major Violation Path.

10.3.2 Settlement Conference

A settlement conference is an informal meeting between the APCD and the source. The purpose of the settlement conference is to openly share with the source documentary and other support for the discovered noncompliance in an effort to mutually resolve the violation. The source may, but is not required to, present evidence in defense or mitigation. The APCD shall take into consideration all evidence presented by the source during the course of the settlement conference in attempting to develop a basis upon which the case can be settled.

Information produced at the settlement conference may cause the APCD to suggest that an additional settlement conference be held at a mutually agreeable time within the next 20 days. Such additional settlement conference sessions may take place so long as they are mutually agreed to, and seem productive to the APCD. If the APCD determines that additional settlement conferences do not seem productive, the APCD shall communicate this to the source with notice that the matter is being referred to formal enforcement process. If an agreement-in-principle on all substantive matters is not reached between the APCD and the source within 60 days, the APCD will refer the case to formal enforcement. Except in extraordinary circumstances, resolution of all major violations will occur within 90 days of the date of the settlement conference letter.

Information produced at the settlement conference may cause the APCD to draft a settlement proposal for review and approval by the appropriate settlement authority, as described in Section 1.4. If such is the case, the terms of such a settlement proposal shall then be communicated to the source in accordance with Section 10.3.3 below. If no such settlement proposal seems reasonably possible following the settlement conference, the APCD will refer the case to formal enforcement process.

Settlement conferences are not for the purpose of negotiating reductions to the monetary component, but may, where appropriate, take up the manner in which the monetary component was calculated, and alternatives to payment of a monetary component. Payment of any assessed noncompliance penalties is mandatory and cannot be mitigated through alternatives to payment.

10.3.3 Settlement Proposal Letter

Upon approval of the terms of the proposed settlement by the appropriate settlement authority, the APCD will communicate the terms thereof to the source within 15 days of the settlement proposal letter. The settlement proposal letter will specify 15 days during which the source may consider and either accept or reject the terms of the proposed settlement, after which time, if the source has failed to respond, the APCD shall deem that the offer was rejected.

10.3.4 Resolution

In the event a mutual settlement is reached, the terms shall be reduced to writing in a COC and signed by the source and the appropriate settlement authority. Resolution of the violation through a mutual settlement agreement shall not be deemed an admission of liability by the source, except where otherwise agreed to during the negotiation process, but will constitute a part of the source's compliance

history for any purpose for which compliance history is relevant under the State and Federal Acts. In the event a mutual settlement is not reached, the APCD will refer the case to formal enforcement process, commencing with the NOV issuance or, as appropriate, referral to the AGO for commencement of a district court action.

10.4 Settlement Considerations

Considerations for entering into a COC are based upon those circumstances listed in § 25-7-122, C.R.S., and in Section 10.4.1. below. The source may agree to perform a SEP in lieu of some portion of the monetary component of the agreement. The settlement shall contain a monetary component.

10.4.1 Monetary Considerations

The monetary component considerations of a settlement proposal consist of a violation category, the total factors component which consists of factors in aggravation, and factors in mitigation, as appropriate. Appendix H contains the monetary component calculation process. The elements of a civil penalty calculation for the settlement are as follows:

- violation category;
- non-Operating Permit sources, penalties are assessed per violation for each day of violation; Operating Permit sources, penalties are assessed for each violation of each day of violation;
- aggravating factors (to increase penalty):
 - violator's compliance history; if source has a previous noncompliance history, penalty will be increased by noted amounts,
 - good faith efforts on behalf of violator to comply after notice of the violation is received,
 - payment by violator of penalties previously assessed for the same violation,
 - economic benefit of noncompliance to violator,
 - impact on or threat to the public health or welfare or environment as a result of violation,
 - malfeasance, and
 - whether legal and factual theories were advanced for purposes of delay;
- mitigating factors (to reduce penalty):
 - voluntary and complete disclosure by violator of such violation in timely fashion after discovery of the noncompliance,
 - full and prompt cooperation by violator following disclosure of the violation including, when appropriate, entering into legally enforceable commitment to undertake compliance and remedial efforts,
 - existence and scope of regularized and comprehensive environmental compliance program or environmental audit program,
 - substantial economic impact of penalty on violator,
 - nonfeasance, and
 - other mitigating factors as appropriate; and
- early settlement reduction in penalty amount.

10.4.2 Noncompliance Penalty Calculation

The economic benefit to a source, listed in 42 U.S.C. § 7420, can be calculated using EPA's BEN model. This program calculates the penalty based on various inputs into it. The source is responsible for calculating any noncompliance penalty and submitting that to the APCD for verification and approval. See Appendix H for further NCP description. The APCD will provide appropriate guidance as necessary.

10.4.3 Settlement Agreement Documentation

If the source and APCD mutually agree, in writing, to the consequences of the discovered violation, the source and the APCD may waive further enforcement proceedings pending compliance by the source with the terms of the settlement agreement. In the event a mutual settlement is reached, the APCD and source will reduce the terms to writing in a COC (Appendix K), signed by the source and the appropriate settlement authority (see Section 5.1. of this Handbook).

11 NEGOTIATING AN ENVIRONMENTAL ENFORCEMENT ACTION

Negotiation is an art. It requires skill, integrity and an ability to think clearly under stress. Negotiating may be extremely dynamic or boring, but in any case, APCD negotiators must remain professional at all times. Most sources are defensive because they feel that they are not in control, that they have no power to negotiate. These cases require the APCD's negotiator to be reasonable and to compromise, and to make the source aware that the negotiations are intended to be a give and take process. A good negotiator requires good listening skills. Most people need to be heard; let the source speak. Active listening helps build rapport, a sense of trust, and mutual respect.

11.1 Overview of the Negotiation Process

- 11.1.1 Negotiation is a process whereby parties involved reached a consensus on how to settle their differences. The settlement is reduced to writing, usually called a COC, in a form that is legally enforceable.
- 11.1.2 The APCD's negotiations usually involved 3 steps: (1) internal negotiations involving the APCD's Legal Administrator, Supervisor of the Compliance, Monitoring and Enforcement Unit, and the inspector(s); (2) where necessary, negotiations with managers who will approve the settlement and commit the Division to implement the settlement's terms; and (3) negotiations with the source.
- 11.1.3 Negotiations should generally be viewed as a complex process to be managed, as opposed to a win-lose game, where one party triumphs over the other. A good negotiation, at a minimum, should maintain or improve the relationship between the APCD and the source, further environmental results, maintain the APCD's integrity and credibility, ensure prompt, full compliance and penalties for deterrence. The source's representatives need to become advocates to their employers in selling the negotiated settlement, and so the APCD's goal is to develop a sense of an ongoing partnership with the source.

11.2 Planning and Preparation

- 11.2.1 Determine facts, determine shortcomings if any in enforcement action, obtain all necessary information and determine limitations on ability to negotiate; e.g., noncompliance penalties (> \$5,000) cannot be negotiated per EPA, the air standard cannot be negotiated, compliance time frames can only be negotiated to a point.
- 11.2.2 Identify interests of each side, e.g., the APCD's interest in consistent treatment among enforcement actions, the desire or need to obtain civil penalties both as a deterrent to future noncompliance by the source as well as to maintain a credible enforcement program; the source's tax consequences for payments or activities "in lieu" of civil penalties, the source's desire not to be seen as a "bad actor," etc.
- 11.2.3 Identify mutual interests of both sides -- each party's concerns; e.g., compliance with the law, maintaining credibility, maintaining good public relations, developing a workable solution.
- 11.2.4 Identify risks of each side if negotiations fail, e.g. risks of going to trial, detrimental long-term relationship between source and APCD, as well as with local health departments.
- 11.2.5 Define Best Alternative to a Negotiated Agreement (BATNA); what is the best the APCD can do outside of a negotiated settlement? What is the best the source can do outside of a negotiated settlement?
- 11.2.6 Collect information at the negotiation table; disclose information about the APCD's strengths and the other party's weaknesses.
- 11.2.7 Develop credible proposals: (1) opening proposal that reflects the best justifiable position; (2) have fall back proposal; and (3) determine the lowest acceptable position that will terminate the negotiations. Decide on concessions that can be made as bargaining chips.

11.3 Negotiating at the Table

- 11.3.1 Opening statement - try to set a positive tone for the negotiation; start by getting everyone in an "agreeing" state of mind, e.g., "we want what you want, a quick resolution in a manner that ensures continued compliance with the air laws . . . we don't want to be back at the table negotiating with you over the same or similar noncompliance issues . . . we are cognizant that the APCD's and the source's relationship is long lasting and we want to do everything we can to ensure a cooperative relationship . . .," etc. Also, opening statement can be used to educate the source about what the APCD/local health department must have to settle the case.
- 11.3.2 The APCD's team must always maintain a unified front; any conflicts with the spokesperson's approach should be dealt with during a break.
- 11.3.3 Do not come to the table with the need to argue over and again whether a violation occurred. The APCD takes an enforcement action because it has determined that a violation occurred. Only in rare instances, where the source presents new credible information that demonstrates to the APCD that the violation did not actually occur, will the APCD dismiss the violation. Often,

the other side will use tactics to try to steer the negotiation into debates that do not belong at the negotiation table, e.g., “the APCD is unreasonable, overbearing, does not know how to take a Method 9 opacity reading,” etc. The APCD’s response should be to return the parties to the substantive issues being negotiated, usually the amount and form of the penalty, the form of the COC, enforceable milestones for compliance, alternatives to compliance with specific requirements (e.g., changing out solvent-based inks to water soluble products in an ozone nonattainment area).

- 11.3.4 The key to settlements is tradeoffs. The APCD usually assesses a one-time up-front civil penalty. A tradeoff to this may be a payment schedule, suspending a portion of the penalty either permanently, or a for a period of time during which, if another violation occurs, the suspended penalty becomes immediately due and payable (perhaps with an additional stipulated penalty due at the same time), or with a supplemental environmental project in lieu of the civil penalty payment. All parties to the negotiation should be constantly thinking of creating tradeoffs as the negotiation continues.
- 11.3.5 Defuse conflict and anger. Let the source’s representative vent until he or she runs out of steam; at the end, summarize or paraphrase the substance of what was said during the venting, and where appropriate, offer to carry the message back to the "higher ups." Empathize with the other side’s frustration or anger over the negotiations -- turn that frustration or anger into a mutual experience -- “we both want to settle this matter, we all need to work toward that goal . . .” If the anger seems feigned, be silent - do not react - suggest continuing to explore the substantive issues of settlement.
- 11.3.6 Feel free to ask for a caucus - judiciously. Leaving the room allows the source’s representatives to explore settlement offers and to change their positions outside the APCD's presence. A caucus may be necessary to let tempers cool. A caucus may be necessary to exchange information in response to the source’s presentation.
- 11.3.7 Establish and meet time frames for exchanging documents, information, written settlement proposals.
- 11.4 Avoid Negotiation Pitfalls
 - 11.4.1 Try not to use APCD or Department “policy” to justify the APCD’s position. It can be seen as an invitation to go over the negotiator’s heads to a higher up -- instead, explain the underlying rationale for the APCD’s position, provide useful arguments for the source to use in justifying the settlement offer to its management.
 - 11.4.2 If a policy is cited, be sure it is the most recent one, that it is legally supportable, and that it has not been interpreted in a manner contrary to the way it is being used in the current negotiation.
 - 11.4.3 Do not offer advice or expertise outside of the scope of the APCD’s/local health department's enforcement authority. Instead, refer the source to the appropriate agency/person.
 - 11.4.4 Know the APCD’s limitations/positions on negotiating substantive issues, e.g., civil penalties and SEPs.

11.4.5 Avoid obvious time wasting -- manage time well; do not get bogged down in trivial issues. Table issues for a later time where little or no progress is being made.

11.5 Negotiation Closure

11.5.1 Successful closure of negotiations should result in both sides feeling like there have been credible tradeoffs for mutual gains.

11.5.2 Successful closure of negotiations should mean that all meaningful issues essential to both sides have been addressed.

11.5.3 Successful closure of negotiations should result in both parties consciously deciding to jointly find a mutually acceptable settlement agreement -- at the end, there is no longer bargaining or haggling back and forth.

12 ALTERNATIVE SETTLEMENT OPTIONS

12.1 Monetary Penalties

The monetary component of a settlement offer is derived from the use of various methods of calculation. See Appendix H. These methods include a penalty schedule for specific violations; the BEN model computer program to calculate the economic benefit, or “noncompliance,” penalty; and factors to reduce or increase the penalty using certain statutory mitigation or aggravation factors.

12.2 Alternative Settlement in Kind

A non-cash settlement for goods and/or services with a monetary value can be used to offset some or all of a civil penalty, excluding the economic benefit component. Examples include: (1) production of a professional education video or training brochure on air pollution control or practices relevant to the type of pollution involved in a particular violation; (2) asbestos abatement services for a school district for asbestos-related violations; or (3) provision of employee training, e.g., asbestos certification training or certification training for persons performing service on refrigerator appliances regulated under the CFC program (AQCC Regulation No. 15).

12.3 An Alternative Settlement in Kind with No Monetary Value

An alternative settlement in kind with no monetary value, but that contributes to the good of the public health or environment may also be used in lieu of a portion of monetary penalties. These may include: (1) the in-house establishment of a comprehensive and regularized environmental assessment program; (2) establishment of a preventive maintenance program; or (3) public service programs.

13 SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In all settlements, the APCD will require that sources achieve and maintain compliance with all applicable regulations. In some instances, the settlement may include additional relief in the form of projects that remediate any adverse public health or environmental consequences of the violations at

issue, and/or demonstrate a commitment by the source to undertake environmentally beneficial expenditures, or SEPs. Whether the APCD decides to accept a proposed SEP as part of a settlement is purely within its discretion. Even though a project appears to satisfy all of the provisions of this policy, the APCD may decide for one or more reasons that a SEP is not appropriate, e.g., the cost of reviewing or overseeing the SEP is excessive, the SEP is not enforceable, or the source may not have the ability or reliability to complete the proposed SEP.

A SEP will not be approved if the source is otherwise legally required to perform the proposed SEP, that is, the SEP must not be required by any federal, state, or local law or regulation or administrative or court order. Further, SEPs cannot include actions which the source may be required to perform as injunctive relief, as part of a settlement or order in another legal action, or by state or local requirements.

SEPs are environmentally beneficial expenditures that may be used to offset some or all of a civil penalty, in accordance with the following discussion. SEPs may not be used to offset the economic benefit component of a monetary penalty. The cost of a SEP will exceed the total penalty amount, however, unlike a civil penalty, a SEP is considered a business expense and will lower tax liability. The APCD may consider allowing a SEP if: (1) violations are corrected through actions to ensure future compliance; (2) deterrence objectives are served by payment of a monetary penalty, which must include the economic benefit accruing to the source for noncompliance; and (3) there is an appropriate relationship between the nature of the violation and the environmental benefits to be derived from the SEP.

All SEPs must improve the injured environment or reduce the total risk burden posed to public health or the environment by the identified violations. SEPs are not intended to reward the violator for undertaking activities which are obviously in its economic self-interest (e.g., update or modernize a plant to become more competitive). Therefore, as a general rule, SEPs will usually not be approved when they represent a “sound business practice,” i.e., capital expenditures or management improvement for which the regulated entity, rather than the public, is likely to receive the substantial share of the benefits which accrue from it. The exception to this general rule is for a “pollution prevention project.” Although such projects are viewed as sound business practice since they are designed both to make production more efficient and reduce the likelihood of noncompliance, they also have the advantage of potentially providing significant long-term environmental and health benefits to the public.

13.1 Five Categories of Approvable SEPs

The APCD considers the following five (5) categories of projects for potential SEPs, subject to meeting the criteria set forth in this document.

13.1.1 Pollution Prevention Projects

A pollution prevention project substantially reduces or prevents the generation or creation of pollutants through “source reduction,” e.g., by changing industrial processes or substituting fuels or raw materials, or through application of closed-loop processes, thereby reducing the amount of any pollutant entering any waste stream or otherwise being released into the environment prior to recycling, treatment or disposal. A project which substantially reduces the discharge of generated pollutants through innovative recycling technologies may be considered a pollution prevention project if the pollutants are

kept out of the environment in perpetuity. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are return directly to production as raw materials on site is considered a pollution prevention projection.

13.1.2 Pollution Reduction Projects

A pollution reduction project is defined as a project which goes substantially beyond compliance with permit or regulatory limitations to further and substantially reduce the amount of pollution that would otherwise be discharged into the environment. Where a pollutant or waste stream already has been generated or released, a pollution reduction approach (recycling, treatment, containment, or disposal techniques) may be appropriate, so long as it does not create an increased or adverse cross-media impact. Examples include through: (1) a project that reduces the discharge of pollutants through more effective end-of-pipe or stack removal technologies; (2) improved operation and maintenance; or (3) recycling of residuals for use as raw materials in production off-site, thereby reducing the need for treatment, disposal, or consumption of energy or natural resources.

The APCD may approve a pollution reduction project for an accelerated compliance project. For instance, assuming there is a statutory or regulatory schedule for pollution phaseout or reduction, if a regulated entity proposes to complete phaseout or reduction at least 24 months ahead of time, and such proposal can be demonstrated to result in significant quantifiable pollution reduction, the APCD may approve the proposal if it meets all the criteria set forth in this document. If a source substitutes a material for one being phased out, it has the burden to demonstrate that the substance provides a significantly reduced adverse impact to the environment; otherwise, no SEP will be allowed for that project proposed. Obviously, the costs of the to-be-required controls cannot be used to offset the civil penalty, rather, the costs associated with the early imposition of those controls will constitute the offset costs.

13.1.3 Remediation Projects (Environmental Restoration Projects)

An environmental restoration project is one that not only repairs the damage done to the environment because of the violation, but which goes beyond repair to enhance the environment in the vicinity of the violating facility. A remediation or mitigation project can only be used to resolve violations at the violating facility subject to the enforcement action. To allow mitigation at another facility would effectively give a company a penalty break for violations at one facility for undertaking what amounts to legally required compliance efforts at another facility. This would reward recalcitrance, poor management practices, and noncompliance. Examples of approvable projects include: (1) reductions in discharges of pollutants which are not the subject of the violation to an affected air basin or watershed; (2) restoration of a wetland along the same avian flyway in which the facility is located; and (3) development of a conservation program or protecting habitat critical to the well-being of a species endangered by the violation.

13.1.4 Environmental Auditing Projects

The two types of projects approvable by the APCD under this category are: (1) pollution prevention assessments; and (2) environmental management system audits. These SEPs can only be approved where the source commits to provide the APCD with copies of all assessments and reports,

and may include implementation requirements. Environmental auditing that merely represents general good business practices are not acceptable SEPs.

Pollution prevention assessments are systematic, internal reviews of processes and operations designed to identify opportunities to reduce the use, production and generation of hazardous and other pollutants, and must reduce the likelihood of future violations.

An environmental management system audit is an independent evaluation of a party's environmental policies, practices and controls. Such evaluation may encompass the need for: (1) a formal corporation environmental compliance policy, and enforceable procedures for implementation of that policy; (2) educational and training programs for employees; (3) equipment purchase, operation and maintenance programs; (4) environmental compliance officer programs; (5) budgeting and planning systems for environmental compliance; (6) monitoring, record keeping and reporting systems; (7) in-plant and community emergency plans; (8) internal communications and control systems; and (9) hazard identification and risk assessment.

13.1.5 Enforcement Related Environmental Public Health or Awareness Projects

Public awareness projects are defined as publications, broadcasts, or seminars which underscore for the regulated community the importance of complying with environmental laws or disseminate technical information about the means of complying with environmental laws. They provide necessary training and technical support to: (1) identify, achieve, and maintain compliance with applicable regulatory requirements; (2) avoid violations; and (3) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. Permissible public awareness projects may include sponsoring industry-wide seminars directly related to correcting widespread or prevalent violations within an industry, e.g., a media campaign funded by the violator to discourage fuel switching and tampering with automobile pollution control equipment or one which calls for the violator to organize a conference or sponsor a series of public service announcements describing how violations were corrected at a facility through the use of innovative technology and how similar facilities could also implement these production changes. Where the violator lacks the necessary expertise to perform these SEPs, the SEP must require the source to contract with an appropriate expert to develop and implement the project.

A public health project provides diagnostic, preventative, and/or remedial components of human health care related to the actual or potential damage to human health caused by the type of violation cited against the violator. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment and rehabilitation therapy.

Violators who fund or implement public health and awareness projects must also agree to publicly state in a prominent manner that the project was undertaken as part of the settlement of an enforcement action brought by the APCD. The APCD will closely scrutinize these projects to ensure that they fulfill the legitimate objectives of this policy in all respects.

13.2 Main Beneficiary of a SEP

The APCD's sole interest in considering SEPs is to ameliorate the adverse public health and/or environmental impacts of violations. Projects are not intended to reward the violator for undertaking activities which are obviously in its economic self-interest. Therefore, although a SEP may benefit a violator, there must be no doubt that the primary beneficiary is the public health and/or the environment.

13.3 SEPs for Studies

SEPs for studies will not be allowed without an accompanying commitment to implement the results. First, little or no environmental benefit may result in the absence of implementation. Second, it is also quite possible that this type of project is one which the violator could reasonably be expected to do as a sound business practice.

13.4 Extent to Which a SEP Can Offset a Penalty

Expenditures on SEPs may generally be used to offset up to 80% of a civil penalty assessed, but cannot be used to offset any portion of the economic benefit portion of the penalty assessment. For small businesses, governmental entities, and nonprofit organizations, this percentage may be as high as 100%. The SEP costs shall equal 150% of the amount of the civil penalty that it is allowed to offset (e.g., if the penalty amount is \$140,000, with \$40,000 representing the economic benefit portion, the SEP may offset up to \$80,000, and the SEP expenditures must equal approximately \$120,000). This 1 to 1.5 ratio of civil penalty to SEP cost recognizes the favorable tax treatment and public relations benefit associated with SEP expenditures. Credit for a SEP cannot be given for a project planned or initiated before the enforcement action was initiated because it credits a project that would have been undertaken anyway.

The extent to which the APCD will allow penalty mitigation depends on whether and how effectively the SEP achieves each of the following objectives. The better the performance of the SEP under each of these factors, the higher the APCD may set the mitigation percentage.

- 13.4.1 Benefits to the Public or Environment at Large: While all SEPs must meet this objective, those that result in significant and quantifiable reduction in discharges of pollutants to the environment and the reduction in risk to the general public will be considered by the APCD in allowing greater penalty mitigation.
- 13.4.2 Innovativeness: SEPs that further the development and implementation of innovative processes, technologies, or methods to more effectively reduce the generation, release, or disposal of pollutants, conserve natural resources, or promote compliance, including technology forcing techniques, will be considered by the APCD in allowing greater penalty mitigation.
- 13.4.3 Environmental Justice: SEPs that perform well in this area will mitigate damage or reduce risk to minority or low income populations which may have been disproportionately exposed to pollution or are at environmental risk, will be considered by the APCD to mitigate the penalty.
- 13.4.4 Multimedia Impacts: SEPs that perform well in this area will reduce emissions to more than one medium.

13.4.5 Pollution Prevention: SEPs performing well in this area will develop and implement pollution prevention techniques and practices.

13.5 Legal Guidelines for Negotiation SEPs

All approvable SEPs must have an adequate relationship between the violation and the proposed project. This relationship exists if the project remediates or reduces the probable overall environmental or public health impacts of risks to which the violation contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. For example, asbestos related violations can be resolved through SEPs involving asbestos related SEPs and the same reasoning applies for CFC violations. Resolution of violations concerning hazardous air pollutants should involve SEPs that prevent, reduce, or otherwise address hazardous air pollutant emissions. With regard to the criteria pollutants, the APCD will consider SEPs that address a different pollutant than that specifically involved in the violation, so long as all other criteria are met. Additionally, the primary impact of the SEP must occur in the same airshed or within the immediate geographic area as that of the violation.

A project must advance at least one of the declared objectives of the State or Federal Act, and cannot be inconsistent with any underlying statute. Further, a SEP cannot involve the commitment to of the source do an activity or meet an objective that the source is already required to do under any statutory or regulatory requirement, and will not be approved for any initiative that the source had begun or proposed to do prior to the commencement of the enforcement action.

The APCD may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP, nor may the APCD retain authority to manage or administer the SEP. Further, the APCD will not approve SEPs that require the source to fulfill a function that the APCD is otherwise required by statute to do. The APCD may provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement, and will retain legal recourse if the SEP is not adequately performed.

The SEP must be set forth in sufficient detail in a signed settlement agreement. The APCD will not enter into agreements where the source agrees to spend a certain sum of money on a SEP to be determined at a later time.

13.6 Drafting Enforceable SEPs

The settlement agreement must accurately and completely describe the SEP, including the specific actions to be performed and providing for a reliable and objective means to verify that the violator has timely completed the project. To the extent feasible, the violator should be required to quantify the benefits associated with the SEP, and provide the APCD with a report describing how the benefits were measured or estimated. The agreement should require that whenever a violator publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action. A SEP settlement format is found in the sample COC attached at Appendix J.

13.7 Failure of a SEP and Stipulated Penalties

If a SEP is not completed satisfactorily, the violator should be required to pay stipulated penalties for its failure. If the SEP is not completed satisfactorily, a substantial penalty is required, e.g., between 50 to 100% of the amount by which the settlement penalty was mitigated on account of the SEP. If good faith and timely efforts to complete the project were made, and the violator certifies, with supporting documentation, that at least 90% of the money which was required to be spent was spent on the SEP, no stipulated penalty is necessary. If the SEP is satisfactorily completed, but the violator spent less than 90% of the amount of money required to be spent for the project, a small stipulated penalty should be required, e.g., 10 to 25% of the amount by which the penalty was mitigated by the SEP. The determination of whether a SEP has been satisfactorily completed is in the sole discretion of the APCD.

14 FORMAL ENFORCEMENT PROCESS

14.1 Administrative Enforcement

14.1.1 Notice of Violation

Section 25-7-115(2), C.R.S., requires the APCD to “act expeditiously and within the time prescribed by law” to issue a NOV to a source after the discovery of a violation. The Asbestos Unit is not required to issue a NOV, but can go directly to a final decision in the form of a compliance order. Section 25-7-123.1, C.R.S., establishes the statute of limitations (“the time prescribed by law”) within which an enforcement action must be commenced from the date of discovery of a violation as 18 months, but in no event later than five (5) years from the date of occurrence of the violation. The 18-month time frame does not apply to “knowing” criminal violations, nor to violations of any order, prohibition, or requirement of an operating permit, and the 5-year statute of limitation does not apply to violations that are knowingly or willfully concealed by the violator. Despite these statutory time frames for commencing an enforcement action, by issuing a NOV or filing a complaint in court, the APCD and the local agencies, via the “Local Capacity Project,” have agreed to a 30-day time frame after discovery of the violation within which to draft a NOV and a 60-day time frame within which to finalize the draft NOV.

Section 25-7-115(2), C.R.S., provides that the notice “shall specify the provision alleged to have been violated or not complied with and the facts alleged to constitute the violation or noncompliance.” These factual basis and legal conclusions required by the statute are referred to in the NOV as “alleged findings of fact” and “alleged conclusions of law.”

The Stationary Source Program Manager reviews the adequacy of the facts presented in a separate memorandum by the supervisors of the three (3) affected units (Compliance, Monitoring and Enforcement Unit, CFC Unit, and Asbestos Unit), as a prerequisite to commencing a formal enforcement action. The “facts” are the underpinnings to a determination that a violation of some statutory or regulatory provision actually occurred. A fact is a thing done, an action performed, an event or circumstance. The facts that need to be included in a NOV are those that answer the question: what circumstances lead to the conclusion that a specific law has been violated by a specific source on a specific date(s)? For example, the minimum factual underpinnings that an asbestos abatement regulation has been violated are: (1) that the abatement project occurred in an area of “public access;” (2) that the amount of asbestos abated was in excess of a statutory de minimis level; (3) that the asbestos

was "friable;" and (4) the inspector observed something that made him/her believe that a regulatory requirement was being violated, (e.g., the general abatement contractor had not obtained state certification, or the contractor left behind big chunks of asbestos behind a toilet after clearing the project, or the inspector did not observe an asbestos abatement permit on the job site, asked the project manager where the permit was and was told that no permit had been obtained for the project).

The NOV can be regarded as a "notice" pleading. A notice pleading puts the violator on notice of the facts that lead to the conclusion that a law has been violated in the enforcement action. To avoid issues of adequacy of notice, NOV's should contain all relevant facts that support the conclusion that a violation has occurred. At a minimum, the NOV should include:

- date, time, and place (including a description of rooms or areas inspected) of the inspection;
- name and title of the inspector(s); and
- in detail, what was observed.

Where the factual basis for a violation involves opacity or odor, the NOV should include a statement that a copy of the visible emissions report or the odor reading was provided to the source at the time of the inspection.

The NOV must also specify the law that is alleged to have been violated. The laws pertaining to the NOV's are the air quality regulations and statute. Legal conclusions found in the NOV are those determinations that specific laws have been violated based upon the factual findings set forth in the NOV. For example, an observation that visible emissions from an asphalt plant stack averaged 40% opacity over a 6-minute reading, performed in accordance with Method 9, forms the factual basis for the legal conclusion that the asphalt plant was in violation of the Regulation No. 6 NSPS standard of 20% opacity for such plants. The Legal Administrator reviews the NOV for legal adequacy prior to its issuance. A sample NOV is found at Appendix L.

Within 30 days of sending out the notice, which must be sent via certified mail, the APCD must hold an NOV conference. The NOV conference is informal, the alleged violator may or may not bring legal counsel, and the conference itself is taped. The conference provides an opportunity for the source to submit data, information, and arguments on its behalf, and allows the APCD to determine whether a violation in fact occurred, or whether the source has been able to satisfactorily explain the facts to the APCD's satisfaction that a violation did not occur.

14.1.2 Compliance Order

If, after the NOV conference, the APCD determines that a violation or noncompliance did occur, a CO is issued via certified mail. The CO must contain the same degree of specificity as contained in the NOV. Section 25-7-115(3)(c), C.R.S., provides that the order shall set forth with specificity the final determinations of the APCD regarding the nature and extent of the violation or noncompliance ("finding of fact") and shall also include, by reference, a summary of the proceedings at the conference held after the NOV, as well as an evaluation of the evidence considered by the APCD in reaching its final determination ("conclusion") of law. For example, a source might argue at the NOV conference that an opacity violation did not occur because the inspector's visible emissions reading was taken during an upset condition, which if established by the source would excuse a violation of the opacity standard. The CO would state that the source asserted that an upset condition was present and, if

appropriate, would also state that a written upset report was never filed with the APCD, an oral upset report was never phoned in, and the plant was continuing to operate despite the asserted upset condition. All of these facts would obviate an upset condition as an excuse to a violation. The Asbestos Program terms its compliance order a Compliance Determination Letter. It has the same legal requirements and significance as a CO.

The Legal Administrator reviews the CO for legal and factual adequacy prior to its issuance; the Stationary Source Program Manager and the Director of the APCD both must review and sign the CO. A sample CO is found at Appendix M.

14.2 Civil Court Enforcement Actions

Civil enforcement actions are judicial actions taken against a source when violations are determined to be serious enough to warrant seeking injunctive relief and/or court-ordered civil penalties or remedies when a previously-issued CO has been violated. The APCD has responsibility for identifying situations that warrant such action and assisting the AGO in preparing a case. The district court can assess penalties and/or order a source to take specific action (e.g., comply with a CO or to cease a prohibited activity).

The inspector, supervisor of the unit, and the Legal Administrator will consider several factors to determine which cases should be referred to the AGO for judicial action. These factors include:

- evidence of a significant violation of a cease and desist order, a CO, or an air quality regulation, and where appropriate, failure to respond to a § 25-7-111(2)(i), C.R.S., letter;
- the ability to prove the violations convincingly in court;
- the source's compliance history;
- the environmental harm, or threat of harm, resulting from the violations;
- the harm, or threat of harm, to public health from a source's emissions;
- the "welfare" effects, e.g., those effects that constitute a public nuisance, of a source's emissions; and
- the strategic value of the case, including its likelihood of deterring others from violating similar requirements.

After a case is selected for civil referral by the APCD, an informal consultation with the AGO takes place to insure that the case has legal merit. The decision to proceed then escalates to the Stationary Sources Program Manager, where technical, policy, and legal resource implications are considered. If appropriate, the case is then referred in writing to the AGO. The AGO then determines the legal basis for a district court filing, and if it determines the case is appropriate for such filing, the AGO prepares the necessary documents to be filed in district court. Once a case is filed in court, the AGO is responsible for progress and resolution of the case, although the APCD participates in and decides proper settlement options.

14.3 Criminal Enforcement Actions

A criminal enforcement action is distinguished from a civil enforcement action on the basis of "criminal intent" or "knowing violation" associated with the violation. The APCD considers several

factors to be appropriate in determining when violations should be addressed through criminal actions. These factors include:

- willfulness of the violation;
- point of knowledge of the violation;
- nature and seriousness of the violation;
- need for deterrence;
- compliance history of the violator;
- adequacy of the evidence; and
- adequacy of penalties and sanctions available through the administrative or civil enforcement process.

In order to successfully prosecute a criminal case, the State must provide proof beyond a reasonable doubt that the violation occurred through intentional, willful, knowing, or negligent action of the violator. Upon conviction, a sentence which includes penalties would be assessed by the court, based on, among other considerations, its perceptions of the harm, damage, or potential threat which are attributable to the violation. The following are specific examples of criminal violations:

- falsely certifying, on an Operating Permit compliance certification, that a source is in compliance with all requirements;
- tampering with a monitoring device to conceal emissions;
- destroying production records that are required to be kept in order to conceal that a source is operating above permitted levels;
- failure to pay operating permit fees after notice;
- knowing violations of the requirement to obtain an operating permit, or of requirements contained in an operating permit; and
- knowing releases of hazardous air pollutants, where such releases also knowingly put another person in imminent danger of death or serious bodily injury.

Whenever a suspected criminal violation is discovered, it should immediately be discussed with the supervisor of the unit, Legal Administrator, and Program Manager. After their concurrence, the Department's management should be consulted and, if approved, a referral made to the AGO. Any referral to the AGO will be in writing.

Because of the limited resources for criminal case development and prosecution, and the serious nature of a criminal conviction, the State must exercise careful judgment in the selection of cases for application of criminal sanctions. The following factors are to be considered in selecting cases:

- the nature and seriousness of the offense, including:
 - potential threat to public health,
 - duration of the conduct,
 - quality of the air,
 - toxicity of the pollutants, and
 - knowledge or negligence of the violator;
- the impact on the APCD's regulatory function, for example, does submittal of false data affect the APCD's decision-making ability;
- the need for deterrence; and

- the compliance history of the source.

Criminal violations subject an entity to a fine anywhere from \$12,500 per violation to \$2 million per violation, depending on the severity of the violation (as set forth in the statute) as well as the “knowing” nature of the violation.

APPENDICES

APPENDIX A ENFORCEMENT AND SETTLEMENT FLOW CHART

APPENDIX B INSPECTION POLICY

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Air Pollution Control Division
Stationary Sources Program
Field Services Unit

Source Inspection Procedures

The purpose of this document is to provide guidance on how to conduct a source inspection and how to prepare the inspection reports. This document is written in an effort to standardize the inspection procedures and reporting requirements for all sources (Title V, Synthetic Minor or True Minor) and is designed as guidance for all field personnel at the state and local level.

The basic purpose of the source inspection is to determine whether or not the source is complying with all applicable regulations, permit conditions, compliance plans, compliance certifications and monitoring requirements. The inspection report is to be constructed in such a manner to convey information concerning compliance with applicable requirements in a written format. The EPA Clean Air Act Compliance / Enforcement Guidance Manual specifies that there are five levels of inspection, of which Level 2 is considered to be the minimum compliance determination inspection. A description of the five types of inspection is as follows:

Level 0 is a “drive-by” inspection conducted off of the source’s property and is insufficient for compliance determination.

Level 1 is an on-site inspection limited to the evaluation of visible emissions and is recommended only to enforce opacity standards.

Level 2 is an on-site inspection which includes evaluation of visible emissions, evaluation of the process equipment, evaluation of control equipment, evaluation of monitoring equipment, and a review of all applicable process records which may include fuel use, production information, emissions data, upset reports, excess emissions reports, and startup and shut-down logs.

Level 3 is an on-site inspection which requires the measurement of all control device operating parameters.

Level 4 is an on-site inspection which requires the monitoring of operating parameters and emissions through stack testing.

The Colorado Air Pollution Prevention and Control Act, Section 25-7-111 (2)(c) authorizes facility entry for the purpose of inspection:

(2) In addition to authority specified elsewhere in this article, the division has the power to:

Enter and inspect any property, premises, or place for the purpose of investigating any actual, suspected, or potential source of air pollution or ascertaining compliance or noncompliance with any requirement of this article or any order or permit, or term or condition thereof, issued or promulgated pursuant to this article; and the division may, at reasonable times, have access to and copy any record, inspect any monitoring equipment or method, or sample any emissions required pursuant to section 25-7-106(6) or part 5 of this article...

Any inspection should include pre-inspection preparation and on-site inspection activities as follows:

I. Pre-inspection Preparation:

A. File Review

1. Review all permit conditions and modifications for the source (construction permits and Title V permits)
2. Review Title V semi-annual and annual compliance reports
3. Review previous inspection reports
4. Review upset condition reports and EERs
5. Review compliance certifications on file
6. Review compliance plans on file and/or the compliance plan overview
7. Review monitoring plans and requirements
8. Review latest stack test data/reports
9. Review compliance history including compliance orders on consent for requirements
10. Review applicable regulations
11. Completion of the pre-inspection template
12. Copy documents as necessary for field use including inspection checklists if available
13. Review record keeping / reporting requirements and verify completeness and accuracy
14. If the inspector is not familiar with the source type, review technical manuals or other documents which describe the process (i.e, guidance documents, source checklists)

B. Planning of Inspection

1. Determine if the inspection will be announced or unannounced - some sources may have to be scheduled ahead of time due to complexity or other factors
2. Identify source contacts, arrange inspection appointment, and schedule car

3. Identify and gather necessary equipment (gas bottles, safety equipment, etc.)
4. Target points and areas to inspect based on information in the file; prepare a list of routine operating records and logbooks which should be verified during the inspection

II. On-site Activities:

A. Pre-inspection Meeting

1. Identify the purpose of the inspection and areas or processes to be inspected
2. Identify records needed for the inspection
3. Identify any changes made to the source since the last inspection (i.e., physical modifications, staff changes, policy changes)
4. Discuss any issues that may be of concern based on the file review - may include complaints, outstanding compliance issues, settlement agreements, etc.

B. Tour Facility

1. When on site, observe all plant safety rules and participate in briefings that the plant may offer to visitors. You may sign the visitor's log upon entry and exit from the plant, but do not sign a waiver of liability or confidentiality.
2. Conduct any necessary Method 9 visible emissions observations of the source. These observations may be made prior to plant entry, during or after the facility tour.
3. Conduct any necessary odor observations of the source. It is recommended that odor observations be made prior to plant entry to avoid becoming "desensitized" to any odor which may be present.
4. Inspect all emission points and control equipment; make flow diagrams or sketches for future reference; inspect changes to the source discussed during the pre-inspection meeting. Note any emission points or processes which have not been permitted.
5. Note production rates of process equipment; identify and record relevant instrument readings of process and control equipment.
6. Inspect CEMs and other monitoring equipment; note instrument readings.
7. Conduct records review including process rates, hours of operation, material consumption, fuel usage, emissions/monitoring data, verify calibration

procedures, MSDS information, maintenance records, and other records as needed. Record information as needed.

C. Post-inspection Meeting

1. Summarize the results of the inspection
2. Ask questions to clarify any outstanding issues discovered during the inspection
3. Identify potential or actual problem areas
4. Provide source with the opportunity to ask questions concerning the inspection or other matters
5. Discuss follow-up actions by the Division which might include:
 - a. another inspection
 - b. a letter asking for more information
 - c. a stack test
 - d. possible enforcement action
 - e. additional inspections

D. Post-inspection Office Activity

1. Prepare for another inspection if necessary
2. Draft letter requesting more information
3. Consult with permit review engineer concerning permit issues
4. Complete inspection report
5. Prepare NOV or assist the legal administrative specialist to prepare a compliance order on consent if enforcement action is appropriate

Inspection Report

The Division is in the process of developing inspection templates for most source categories which require permits. (The inspection template is expected to include check off forms for the pre-inspection office preparation so that all necessary information is reviewed prior to the on-site inspection.) The following information should be included in the inspection report which may be relevant to determining the continuous compliance status of a source.

I. Field Inspection Template and Inspection Checklist(s)

- A. Source information including source name, source ID, permit number(s), location, contact name, date of inspection, and type of inspection
- B. Inspection checklist(s) - forms for various types of process or control equipment which the Division has developed to include specific information about the type of process or control equipment
- C. Narrative - the written section of the report which allows the inspector to expand discussion of information relevant to the inspection. The narrative may include the following information:
 - 1. Process description(s) with emission points and with corresponding permit numbers
 - 2. Production rates, fuel usage, material consumption - compare to permit requirements
 - 3. Pollutants emitted from each emission point
 - 4. Control equipment type, operational parameters, condition and maintenance, and instrument readings
 - 5. CEM instrument readings and/or other monitoring equipment parameters - compare to permit requirements
 - 6. Comparison with permit and regulatory requirements and compliance status of each point
 - 7. Comments concerning review of records and documentation supplied by the source
 - 8. Statements made by source representatives during the inspection
 - 9. Note the follow-up action to be taken by the source and/or the Division concerning the inspection
 - 10. Inclusion of supporting documentation such as VEO forms, odor observations, copies of source records, semi-annual compliance reports, etc.
 - 11. Complete calculations, if necessary, to determine compliance status.
 - 12. Summary statement concerning the compliance status of the source. Note: if the source is subject to terms of an ongoing settlement agreement, compliance with the terms of that agreement must be included in the inspection report as well.

APPENDIX C EPA'S INSPECTION PROTOCOL

United States
Environmental Protection Agency

Air and Radiation
(EN-341 W)

EPA340/1-91-007
June 1991

EPA

Inspection Protocol and Model Reporting Requirements For Stationary Sources

EPA 340/1-91-007

INSPECTION PROTOCOL AND MODEL REPORTING REQUIREMENTS FOR STATIONARY
SOURCES

U.S ENVIRONMENTAL PROTECTION AGENCY
Office of Air and Radiation
Office of Air Quality Planning and Standards
Stationary Source Compliance Division
Washington, DC 20460

June 1991

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SECTION 1 INTRODUCTION

This protocol provides guidance to EPA and State inspectors and supervisory staff in preparing for, conducting, evaluating, and reporting onsite compliance determination inspections. It applies to State and EPA permit inspections and state overview inspections of any stationary source, except asbestos demolition/renovation.

The EPA Clean Air Act Compliance/ Enforcement Guidance Manual' specifies five levels of EPA inspections, of which Level 2 is considered to be the minimum compliance determination inspection. Additionally, the Compliance Monitoring Strategy (CMS) requires that the quality of compliance inspections be Level 2 or higher.

This protocol presents the minimum requirements to ensure Level 2 inspections. It is aimed at developing consistency among EPA inspectors in terms of the level of inspections conducted and information reported. EPA encourages State and Local inspectors to use this protocol. It identifies the activities that would ensure a thorough and complete inspection for the determination of compliance with applicable regulations.

Level 2 requires an on-site inspection, in which current control device and process operating conditions are recorded in addition to visible emission observations. It requires a review of existing records and log books on source operations, recording such process information as raw material and process throughput and compositions, and recording control equipment design and gas flow parameters. It does not require the actual measurement of process or flue gas conditions.

Of the remaining EPA inspection levels, Level 0 is a “drive-by” inspection conducted off the source’s property and is insufficient for compliance determination. Level 1 is an on-site inspection limited to the evaluation of visible emissions and is recommended only to enforce opacity standards. Levels 3 and 4 are significantly more complex and are designed to provide detailed engineering analyses of source compliance. Level 3 requires the measurement of all control device operating parameters, whereas the monitoring of operating parameters and emissions through stack testing is a requirement of Level 4.

EPA inspectors who conduct Level 2 inspections must meet the requirements of the Air-Specific Inspector Training Plan (ITP) developed by SSCD. These requirements include a combination of classroom training and -on-site on-the-job training with an experienced inspector in inspection techniques and safety procedures. EPA Order, “Training and Development for Compliance Inspections/Field Investigators,” Classification No. 3500.1, June 29,1988, establishes an Agency-wide training and development program for employees leading environmental compliance inspections/field investigations. It applies to all EPA personnel who lead or oversee the conduct of compliance inspections/field investigations, and is advisory to State and local agencies. Applicable health and safety training and respiratory protection are defined in EPA Orders 1440.2 and 1440.3.

Chapters 2 and 3 of this report present the procedures for conducting a Level 2 compliance inspection grouped into the pre-, on-site-, and post-inspection activities. These activities are intended to ensure that:

- The compliance status of each source to be inspected is determined in a credible manner

- A source in violation of regulated or permitted emissions is not overlooked
- Sources determined to be in compliance with applicable emission limitations have been thoroughly and completely evaluated

In any type of inspection, a listing of all activities to be performed in an inspection allows the inspector to check and verify that the preparation for and the conduct of the actual on-site inspection are thorough and complete.

Example checklist forms for various inspection activities are presented in the appendices. They can be partially completed prior to the on-site inspection and referred to during all phases of the inspection to ensure that the minimally acceptable data is obtained.

A model post-inspection report that summarizes the findings and recommendations following a Level 2 inspection is discussed in Chapter 4. All of the relevant data that must be documented in support of a compliance determination are indicated and a standard data presentation form is suggested. The use of this model report is recommended in order to maintain consistency among the EPA inspectors nationwide when reporting compliance evaluations. It is also recommended for state and local inspectors to simplify and standardize reporting for review purposes.

It is expected that inspectors, after becoming completely familiar with the inspection activities indicated in this report, will be able to routinely use the standard forms and the model inspection report to ensure thorough and complete compliance evaluations.

Those individuals interested in learning the details of various other inspection activities should refer to the references presented in Chapter 5.

SECTION 2

PRE INSPECTION PREPARATION

Prior to an on-site inspection, the inspector must become as familiar as possible with the facility to be inspected. If the time spent on-site is to be effective and efficient, the inspector must be familiar with all process emission points to be evaluated and the applicable regulations and permit conditions. The pre-inspection process involves a review of all available background information on the source and assembly of the required inspection material.

As shown in Figure 2.1, preinspection preparation can be divided into four phases, each involving several activities. They are: 1) Establishment of Inspection Objectives/Scope, 2) Review of Background Information Source Files, 3) Review of Regulations and Compliance History, and 4) Assembling of Inspection Material.

Once the necessary pre-inspection activities are completed, the inspector may assemble and arrange all the information pertinent to the actual inspection in a manner most suitable to the individual's liking. The inspector will use such information to review and verify the data obtained during the actual on-site inspection.

2.1 ESTABLISH INSPECTION OBJECTIVES/SCOPE

Typically, inspections of stationary sources are conducted to determine if the source is in compliance with the applicable regulations. Inspections are also conducted to obtain information necessary for verifying the appropriateness of reissuing of any operating permit.

When EPA conducts an inspection to determine compliance with any federally enforceable emission standard or limitation, EPA must give the State or local air pollution control agency reasonable prior notice of the inspection.

Defining specific objectives initially in preparation of on-site inspections establishes the correct framework for conducting the entire inspection process. The inspector will:

- Determine what portions of the facility must be emphasized during the inspection
- Prepare a list of the operating records and logbooks which should be requested during the preinspection meeting
- Review any permit conditions or stipulations which should be verified during the inspection

2.2 REVIEW SOURCE FILES

The source-specific files typically available from the EPA Regional offices and State agency offices provide background information on the source and are an effective way of preparing for on-site inspection. In order to identify previous enforcement activity at the site, reviewing the existing records from the last inspection is essential.

Figure 2.1. Stationary Source Pre-inspection Flow Chart

Establish Inspection Objectives / Scope

Review Source Files

- # Process/Pollutant Data
- # Previous Inspection Reports
- # Previous Enforcement Actions

Review Regulations

- # SIP Units
- # NSR Limits
- # NSPS NESHAP Limits
- # Alternative Compliance Plans (Equivalency or Bubbles)
- # Source, Control Device, and CEM Inspection Manuals
- # Compliance Methods
- # Applicable AP-42 Sections

Assemble Inspection Material

- # Applicable Operations Data Sheets
- # Applicable Control Device Data Sheets
- # Pertinent Information from:
 - Source and Control Device Specific Inspection Manual
 - CEM Inspection Manual
 - EVE Data Sheets
- # Personnel Protection Equipment
- # Sampling Equipment (for VOC sources)
- # Camera / Notebook / Pencils / Stopwatch / Rash Light

Pertinent data available may include: current and out of date permits; applicable regulations; emission test reports; correspondence, such as prior contacts with source personnel; previous enforcement actions, such as notices of violation; dates of construction or replacement of equipment potentially subject to NSPS; and process, control equipment, and pollutant related information.

2.2.1 Availability of Source Files

Inspectors will have access to EPA's Aerometric Information Retrieval System's Facility and Air Quality Subsystems (AIR/AFS/AQS), a computerized data base containing information on source compliance and emissions. Other sources include CDS and NARS.

Nearly all State and some local agencies have computerized data bases containing emission, permitting, and compliance information on sources in their jurisdiction. Some agencies maintain separate data bases for emissions inventory information and compliance data. Paper files on a source may exist at both Headquarters and Regional offices. In some States, detailed permitting information resides in one location while inspection information is located elsewhere.

EPA Inspectors should seek guidance from their supervisors before contacting a State or local agency for information acquisition. They may conduct a telephone search for potentially useful files at State and local agencies before visiting offices where files are known to exist.

2.2.2 Process Information

The primary information of concern includes facility process descriptions, pollutants emitted by each process, emission points, and associated control equipment. Typical information on process operating parameters that may be obtained from source files consist of such items as feed rates, temperatures, and raw material compositions. The most relevant information on control equipment includes design capture and control efficiencies, gas volume flow rates, emission rates, and specific control equipment parameters.

2.2.3 Previous Inspection Reports

Previous inspection reports, stack test reports, and correspondence between the regulatory agency and the source provide sources of information for identifying non-compliance problems and changes made to rectify these problems. Baseline emission test and inspection data will include operating parameters that should be noted for comparison to the observations made during subsequent inspections. Additionally, upset reports and excess emission reports will identify previous problems and provide focal points for the inspection.

2.2.4 Previous Enforcement Actions

The inspector should examine if any enforcement action has been taken against the facility such as issuance of a notice of violation, Compliance Orders, etc., and if it resulted in any remedial or corrective actions.

2.3 REVIEW REGULATIONS AND OTHERS

The source files may also provide information on specific regulations applicable to the source. The inspector must also be familiar with all applicable SIP-approved state and local regulations and all applicable non-delegated or non-SIP federal regulations.

2.3.1 Enforceable Limitations

Construction and operating permits often delineate control guidelines specific to the facility being permitted. The inspector must review all federally enforceable requirements contained in the existing permit in order to determine the specific compliance requirements and any exemptions which could apply to conditions observed during the on-site visit.

The requirements of the following are examples of enforceable limitations:

- Permits issued pursuant to the Prevention of Significant Deterioration (PSD) of Air Quality portion of the State Implementation Plans (SIPs)
- Permits directly issued by EPA
- The non-permit limitations (ie., New Source Performance Standards [NSPS] and National Emission Standards for Hazardous Air Pollutants [NESHAP])

Applicable restrictions contained in these federally enforceable limitations may include production or operational limitations in addition to the emission limitation. Restrictions on production or operation include limitations on quantities of raw materials consumed, fuel combusted, hours of operation, or conditions which specify that a source must install and maintain controls that reduce emissions to a specified emission rate or a specified efficiency level.

When permits contain production or operational limits, they usually have recordkeeping requirements that allow verification of a source's compliance with its limits. In some circumstances, the enforceable permits may specify limits such as an amount of emission per unit time, (eg., lb/hr). This reflects the operation of the control equipment and accompanies the requirements to install, maintain, and operate a continuous emission monitoring (CEM) system, CEM data must be retained and may be used to determine compliance with the emission limit.

The inspector should verify and note the process and operating Conditions and any other parameters that the source is required to meet to ensure compliance with the permit. The expiration date for the operating permit along with any CEM information showing emission excursions should be noted. A source may have more than one permit and expiration date for different process lines or pollutant types.

If any CEM requirements are specified, then the inspector should also note the current information on certification and operation of CEMs in addition to the other regulatory requirements.

2.3.2 Inspection Manuals

A review of the source control device and CEM inspection manuals will give the inspector typical ranges of operation to gauge the source against, and provide information on critical operating parameters and pollutant emission rates.

2.3.3 Compliance Determination Methods

Compliance determination methods include, but are not limited to: calculation procedures and emission factors for determining compliance with emission limits; review of stack test reports; and review of records such as process rates, production reports, upset reports, excess emissions reports, startup and shut-down logs, and fuel compositions and consumption logs.

2.3.4 Other Information

Review any plant specific health and safety problems which have been noticed on previous visits to the plant and note precautions to be taken concerning specific chemicals and other hazards to which the inspector could conceivably be exposed on-site. The inspector should discuss the information with the plant representatives on-site prior to the tour of the affected facility. Such information may guide the inspector in selecting the appropriate respirators, respirator cartridges/canisters, and protective clothing. The inspector should briefly refer to the Material Safety Data Sheets and other reference guides concerning the symptoms of exposure and proper first aid procedures.

When there is a complete lack of data in the source file, a review of the AP-42 reference manual sections for the source category may provide the inspector insight into the expected conditions and range of emissions at the source.

If necessary, the list of records and other information considered confidential by agency personnel and by source personnel should be reviewed. The need for sampling should also be evaluated and required sampling instrumentation to take on-site should be assembled.

2.4 ASSEMBLE INSPECTION MATERIAL

At the end of the source file review, an inventory of the material needed for the inspection should be taken by the inspector. At this point, the inspector may proceed to fill out the checklist such as that provided in Appendix A. The inspector must take on-site:

- An inspection notebook for recording observations
- Method 9 Visible Emission data forms, if applicable
- Personnel protection equipment (eye and hearing protection, hardhat, safety shoes/boots, appropriate clothing), and sample collection equipment/containers as applicable
- Optional items might include a camera, stop watch, audio recorder, flash light, and any reference material or check lists

SECTION 3 ON-SITE INSPECTION

On-site facility inspections are the primary activity in evaluating source compliance status; it is composed of reviewing facility records, making observations, taking samples, and preparing documentation. Inspectors provide current information on actual process and control equipment operating conditions. The background information collected prior to the on-site inspection serves to compare and verify the data obtained through actual process observation. Section 114 4 of the Clean Air Act enables the Administrator or any authorized representatives of EPA, upon presentation of credentials, to enter a source for monitoring, sampling, inspecting or copying records. Inspections can be unannounced during normal facility operating hours.

Figure 3-1 presents a flowchart describing the step-by-step procedures for conducting a stationary source compliance inspection. They are divided into: 1) Pre-Entry On-Site Activities, 2) On-site Records Review, 3) Facility Inspection, and 4) Post Inspection On-site Activities. These procedures are explained in detail below.

3.1 PRE-ENTRY ON-SITE ACTIVITIES

Upon arrive at the site, inspectors should identify themselves, present their credentials to the person authorized by the source, be prepared to explain the authority for the inspection, and ask for consent to conduct the inspection. Record the name of the person providing entrance to the facility. If entry is unnecessarily delayed or entry to parts of the facility is denied, this can be considered a denial of consent. If consent is denied for any reason, EPA Regional Counsel should be contacted for advice on how to proceed.

Many companies provide blank sign-in sheets, such as a visitors log, to determine an on-site body count. The inspector may sign such a log, taking care not to sign any document which compromises the inspection or limits the source's liability, such as confidentiality agreements or waivers of liability. It is EPA policy that liability waivers are never signed. If there is any statement of liability waiver on the sheet, the inspector may sign the sheet only after modifying it appropriately. The inspector can either cross out the liability waiver at the top of the sheet or may write "no liability waiver next to his or her signature. These actions should be discussed with the facility representative should the issue arise. Once this preliminary pre-entry procedure is completed, the inspector may proceed with the opening interview followed by on-site records review prior to the actual facility tour.

3.1.1 Opening Interview

The opening interview provides an opportunity for the inspector to supplement the information gathered in the agency file review. Additionally, it will give the inspector an overview of the facility and identify potential emission points.

Figure 3.1. Stationary Source Inspection Flow Chart

Pre-Entry On-Site Activities

- # Present Credentials and Obtain Consent
- # Communicate Objectives of Inspection
- # Discuss Claims of Confidentiality / Safety Issues / Policies / Photography

Review On-Site Records for:

- # Operating Status of Processes and Emission Control Equipment/Changes
- # Applicable Regulations
- # Comparing with the Data Obtained from the Source File

Facility Inspection

- # Safety Review
- # Inspect Processes, Control Equipment, and CEM Monitors, and Record Relevant Information
- # Conduct Visible Emission Observations
- # Take Samples
- # Take Photographs

Post Inspection On-Site Activities

- # Exit Interview
- # Request Additional Information

Proper documentation of the pre-entry interview discussions is critical. The inspector should communicate the objectives of the inspection and indicate specific process areas that are to be observed. At this time, the safety issues associated with touring of the area should also be addressed. Facility policies on photography as well as claims of confidentiality should be thoroughly discussed and understood by all parties.

The facility representatives may object to the use of cameras on the company property. Under Court ruling, EPA has the right to take photographs if they are necessary and pertinent to the source compliance evaluations. The facility may request that any photographs taken be considered confidential. EPA must comply with this request pending further legal determination. However, any restrictions placed on the inspector regarding the use of cameras could be construed as a denial of entry.

If samples are to be collected, facility representatives should be informed that they may receive a split of any sample taken during the inspection. The facility representatives should express their desire for split samples before the sampling begins, so that arrangements can be made to secure the samples during the investigation. However, the inspection should not be unduly delayed while the facility gathers sample containers or equipment necessary for obtaining the samples. It is also not recommended that the Inspector provide sampling materials to the facility.

3.2 ON-SITE RECORDS REVIEW

Once the opening interview is completed, the inspector may discuss the current operating status of all processes and emission control equipment and any changes that may have occurred since the last inspection.

The inspector may review site records for pertinent information on the emission points and the pollutants under evaluation for compliance. Depending upon the type of source and pollutants, information such as process throughput, fuel consumption rates, fuel composition analysis, plant operating levels (ie., percent of capacity), operational schedules, and other information are pertinent in the compliance evaluation. In the case of an inspection conducted for the purpose of determining compliance with VOC emission regulations, the minimum recordkeeping data for review includes the following: coating formulation and analytical data, coating consumption data, capture and control equipment performance data, and process information.

In situations where a large quantity of data are available, especially in a large facility, the inspector may want to Spot check the data and compliance calculations. The inspector might want to request that the facility make copies of a representative set of records so that a more thorough review can be made in the office.

At this point, the inspector may use the values of parameters obtained from the background information review to determine any significant change since the last inspection or any process operations outside normal permitting conditions if the situation warrants, the inspector should inquire about the reasons for any significant changes.

3.2.1 Safety Review

No inspection should be performed unless the inspector has the proper safety equipment the training necessary to use the equipment, and the training to recognize potential safety hazards, general safety. Guidelines are mainly common sense:

- Always be accompanied by a facility representative
- Wear the appropriate protective clothing and equipment when necessary
- Never enter any confined space, such as a bag house

Although the inspectors' supervisors are responsible for ensuring that each inspector is properly trained in safety procedures and the use of safety equipment the ultimate responsibility for the inspectors' safety is their own.

3.3 FACILITY INSPECTION

The facility inspection enables the inspector to verify the information from the records and provides an opportunity to inspect the processes and control equipment and record process and control equipment operating parameters. A complete walk-through of the facility should be performed to verify and identify existing or new emission points.

The inspection should proceed in a counter flow direction (ie., beginning at the stack [emission point], and proceeding backwards through control equipment and on to the process), especially if excess emissions are observed, in order to ascertain the cause of those emissions, such as upsets. However, the inspector is not familiar with the plant or process it is easier to conduct the inspection in the process flow direction. It is very important that the inspector take thorough and legible field notes. This is due to the fact that enforcement action will take years to complete. Often the inspector may become a witness long after the inspection.

3.3.1 Documentation and Sampling Equipment

In order to assure maximum credibility, the inspector must prepare proper documentation of inspection activities and must select the appropriate documentation equipment. Cameras and accurate stop watches are often necessary. As indicated earlier, the inspector should bring sampling equipment when necessary. Proper documentation of observations of significant visible emissions is important as it may be the only means of determining compliance.

3.3.2 Visible Emissions

If visible emissions from any process are significant, then the inspector should estimate such visible emissions by measuring the opacity by EPA Method 9 observation. Opacity should be documented formally, even if it means observing essentially zero opacity for six minutes. If a violation is observed a minimum of 30 minutes of readings should be recorded as this will greatly strengthen any enforcement action. The cause of these excess emissions should be investigated and reported (e.g., malfunctioning control equipment, upset, or other circumstances).

When the opacity observations are made, a copy of the observation form should be provided to the facility representative. Appendix B presents a standard Visible Emission Observations (VEO) form that can be used for making Method 9 observations. A detailed description of Method 9 and the use of the VEO form is given in Section 3.12 of the EPA Quality Assurance Handbook for Air Pollution Measurement Systems.

To make Method 9 observations valid, the inspector must be certified to conduct Method 9 observations, and the minimum data required by Method 9 must be obtained according to the conditions specified. If the items in the VEO form are correctly completed, then a valid, enforceable VEO will be the result.

3.3.3 Process Information

The inspection processes should include, at a minimum, the operating equipment, the material throughput, fuel consumption, and process rate. The inspector should review each process (emission point) independent of other processes, since the regulations in general apply to each process. The exception to this could be sources which have received authorization to average or "bubble" the emissions over several processes. However, even these processes should be inspected individually by the inspector to ascertain how they are operating.

During the inspection, if any process is found not to be operating, the facility representative should be asked about the reasons and all the pertinent information should be duly documented.

The inspector should know prior to the facility inspection about any scheduled or unscheduled process shutdowns either through the State/Local office or directly from the facility representatives if the inspection is preannounced.

3.3.4 Control Equipment

If any part of the operation vents to add-on control equipment, the operation of this equipment should be evaluated. The specific areas which may need to be inspected include: the exhaust system (i.e., capture device, ducts, fans), monitors for control equipment (i.e., temperature, pressure, VOC concentration gauges), the control device, and any stack emission monitors.

There are two parts to an add-on emission control system. The first is the capture system used to collect the pollutant and deliver it to the control device. The second part of the system is the actual control device that either removes or destroys the pollutant in the air stream. The capture system consists of: enclosures and hoods that trap the emissions, ductwork that transfers the emissions to the control device, and a fan that supplies the energy necessary to move the emissions through both the capture and control systems, then through the stack to the atmosphere.

Examples of data that should be recorded and evaluated are: differential static pressure, inlet and outlet gas stream temperatures, pulse-jet air pressure, electrostatic precipitator primary and secondary voltages and currents and spark rates, gas flow rates, and CO and O₂ concentrations. Fans and ductwork should be observed for air leakage and wear. Evaluation of the sources quality control procedures for the control equipment should be conducted. To understand how these data are useful in evaluating control equipment, refer to the OEPA APT] Course 445 Baseline Source Inspection Techniques Student Manual

and the EPA APTI Field Inspection Notebook, December 1985, References 10 and 11 are additional resources for on-site inspections.

3.3.5 CEM Evaluation

In the plant control room at the time of the inspection, record the readings from the continuous emission monitor (CEM) readouts (e.g., LED, CRT, or strip chart). When it is safe to do so, take readings from the meters on the instruments for comparison with the control room readings. The purpose of these comparisons is to evaluate the accuracy of the data acquisition system. For opacity monitors, compare your visible emissions observations with concurrent opacity CEM readings.

The inspector should check strip charts to ensure that the proper calibrations are being performed. He should record the calibration gas concentrations and compare them with the required values if any exist in the regulation. Often it is useful to have facility personnel manually demonstrate the calibration.

3.3.6 Sample Handling

If any samples are taken during the course of an inspection they must be handled in a manner consistent with agency policy, approved methods and chain of custody procedures. The samples taken must be properly labeled with such information as sample date, exact sampling location, contents, and sampler's name.

In addition to correctly labeling samples, a chain of custody must be maintained from the point of sample generation to the end of the analysis process. In general, the inspector must assure that the sample is supplied to a laboratory for analysis as soon as possible, and that the chance of loss is minimized,

3.4 POST INSPECTION ON-SITE ACTIVITIES

Proper post inspection procedures must be followed properly and expeditiously. An exit interview with the source representatives is the primary activity in which both parties get a final opportunity to obtain clarifications on the status and nature of the information being gathered by the inspector.

3.4.1 Exit Interview

The closing conference with source representatives enables the inspector to answer questions and seek any additional information needed. At the closing conference, the inspector “wraps up” the inspection by:

- Accepting the declaration of confidential business information
- Advising that results of any analysis of samples will be furnished to the source
- Discussing specific inspection findings (i.e., factual observations only)
- Requesting any additional information and arranging for receipt of missing data if not readily available before the inspection ends

In discussing the specific findings, the inspector should inform the source that no conclusions can be drawn for all pertinent findings, data, and information are evaluated. It is imperative that the inspector not make a final compliance determination on-site. However, when the field citation program is

implemented, the inspector will need to make compliance determinations for certain requirements relative to the program.

The notes and data collected should be reviewed to ensure their completeness. If possible, the data obtained on-site should be compared with the data compiled from the source file. In any event, the inspector may make a detailed comparison of these data later during the compliance evaluation. If the source inspection reveals that a significant change has occurred in operating conditions, the up-grading of the inspection to a Level 3 or Level 4 (a stack test) to verify compliance may be necessary.

Even after the on-site inspection, the inspector may request any additional data deemed necessary to determine compliance. EPA has the authority under Section 114 of the Clean Air Act to request information, or to require emission testing at a facility. States may use their analogous authority to achieve this result. When requesting additional information on-site or after leaving the source premises, the inspector should only request the information necessary to determine compliance.

SECTION 4 INSPECTION EVALUATION AND REPORT PREPARATION

4.1 POST INSPECTION EVALUATION

At the completion of an inspection, a find evaluation should be made to ensure the following:

- *The inspection conducted was Level 2.* That is, visible emission observations were made, control equipment operating data and process information were recorded, and emission calculations were performed. Reasons are to be given if any of these activities were not done.
- *All emission points have been properly identified and evaluated for compliance.* Emission calculations, as well as the source of emission factors used, were spot-checked. (Unless a stack test is available and considered to still be valid, EPA's AP-42 emission factors should be used, not the NEDS SCC emission factors.)
- *References against which compliance determinations were made are indicated for each emission point.* The most current permits with federally enforceable conditions were used and all conditions were evaluated properly. Proper regulations were applied, for example, if an emission point was grand fathered under the regulation requiring a permit, it was evaluated against the common SIP provisions.
- *The compliance determination is based on complete and thorough information.* A complete State overview inspection will require that the EPA inspector await completion of his/her report until an evaluate of the State inspector's report can be made and the compliance determination verified.

4.2 INSPECTION REPORT

Inspection reports are prepared to summarize findings and recommendations following Level 2 inspections of stationary sources, regardless of the compliance status of the source. The primary requirement of inspection reports is to provide sufficient and proper documentation of an inspector's evaluation of the sources's compliance status. The information that must be included consists of:

- A description and summary of all emission points, applicable regulatory requirements, and on-site inspection observations, including exit interview with the source representatives
- Source file review observations
- Procedures followed and information gathered for evaluating source's compliance with the applicable regulations

For the sources which are believed to be in violation of one or more regulatory requirements, the inspection report serves to support subsequent enforcement actions. Otherwise, for sources which are believed to be in compliance, the inspection report serves simply to document the operating data and observations at the time of the inspection.

To serve the purpose stated above, the reports of inspections must summarize all the supporting information used in the inspector's evaluation of the source compliance status. The report should provide a quick review of the source, its emission points, and its compliance status, without requiring an in-depth reading. The length of an inspection report is primarily dependent on the number of emission points, and on the ability of the inspector to be thorough but concise, that is, present just the relevant facts. The information presented would obviously be the summary of that gathered from the source background files during the pre-inspection and from the on-site inspection. Additional information, such as process description and photographs, can be attached in appendices as the inspector deems necessary. However, since this information is not required for a review of the source's compliance status, they should not be included in the body of the report

The minimally acceptable information to be included in a Level 2 inspection report is as follows:

- General information
- Previous enforcement actions and compliance status
- Inspection activities
- Findings and recommendations
- State inspection report review (applicable to EPA's State overview inspections only)

These minimally acceptable data are necessary in the source compliance determination, Specific data requirements in each of these are discussed in more detail in Section 4.3.

Some information gathered by the inspector may be sensitive in nature and the source may request it be kept confidential and not be made available to the public. Such information could include proprietary industrial processes and production rates.

In general, the inspection report should not include sensitive data unless necessary and relevant to the violation. Regional Counsel should be consulted if the source is claiming confidentiality, it is recommended that information claimed to be confidential be excluded from the inspector's report if possible. If the information is important the best procedure is to refer to it in the main inspection report while keeping the confidential information separate. The entire inspection report must be labeled "confidential" if any portion of it is confidential.

However, certain information dealing with emissions cannot be withheld from the public under federal law. Such information includes process descriptions and rates used in estimating emissions, and the general description of the location and nature of the source of emissions.

4.3 STANDARD FORM

A standard form that can be used to provide an inspection compliance report is shown in Appendix C. This form is intended to provide for a complete and concise reporting of the minimally acceptable information for a Level 2 inspection, and can accommodate a State inspection, an EPA inspection, or a combination of both. The use of this form is recommended in order to maintain consistency among inspectors nationwide when reporting compliance evaluations. However, the standard form cannot take the place of a thorough review of applicable regulations prior to the inspection.

An additional purpose of this form is that reserves -as a "checklist" for the inspector throughout the pre-inspection and on-site and thereby simplifies the inspection and reporting process. When using this form, those words and line items that are not applicable can be answered with an "NA" Some of the data in the form may be partially completed prior to the on-site inspection. If this form does not accommodate inspections for any given type of source, it can be expanded suitably to document additional relevant data.

Following is a discussion of each of the elements of the Standard Inspection Guide/Report form provided in Appendix C.

General Information

The information such as the date and type of inspection and the person submitting the report is necessary in the identification of the particular inspection. Such information provides a starting point for the reviewer of the report

Source Information

The primary purpose of the source information in the form is to identify the source of the data and present background information on the processes and emission points evaluated. Besides source name, location, and contain the information on process code, applicable regulations, source tests, emission inventory, and previous enforcement actions is important. This information is basically compiled from the review of the source files,

Processes Evaluated

This portion of the form is used to provide process information for each emission point that is regulated or permitted for certain emission limits. This portion along with the applicable regulations portion of the form constitute the most important information considered in the evaluation. This information should be completed initially during the source file review and updated later as more accurate information is available from the on-site records review and actual inspection. The information on processes, pollutants and associated control equipment and CEMs as well as allowable and actual emissions are essential in compliance determinations.

When possible, the allowable and actual emission values should be expressed in terms of the same units as the applicable permit limits or regulations.

Applicable Regulations

Almost all of the information concerning applicable regulations is accessible to the inspector prior to the on-site inspection. Documenting such information would reveal if any alternative emission compliance plans such as averaging or bubbling of emissions from multiple emission points has occurred.

Source Inspection

This portion of the form reveals the information from the on-site inspection and can also provide a view on the attitudes of the plant towards the inspector. All observations, comments by plant personnel, readings from instruments, summaries of records reviewed, and process flow or plant layout diagrams, etc., are to be recorded here.

Other Data and Observations

In the report, be observant and note any Conditions such as work practices, house-keeping, record-keeping, safety Conditions and source representatives's attitude toward the inspector's presence that may be mitigating or aggravating a potential enforcement action. Do not rely on memory alone to carry through a potential referral years after the inspection.

Findings and Recommendations

It is essential that this portion of the report be clearly presented. The findings must be clearly defined and summarized, The recommendations should also be listed in a clear and concise manner.

State Inspection Report Review

This section is applicable to EPA's State overview inspection only. For other inspections list an "NA".

SECTION 5 REFERENCES

1. The Clean Air Act Compliance/Enforcement Guidance Manual, U.S. Environmental Protection Agency, Revised 1987.
2. Compliance Monitoring Strategy for FY 1989, U.S. EPA Stationary Source Compliance Division, March 31, 1988.
3. Air-Specific inspector Training Plan for the Stationary Source Compliance Program, U.S. Environmental Protection Agency, February 1989.
4. Air Pollution Source Inspection Safety Procedures: Respiratory Protection Program Guideline, EPA-340/1-85-002c, U.S. Environmental Protection Agency, February 1983.
5. Air Pollution Source Inspection Safety Procedures: Student Manual. EPA-340/1-85-002a. U.S. Environmental Protection Agency, September 1984.

6. Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources, Fourth Edition, U.S. Environmental Protection Agency, September 1985.
7. 40 C.F.R, Part 60, Appendix A, Method 9, Revised July 11, 1987.
8. Quality Assurance Handbook for Air Pollution Measurement System: Volume 11. Stationary Source Specific Methods. Section 3.12 Method 9 - Visible Determination of the Opacity of Emissions from Stationary Sources, EPA/4-77-027b, U.S. Environmental Protection Agency, February 1984.
9. Baseline Source Inspection Techniques: Student Manual. U.S. EPA Air Pollution Training Institute, APTI Course 445, Draft December 12, 1985.
10. Air Pollution Source Field Inspection Notebook. Revision 2, U.S. EPA Air Pollution Training Institute, June 1988.
11. Field Inspection Protocol for Region VIII Stationary Sources, Excluding Asbestos Demolition/Renovation. U.S. EPA Region VIII, Air & Toxics Division, June 13, 1988.

Appendix A
Pre-inspection Activities Checklist

Assemble Inspection Material (put a check mark)

Writing pads / pens _____

Camera Stop watch _____

Flashlight _____

Measuring tape _____

Personal Protection Equipment (Required):

 Hard Hat _____

 Eye protection _____

 Ear plugs _____

 Respirators _____

 Safety boots _____

VOC Sampling Equipment _____

Credentials _____

VE data sheets _____

Inspection Guide / Report Form _____

Additional Equipment/ Checklists (List):

Appendix B
Visible Emission Observation (VEO) Form

Appendix C
Inspection Guide and Report Form

Inspection Guide and Report For

(Company Name)

I General Information

Report Prepared By: _____ Date: _____

Report Submitted To: _____

Date of Inspection: _____

Type of Inspection: _____

(e.g., FYxx Overview Inspection, FYxx EPA Permit Inspection)

II. Source Information

Company Name: _____

Plant Location: _____

Mailing Address: _____

Source Contacts: _____

SIC code and Description: _____

AFS No: _____ AFS Class: _____

Local Non-Attainment Areas: _____

Applicable Air Programs _____

Issue Date of State / EPA PSD Permit: _____

Permit Expiration Date: _____

Date of Last Source Test: _____

Results of That Test: _____

(Compliance / Non-Compliance)

Applicable Federal Regulations: _____

Source Emission Inventory: Actual Emissions (Tons/ Year)

TSP	SO2	NOx	CO	VOC	Reference
_____	_____	_____	_____	_____	_____

Summary of Enforcement Actions:

<u>Date</u>	<u>Action Taken</u>	<u>State / EPA</u>	<u>Violation</u>
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Comments:

Inspection Guide and Report For

(Company Name)

III. Processes Evaluated and Test Data

Control equipment and CEM Data

Emission Point	Pollutant	Control Equipment	CEM ID
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Source Tests & Compliance Status

Date	Emission Point	Pollutant	Allowable Emissions	Actual Emissions
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

CEM Performance Specification Tests

Date	Emission Point	Pollutant	Passed/Failed
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IV. Applicable Regulations

Regulation or Permit No.	Emission Point	Pollutant	CEM (Y/N)	Allowable Emissions
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Inspection Guide and Report For

(Company Name)

V. Source Inspection

Date /Time: _____

Weather: _____

Names of Participants: _____

Inspection Notes and Narratives

Entrance Interview _____

On-site Inspection _____

Exit Interview _____

Description of Sampling _____

Additional Information Requested _____

Other Data and Observations

Does Company Keep Any:

Operating Logs _____

O&M Records on Process or Controls _____

Inspection Guide and Report For

(Company Name)

VI. Findings and Recommendations

VII. State Inspection Report Review (If Applicable)

APPENDIX D SAMPLE FIELD INSPECTION REPORT

V. Compliance Assistance Provided (i.e., questions asked and answered, information and resources provided)

VI. Pollution Prevention Assistance Provided (i.e., questions asked and answered, information and resources provided, contacts at CDPHE provided)

Pollution Prevention information packet provided: yes no

Source interested in being contacted by CDPHE Pollution Prevention Program: yes no

VII. Supporting Information Enclosed (i.e., opacity readings, production records, fuel use records, control equipment records, continuous emission monitoring records)

APPENDIX E MEMORANDUM OF AGREEMENT BETWEEN APCD AND LOCAL
ENVIRONMENTAL HEALTH DEPARTMENTS REGARDING THE AIR QUALITY
ENFORCEMENT PROGRAM NOV PROCESS

MEMORANDUM OF AGREEMENT BETWEEN APCD AND LOCAL ENVIRONMENTAL HEALTH DEPARTMENTS REGARDING THE AIR QUALITY ENFORCEMENT PROGRAM NOV PROCESS

May 1996

INTRODUCTION

The Air Pollution Control Division (APCD) and local environmental health departments have completed discussions culminating in this Memorandum of Agreement (MOA). The purpose of this MOA is to clarify and streamline roles associated with that portion of the air quality enforcement program that involves evaluating the need for and issuing Notices of Violation (NOVs). It also addresses aspects of Compliance Orders (COs) and settlement agreements as they affect the NOV process. Additional MOAs may be developed as needed for other aspects of the enforcement program (e.g., Cease and Desist Orders). This MOA is not intended to give additional enforcement authorities either to state or local government enforcement programs.

In most situations, it is anticipated that it will take 178 days to complete an enforcement action involving an NOV (not including the settlement phase which occurs afterwards). Inevitably, there will be enforcement cases that take longer than 178 days to complete due to unforeseen technical, legal, or political considerations. In these unusual situations (about 20% of the time), every effort will be made by all parties to complete an enforcement action as close to the 178 day timeframe as possible.

Generally, an enforcement action is initiated after an inspector observes a problem during an inspection. Such actions can also begin with an information request made by the State to the air pollution source or using a letter of admonition. In either case, state and local government staff may be involved.

Additional steps associated with the NOV enforcement process can generally be categorized as follows:

- 1) Draft and review the NOV;
- 2) Revise and issue the NOV;
- 3) Hold the NOV conference and conduct a Case ReV4 Review Assessment Board (CRAB) meeting;
- 4) Decide whether to issue and draft a CO;
- 5) Review and revise the CO; and
- 6) Issue the CO.

To fully clarify NOV enforcement roles and responsibilities, this MOA divides the steps to completing an NOV enforcement action into six key time periods. These time periods directly relate to the six steps listed above. The NOV enforcement process flow chart (attached), offers a visual method for following the key elements of this MOA. For each major step (associated with a time period), the MOA describes in detail: 1) the major activity; 2) any potentially ambiguous terms; and, 3) all responsibilities involving state and local health department staff. Other clarifications are included as needed.

STEP 1: DRAFT AND REVIEW THE NOV

Time Period: 1 to 30 days from the “discovery” of a violation.

For the purposes of this MOA only, “discovery” means the date an inspector determines a violation has occurred or has reason to believe one has occurred; or from the date that information requested from the air pollution source is required to be, but is not received by either the state or local inspector health department requesting the information.

Major Activity:

State or local inspector drafts the NOV and delivers it to the state for review and action.

Roles/Responsibilities:

- State or local inspector who observes the violation initiates this activity. Where a local inspector observes the violation and depending on local agency policies, the draft NOV may need to be reviewed by the inspector’s supervisor.
- If a local inspector drafts the NOV, he/she shall send it to the State Area Coordinator. The State Area Coordinator will provide the draft NOV to the State Unit Leader and Legal Administrator. The State Area Coordinator must also ensure that the local agency having jurisdiction over the source in question is copied on all NOVs, where a state inspector initiates the enforcement action. The State Area Coordinator is the general contact for all locals regarding enforcement activity. Provided that locals have the technology, all draft NOVs must be sent to the State Area Coordinator on a computer disk in WordPerfect 6.1 and/or 5.1.
- If the violation was observed by a state inspector, he/she shall place a courtesy call to the local inspector if the source is located in a county with whom a work contract exists. This must be done prior to drafting the NOV, to inform him/her of the activity. This step provides an opportunity for locals to provide pertinent information about the problem to the state inspector.

Other Clarifications:

- The preferred methods for transmitting information between state and local government agencies is via WordPerfect disks, fax, E-mail, or U.S. mail, depending upon capabilities at the state and individual local agencies.
- Acceptable criteria for returning a draft NOV to the drafter includes: insufficient substantive information and presentation of information that is inconsistent with guidance that will be provided by the APCD by March 1, 1996.

STEP 2: 30 to 74 DAYS FROM THE DATE OF DISCOVERY OF VIOLATION

Major Activity:

The state reviews, revises, and issues the NOV, in cooperation with the local agency, where appropriate.

Roles/Responsibilities:

- The State Area Coordinator and Unit Leader receive the draft NOV from the inspector and review it for completeness, based on guidance for completing an NOV that will be issued by the State Legal Administrator by March 1, 1996. The State Legal Administrator reviews it for substantive completeness.
- The NOV must be signed by the inspector and the State Unit Leader.
- Via first class and certified mail, the state sends the NOV letter to the source. This letter establishes a date and time for the NOV conference. The letter must include a conference date that is within two weeks of the date of the NOV. However, the source may request an extension of up to a 30 days from the date of the NOV to prepare for the conference.
- While direct involvement in the NOV enforcement process by appropriate local agencies should be considered appropriate in all cases (provided they coordinate with the state), such involvement is mandatory when the local inspector has discovered the violation. Asbestos and CFC -related NOVs may be treated differently, due to different statutory requirements.

Other Clarifications:

- An underlying goal of this phase is to minimize the situations that cause draft NOVs to be returned to the drafter. As such, care should be taken by all involved to fully complete the document.

STEP 3: 74 TO 104 DAYS FROM THE “DISCOVERY” OF A VIOLATION

Major Activity:

The state holds the NOV conference, may request additional information from the source during the NOV conference, conducts an information/evidence review, and makes a preliminary decision about whether to issue a compliance order. This step must occur in cooperation with the local agency, provided the source in question is located where a local agency has jurisdiction.

Roles/Responsibilities:

- In most cases, the state hosts the NOV conference either in Denver offices or in Grand Junction offices, depending on the location of the violation. In some cases, the NOV conference will be held at the offices of the local agency having jurisdiction over the source.

- Depending on the nature of the violation, NOV conference participants may include the State Compliance, Monitoring, and Enforcement Chief, Area Coordinator, Unit Leader, and Legal Administrator, the inspector (state or local) who detected the problem, a representative from the Attorney General's Office, and the source.
- The NOV includes language notifying the source that the conference provides an opportunity to submit data, views, and arguments. The State Area Coordinator normally conducts the conference and in this capacity requests all information related to an alleged violation. The state may find, during the course of the conference, that additional information/supporting documentation is necessary. Most additional information will be requested verbally during the NOV conference and will be due back to the state within one week of the conference. However, some information may be requested subsequent to the NOV conference. In such cases, the state will make the request in writing within 10 days of the NOV conference. Sources must provide requested information within 7 days of receipt of the information request. If the source requests an opportunity to provide additional information during the NOV conference, the information will be due back to the state within one week of the conference. Additional time for all information requests may be allowed on a case-by-case basis for complex requests.
- An information/evidence review immediately follows the NOV conference. During this review, participants (same as those for the NOV conference, except the source) discuss: 1) whether a CO should be issued; 2) whether more information is needed from the source; 3) if a consent order should be pursued; 4) the penalty criteria, including alternatives to assessing a penalty; and, 5) whether the NOV should be dismissed.
- Active participation by locals in the NOV conference and CRAB review is mandatory in situations where a local inspector discovered the violation. Locals may participate in all other NOV conferences and information/evidence reviews, provided they have jurisdiction over the source responsible for the alleged violation.

STEP 4: 104 TO 134 DAYS FROM THE "DISCOVERY" OF A VIOLATION

Major Activity:

The state receives additional requested information from the source during the NOV conference. Based on additional information, the NOV conference, and consensus from the information/evidence review, the state makes final determination about whether a CO should be issued. If a CO is decided upon, the state or local inspector drafts it and gives it to the State Unit Supervisor.

Roles/Responsibilities:

- Regarding CO Decisions:
 - The State Area Coordinator, inspector (state or local, depending on the case), and Legal Administrator discuss the appropriateness and basis for making a final decision on whether to issue a CO.

-- Criteria for making this decision must include the results of the NOV conference, the information/evidence review, and all information submitted by the source.

-- Where sufficient evidence exists, the state will automatically issue the CO if the information the state requests from the source is not received within the required timeframe.

- Regarding Drafting the CO:

-- The inspector drafts the language that describes the basis and rationale for issuing a CO and delivers it to the State Area Coordinator within seven days of the decision to proceed with one. During this timeframe, some local agencies may conduct an internal review of the draft CO, depending on local policies.

-- CO decisions are based collectively on the outcome of the NOV conference, the information/evidence review, any information requests, and the source's history of compliance, cooperation, and its record of responsiveness when compliance issues have been raised.

STEP 5: 134 to 164 DAYS FROM THE "DISCOVERY" OF A VIOLATION.

Major Activity:

The state reviews and revises the CO. This final draft of the CO must reflect a review by the State Unit Supervisor of the penalty assessment criteria and associated policies, and include a penalty calculation.

Roles/Responsibilities:

- The State Area Coordinator and Legal Administrator have the primary responsibility for completing this phase; the local inspector may be contacted if questions arise.
- The State Unit Supervisor establishes CO penalty amounts based on information from the inspector. The state must consult local agency officials if the penalty amount selected by the State Unit Supervisor deviates from that established by the penalty policy formulas. In this situation, the specific reasons for a variation from the penalty policy must be discussed among local and state officials, in conjunction with the State's published penalty policy.
- During the review and revision of the CO, the state may decide that negotiating a consent order is the better outcome for the problem. In this case, all enforcement timeframe estimates will be on a case by case basis. When the state selects a settlement agreement approach, the state must solicit and consider input from the local health department having Jurisdiction over the source.

STEP 6: 164-178 DAYS FROM THE "DISCOVERY" OF A VIOLATION

Major Activity:

The state finalizes the compliance order, obtains signatures for it, and mails it to the source.

Roles/Responsibilities:

- The State Legal Administrator, Area Coordinator, Enforcement Chief, and Unit Supervisor (as an advisor) are responsible for completing this phase.
- All final documents must be signed by the State Program Manager and APCD Director. A Local agency official may also sign final documents, provided they have jurisdiction over the source.
- A CO must be mailed via certified mail and 1st class; state is responsible for doing this.

If the foregoing clarifications and agreements are followed by all state and local environmental health department officials, we have every reason to believe that, in most cases, an NOV enforcement action can be completed in no more than 178 days. In fact, depending on work load and priorities at the time of a particular action, it may take even less time. We, the undersigned agree to inform our staffs about the terms of this MOA and take all reasonable steps to enforce its terms.

Air Enforcement MOA Signatures

APPENDIX F SAMPLE REQUEST FOR INFORMATION LETTER (§ 111 LETTER)

(date)

(name)
(title)
(company)
(address)

re: (name of source)

Dear (name):

Pursuant to the authority contained in section 25-7-111(2)(i), C.R.S., the Air Pollution Control Division (“Division”) hereby orders (name of source) to provide the following information regarding (emission unit, source, etc.):

- 1.
- 2.
- 3.

Please provide the Division the requested information by (date). Refusal to provide this information by the date given may result in the Division seeking a court-issued subpoena to compel production of the data and/or enforcement action and assessment of civil penalties.

Should you have any questions, please contact me at (telephone number). Your help and cooperation in this matter is appreciated.

Sincerely,

(staff person’s name)
(title)
(unit)

cc: Robert Jorgenson, APCD
Jill E. Cooper, Legal Administrative Specialist

APPENDIX G SAMPLE COMPLIANCE ADVISORY

COMPLIANCE ADVISORY

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
4300 CHERRY CREEK DRIVE SOUTH
DENVER, COLORADO 80246-1530
TELEPHONE: 303-692-3150**

Contact Name: _____

Facility Name: _____

Facility Address: _____

Date: _____ Time: _____

This Compliance Advisory provides notice related to information gained during the Air Pollution Control Division's ("Division's") inspection of the above named facility on the date shown. We advise you that the inspector(s) believes that the "Deficiencies" listed below are violations of the Colorado Air Pollution Prevention and Control Act and implementing regulations. Division personnel will review the facts established during this inspection and this notice may be revised to include additions or clarifications as a result of that review.

Please be aware that you are responsible for complying with the State air pollution regulations and that there are substantial administrative and civil penalties for failing to do so. Section 25-7-115, C.R.S., provides that any person who violates the Colorado Air Pollution Prevention and Control Act ("the Act") may be subject to an administrative penalty of not more than \$15,000 per day of violation (violations of the requirements to have and to comply with an operating permit may subject the violator to \$15,000 per violation per day). The issuance of this Compliance Advisory does not limit or preclude the Division from pursuing its enforcement options concerning this inspection including issuance of a Compliance Order and assessment of penalties. Also, this Compliance Advisory does not constitute a bar to enforcement action for conditions that the inspector did not observe or evaluate, or conditions found during future inspections of your facility.

To close out this Compliance Advisory, we encourage you to contact the Compliance Officer listed below at the above address, and where necessary, schedule a meeting:

- A. To discuss the Compliance Advisory and answer any questions you may have;
- B. To develop a schedule for correcting the Deficiencies and Potential Deficiencies; or
- C. To submit information necessary to successfully show that the Deficiencies and Potential Deficiencies (or any portion of them) are not violations of Colorado's air pollution laws.

_____, Compliance Officer

Failure to respond in a timely fashion to this Compliance Advisory will be considered in any subsequent enforcement action and the assessment of penalties

APPENDIX H DIVISION'S PENALTY POLICIES

PENALTY POLICY FOR FIELD SERVICES

CIVIL PENALTIES

To provide a deterrent against willfully, knowingly, or negligently violation air pollution rules and regulations, monetary penalties have been established based upon the statutory requirements of § 25-7-122, C.R.S. These penalties are an incentive for source operators to maintain vigilance in their day-to-day operations.

The statute authorizing civil penalties for air violations sets forth the following factors for consideration when determining an appropriate penalty amount. Accordingly, civil penalties are adjusted when considering the items listed in the table below. Major violations may require large penalties, while minor administrative infractions and violations may warrant only small penalties. Non-monetary resolutions may also be appropriate in certain situations. The maximum allowed reduction in a civil penalty is forty percent (40%).

Factors to Consider to Increase Penalty	APEN Violations	Emission Regulation, & SIP, Construction Permit, PSD Requirements	Operating Permit, Requirements of Operating Permit, Payment of Fees	Commercial Open Burning	Residential Open Burning
History					
No Previous History	\$250	\$1000-2500	\$1000-2500	\$500-2000	\$100
1-2 Previous Violations	\$500	\$2500-5000	\$2500-5000	\$2000-5000	\$100
>2 Previous Violations	\$500	\$5000-7500	\$5000-7500	\$5000-7000	\$100
Good Faith Efforts to Comply					
Demonstrated	No increase	No increase	No increase	No increase	\$100
Not Demonstrated	\$500	Increase by \$500-1500	Increase by \$500-1500	Increase by \$500-1000	\$100
Previous Payment for Same Penalty	\$500	Increase by \$500-1000	Increase by \$500-1000	Increase by \$500-750	\$100
Threat to Public Health or Welfare	\$500	Increase by \$1000-2500	Increase by \$1000-2500	Increase by \$500-1500	\$100
Malfeasance	\$500	Increase by \$1000-2500	Increase by \$1000-2500	Increase by \$500-1500	\$100
Legal & Factual Theories for Delay	\$500	Increase by \$1000-2500	Increase by \$1000-2500	Increase by \$500-1500	\$100
Economic Benefit	N/A	Added to Penalty	Added to Penalty	Added to Penalty	\$100
Duration: Multiply Penalty by Number of Days	N/A	Penalty x # of days	Penalty x violations/day x # of days	Penalty x # of days	Penalty x # of days
Factors to Consider to Reduce Penalty	APEN Violations	Emission Regulation, & SIP, Construction Permit, PSD Requirements	Operating Permit, Requirements of Operating Permit, Payment of Fees	Commercial Open Burning	Residential Open Burning
Voluntary & Complete Disclosure	Reduce or defer up to 15%	Reduce or defer up to 15%	Reduce or defer up to 15%	Reduce or defer up to 15%	\$100
Full & Prompt Cooperation Following Disclosure	Reduce or defer up to 15%	Reduce or defer up to 15%	Reduce or defer up to 15%	Reduce or defer up to 15%	\$100

Existence & Scope of Environmental Compliance Program or Audit	Reduce or defer up to 15%	Reduce or defer up to 15%	Reduce or defer up to 15%	Reduce or defer up to 15%	\$100
Economic Impact	Reduce up to 10 to 25%	Reduce up to 10 to 25%	Reduce up to 10 to 25%	Reduce up to 10 to 25%	\$100
Nonfeasance	Reduce or defer up to 10%	Reduce or defer up to 10%	Reduce or defer up to 10%	Reduce or defer up to 10%	\$100
Other Mitigating Factors	Reduce up to 25%	Reduce up to 25%	Reduce Up to 25%	Reduce up to 25%	\$100

General Considerations:

1. The maximum allowable penalty for an APEN violation is \$500.
2. The maximum allowable penalty for non-Title V violations is \$15,000 per day of violation.
3. The maximum allowable penalty for Title V violations is \$15,000 per violation per day of violation.
4. The maximum allowable penalty for commercial open burning violations is \$10,000 per day.
5. The maximum allowable penalty for noncommercial open burning violations is \$100 per day.
6. The maximum allowable reduction or deferral is capped at 40% from consideration of all circumstances.

NONCOMPLIANCE PENALTIES

Noncompliance penalties are imposed for emissions violations by certain sources. The Act specifies that the violating source will submit calculations as to the amount of noncompliance penalty to be assessed. The purpose of the penalties is to deprive the source of the economic benefit that the source realizes due to its noncompliance.

Certain categories of violations and sources are subject to noncompliance penalties. These penalties are described in the Act in § 25-7-115(5)(a)(i), C.R.S., which states:

Any order issued pursuant to subsection (3) of this section which pertains to an alleged violation described in Section 120(a)(2)(A) of the federal act shall also require each person who is subject to such order, within forty-five calendar days after the issuance of such order, to calculate the penalty owed in accordance with paragraph (b) of this subsection (5) and submit the calculation, together with a payment schedule and all information necessary for an independent verification thereof, to the Division. If the order has been stayed, the

penalty shall be submitted by the owner or operator to the Division within forty-five calendar days after issuance of a final determination of the commission that:

- (A) A violation or noncompliance occurred;
- (B) If a revision to the state implementation plan has been requested, that all or part of such request should be denied; except that if only part of such request is denied, the penalty calculation shall not be submitted for any aspect of the violation or noncompliance which is excused by reason of approval of a requested revision of the state implementation plan.
- (C) The violation is one described in section 120(a)(2)(A) of the federal act; and
- (D) If an exemption pursuant to subsection (7) of this section has been claimed, that the owner or operator is not entitled thereto.

The federal act, at Section 120(a)(2)(A), describes the violations to which noncompliance penalties attach:

(2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates --

- (i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under Section 119) which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or
- (ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under Section 111, 167, 303, or 112 of this Act, or
- (iii) a stationary source which is not in compliance with any requirement of Title IV, V, or VI of this Act, or
- (iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under Section 119 which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of subsection 120(d)(2) of the federal act, in the case of a penalty assessed with respect to a source referred to in clause (iv) of subparagraph 120(a)(2)(A), the costs referred to in subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

To summarize, noncompliance penalties will be collected where the violation:

1. is an emission limitation or emission standards violation, or a violation of a compliance schedule and the violating source is a major stationary source (100 tpy), an NSPS source, a NESHAP, or a HAP source; or
2. is a stationary source in violation of Acid Deposition requirements, operating permit, or stratospheric ozone protection requirements, or in violation of an order issued pursuant to emergency powers authority.

The economic benefit to a source can be calculated using an EPA computer software program called BEN. This program calculates the penalty based on various inputs into it. The source is responsible for calculating any noncompliance penalty and submitting that to the Division. The Division or EPA would verify the penalty through the use of the BEN model. Detailed descriptions of the BEN program can be obtained from the Division.

**Air Pollution Control Division
Stationary Sources Chlorofluorocarbon (CFC) Program
Noncompliance and Civil Penalty Policy and Calculation Procedures
January 10, 1995, 1st Revision**

1 Application

This document establishes the Policies and procedures to be used by the CFC program of the Stationary Sources Program of the Air Pollution Control Division (Division), when assessing penalties provided in the Colorado Air Pollution Prevention and Control Act (State Act), Colorado Revised Statutes, 1992.

Various types of penalties must be considered under the authority of the State Act for related violations which include:

- 1) Noncompliance Penalties, and
- 2) Civil Penalties.

2 Purpose

The purpose of this document is to define how the Air Pollution Control Division shall define, assess, and calculate penalties set forth in the State Act for purposes of enforcing rules and regulations pertaining to the uses of chlorofluorocarbons hydrochlorofluorocarbons (Ozone Depleting Compounds, ODCs) in motor vehicle and stationary sources.

The Division reserves the right at any time to modify and or change such policies to meet the of notification and intent of the related regulation(s). Such changes or modifications shall meet the requirements as required by statute.

If violations of related regulations are deemed to have occurred, established procedures found in this document shall be used to calculate and assess penalties in the issuance of compliance orders. Final settlement agreements of compliance orders and or civil penalties may be lower than actually calculated in this document.

3 Background

Portions of the noncompliance and civil penalty calculations procedures found in the State Act reference specific sections and language in the Federal Act. As a result, portions of this document are taken directly from: 1) the U.S. E.P.A. Clean Air Stationary Sources Civil Penalty Policy, October 25, 1991, 2) U.S. E.P.A. Appendix X, Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerants, June 1, 1994, 3) U.S. E.P.A. Appendix IX, Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Service of Motor Vehicle Air Conditioners, July 19, 1993.

4 Noncompliance Penalty Policy

Noncompliance penalties are imposed for violations of emissions regulations by sources and individuals. The State Act specifies that the violating source will submit calculations to the Division to determine the amount of noncompliance penalty to be assessed. The purpose of this penalty is to deprive the source of any economic benefit which may have been realized due to noncompliance.

Should the Division believe a source is in violation of any emission control regulation, SIP, or determines that a Notice of Violation provision or Parts 1 through 4 of the State Act, the Act specifies that a Notice of Violation (NOV) will be issued to the source. The source will be provided an opportunity to present data, views and argument in its behalf regarding the alleged violation(s) through an informal conference. After the conference, should the Division determine that a violation did in fact take place, certain categories of violations and sources are subject to a noncompliance penalty. These penalties are described in the State Act in section 25-7-115(5)(a)(1), which states:

(5)(a)(1) Any order issued pursuant to subsection (3) of this section which pertains to an alleged violation described in Section 120(a)(2)(A) of the federal act shall also require each person to who is subject to such order, within forty-five calendar days after the issuance of such order, to calculate the penalty owed in accordance with paragraph (b) of this subsection (5) and submit the calculation, together with a payment schedule and all information necessary for an independent verification thereof, to the Division. If the order has been stayed pursuant to subsection (4) of this section, the penalty calculation shall be submitted by the owner or operator to the Division within forty-five calendar days after issuance of a final determination of the commission that:

- (A) A violation or noncompliance occurred;
- (B) If a revision to the state implementation plan has been requested, that all or part of such request should be denied; the penalty calculation shall not be submitted for any aspect of the violation or noncompliance which is excused by reason of approval of a requested revision of the state implementation plan.
- (C) The violation is one described in section 120(a)(2)(A) of the federal act; and,
- (D) If an exemption pursuant to subsection (7) of this section has been claimed, that the owner or operator is not entitled thereto.

This section of the Act refers to violations described in section 120(a)(2)(A) of the Federal Act which states:

- (2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates;
 - (iii) a stationary source which is not in compliance with any requirement of Title IV, V, or VI of this Act, or
 - (iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under Section 11 11 9 which is not in compliance with

any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of section 120(d)(2) of the Federal Act, in the case of penalty assessed with respect to a source referred to in clause (iv) of section 120(a)(2)(A), the cost referred to in section 120(d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

5 Noncompliance Penalty Assessment Procedure

The noncompliance penalty assessment is that value represented by the economic benefit realized by a source due to its noncompliance with applicable requirements. The economic benefit gained by a person or source due to delayed or avoided costs shall be determined in accordance with the Stationary Source Civil Penalty Policy, using as appropriate, the BEN computer model. Economic benefit should be calculated from the earliest provable date of violation until the date that the violation is corrected.

For purposes of verifying the amount of noncompliance penalty for violations of state CFC regulations, the following procedures shall be used:

- 1) For all violations of CFC regulations which are similar or related to corresponding violations found in Section 608, Title VI of the Federal Act, the BEN computer model shall be used.
- 2) For all violations of CFC regulations which are similar or related to corresponding violations found in Section 609, Title VI of the Federal Act, the BEN computer model is not appropriate, and should not be used. Instead, the use of Economic Benefit Matrix shall be used, detailed in U.S. E.P.A., Appendix IX, Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Service of Motor Vehicle Air Conditioners, July 19, 1993.

Noncompliance penalties will be collected from sources where the violation:

1. Is an emission limitation or emission standards violation, or a violation of a compliance schedule and the violating source is a major stationary source (100 tpy), an NSPS source, a NESHAP or HAP source; or
2. Is a stationary source in violation of Acid Deposition control, Operation Permit or Stratospheric Ozone Protection requirements (Title IV, V, or VI of the Federal Act) or in violation of an order issued pursuant to emergency powers (7603).

The economic benefit calculations, where appropriate, presented to the Division by a source should be verified using the EPA computer software program called BEN. This program calculates noncompliance penalties based on a variety of factors which should be supplied by the source. Sources are responsible for calculating and submitting noncompliance penalties to the Division. Detailed descriptions of the BEN program can be found in the following documents included as appendices:

- 1) BEN, A Model to Calculate The Economic Benefit of Delayed Compliance for Civil Penalties, Appendix C,
- 2) BEN User's Manual, Appendix D.

When calculating economic benefit of noncompliance where the BEN model is not appropriate, sources shall use the Section 609 Economic Benefit Matrix, as referenced in this policy. The matrix calculates noncompliance penalties, assuming that sources should have acquired one piece of recovery equipment. Source are responsible for calculations of noncompliance penalties and submitting such calculations to the Division. When using the Section 609 Economic Benefit Matrix, the date of noncompliance shall commence on January 30, 1993, (effective date of Colorado Air Quality Control Commission, Regulation No. 15).

Detailed descriptions of Section 609 Economic Benefit Matrix can be found in the following document:

- 1) Appendix IX, Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners, July 19, 1993.

6 Civil Penalty Policy

The Colorado Air Pollution Prevention and Control Act, 1992, authorizes the assessment and collection of civil penalties for violations of specific regulations. Section 25-7-122, C.R.S., Civil Penalties, details the determination and collection of civil penalties for any person who violates any requirement, prohibition, or provision of section 25-7-105, C.R.S., Duties of the Commission. Section 25-7-105(11)(a), C.R.S., *et. seq.*, details the duties of the commission in terms of regulations concerning CFCs and ozone depleting compounds.

Civil penalties are economic penalties established to discourage sources from operating in noncompliance with state regulations and rules. The Division's policy is to apply the authority granted in the State Act regarding civil penalties in order to deter noncompliance with statutory requirements.

When violations of the State CFC regulations have occurred, civil penalties will be assessed in an equitable and documented procedure. Final settlements of civil penalties may be lower than calculated however, while meeting the requirements of the authority found in section 25-7-122, C.R.S., Civil Penalties.

7 Civil Penalty Assessment Procedure

Section 25-7-122 C.R.S., Civil Penalties, authorizes the assessment of civil penalties of not more than fifteen thousand per day for each day of violation, for violations of related CFC regulations. Civil penalty calculations found in this policy were designed to discourage noncompliance with such regulations and represent equitable and reasonable costs associated with the administration and enforcement of the State CFC program.

Air Quality Control Commission Regulation No. 15 establishes the standards and guidelines for the administration and enforcement of the State CFC Program. The program was authorized by the State Legislature to be consistent with the Federal CFC Program, Title VI, Section 608. Conformity is required regarding standards and requirements concerning the use and disposal of Class I and Class II ozone depleting compounds during service, repair, or disposal of appliances and industrial process refrigeration systems.

At the date of this original penalty policy for enforcement and penalty assessments of CFC violations, Title VI of the Federal Act is not a delegatable state program. As a result, certain penalty assessment limitations in the State of Colorado are present. However, it is the intent of this document to maintain consistency with the Title VI of the Federal Act, where possible, regarding penalty assessments and policy.

The civil penalty policies hereby set forth shall consider penalties for similar programs found in the Federal Act, specifically, violations of similar programs of Sections of 608 and 609, as they apply within the State of Colorado.

The Division reserves the right to modify as needed such policies for purposes of maintaining consistency and intent with regard to similar Federal Act CFC Programs.

With regard to this CFC Civil Penalty Policy, additional consideration shall also be given to: (1) the size and scope of a business or facility, (2) the occurrence of repeat violations, and (3) the cost of compliance.

- 1) Regarding size and scope of businesses or facilities, the following civil penalty addition shall be included:
 - A) For all sources with one to four employees, the civil penalty shall be the base penalty.
 - B) For all sources with five to ten employees, the civil penalty shall be increased by \$500.00 or an amount equal to the base penalty, which ever is less.
 - C) For all sources with eleven or more employees, the civil penalty shall be increased by \$ 1 000.00 or an amount equal to the base penalty, which ever is less.
- 2) Regarding occurrences of repeat violations, the following conditions shall be assessed to previous violations:
 - A) All subsequent violations of similar occurrences shall increase the civil penalty assessments by 25 % where a compliance order has been issued.
- 3) All penalty assessments shall include the cost of compliance for violations where noncompliance was deemed to have occurred over any time frame, regarding fees. (i.e. if a source or individual were found to be in noncompliance for two years, two years of fees would be included in the penalty assessment calculation).

Civil penalty assessments for fees are different from, and in addition to penalties found in the BEN computer model for noncompliance fee assessments.

8 Civil Penalty Calculations for Violations of 609 (motor vehicle) Provisions

8.1 Technician Registration

Failure of technician(s) to properly register with the Division shall be assessed a base civil penalty of \$250.00.

8.2 Technician Certification

Failure of technician(s) to possess EPA approved certification and training when performing service which involves the refrigerant, shall be assessed a base civil penalty of \$2,500.00.

8.3 Use of Approved Recycle/Recovery Equipment

Failure of technician(s) to properly use or possess approved recycle/recovery equipment in the act of performing air conditioning service shall be assessed a base civil penalty of \$5,000.00

8.4 Record Keeping

Failure of technician(s) or sources to maintain required service records shall be assessed a base civil penalty of \$500.00 for each required item.

9 Civil Penalty Calculations for Violations of 608 (stationary) Provisions

9.1 Intentional Venting

Any person who allows the intentional venting of an ozone depleting compound shall be assessed a base civil penalty of \$5,000.00

9.2 Technician Certification

Failure of technician(s) to possess EPA approved certification for the appropriate level of work which involves the refrigerant, shall be assessed a base civil penalty of \$2,500.00.

9.3 Technician Registration

Failure of technician(s) to properly register with the Division, shall be assessed a base civil penalty of \$250.00.

9.4 Equipment Registration, Reporting and Recordkeeping

Failure to properly register equipment and maintain and/or submit required record keeping shall be assessed a base civil penalty of \$500.00 for each required item.

9.5 Leakage Rates Exceedances

Noncompliance of established leakage rates shall be considered intentional venting.

9.6 Installation, Service, Refrigerant Recovery

Noncompliance with established installation, service and refrigerant recovery requirements shall be considered intentional venting.

9.7 Inactive Refrigeration Systems

Failure to meet the requirements of an inactive refrigeration system shall be considered Intentional venting.

9.8 Installation of New Air Conditioning/Refrigeration Equipment

Noncompliance for installation and design of equipment meeting ASHRAE 3-1990 Guideline, installed after July 1, 1993, shall be assessed a base civil penalty of \$1,500.00 for each system.

9.9 Sales of ODCs

Noncompliance regarding limitation of sales of ODCs to only certified technicians by any such person shall be assessed a base civil penalty of \$2,500.00.

9.10 Other

All other violations not noted will be assessed at the statutory maximum unless otherwise determined by the Division. In addition, all cases will be review and considered on a case-by-case basis.

9.11 Circumstances and Factors

Section 25-7-122, C.R.S., Civil Penalties, identifies specific circumstances and factors to be considered when assessing civil penalties, which include:

- 1) The Violator's Compliance History: Violator's compliance history shall be considered based upon occurrences of previous violations. In the event of previous violations, the civil penalty shall be increased by 25% for previous violations where a compliance order was issued.
- 2) Good Faith Efforts on Behalf of the Violator to Comply: Good faith efforts on behalf of the violator to comply shall be applicable only if the violator has made no attempt to comply after a determination of noncompliance has deemed to have occurred. If a violator has made any reasonable good faith effort after a determination of noncompliance (e.g. inspection), after a NOV is issued, or before a NOV conference is held, no additional adjustment to the civil penalty shall be considered. However, if no attempt to comply is evident, an additional 10% shall be added to the civil penalty.
- 3) Payment by the Violator of Penalties Previously Assessed for the Same Violation: Payment by the violator of penalties previously assessed for the same violation shall be considered a previous violation, and the civil penalty shall be doubled.

- 4) Duration of the Violation: Duration of violation shall be considered evidence of continued noncompliance by the violator after an NOV has been issued. If after an NOV has been issued, noncompliance is evident, the civil penalty shall be increased by 10%.
- 5) Economic Benefit of Noncompliance to the Violator: Economic benefit of noncompliance to the violator shall be considered in the noncompliance penalty provision of this policy statement and no additional civil penalty shall be included on the penalty for related violations.
- 6) Impact on, or Threat to, the Public Health or Welfare or the Environment as a Result of the Violation: Impact on, or threat to, the public health or welfare or the environment as a result of the violation shall be considered on a case-by-case basis and if the Division determines an impact in fact did occur, and additional 10% civil penalty shall be applied to the violation penalty.
- 7) Malfeasance: Malfeasance shall be considered knowingly committing an act of wrong doing in regards to the regulatory scheme. If the Division determines malfeasance has occurred by a violator, the civil penalty shall increase by 10%.
- 8) Whether Legal and Factual Theories were Advanced for Purposes of Delay: Whether legal and factual theories were advanced for purposes of delay shall be considered situations which stall or delay compliance. If the Division determines such delays did in fact occur, the civil penalty shall be increased by 10%.

In addition to the eight (8) factors set forth above, the following circumstances and factors are to be considered as grounds for reducing or eliminating civil penalties:

- 1) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance;
- 2) Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts;
- 3) The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program;
- 4) Substantial economic impact of a penalty on the violator;
- 5) Nonfeasance; and
- 6) Other mitigating factors.

After an initial civil penalty has been calculated, the following reductions in penalties shall be ordered in order to reduce a civil penalty. However, where applicable, the total reduction in civil penalties shall not exceed 50% of the penalty for a related violation. The Division may suspend or defer all civil penalties after review on a case-by-case basis.

- 1) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance prior to receiving an NOV shall reduce the civil penalty by 10%.
- 2) Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts shall reduce civil penalties by 10% for enforcement situations where violators acknowledge noncompliance(s) and are actively committed to rectifying such noncompliance.
- 3) The existence of and scope of a regularized and comprehensive environmental compliance program or an environmental audit program shall reduce the civil penalties by 20% and may be combined with items 1 and 2 above. Environmental compliance programs and/or audits will be considered on a case-by-case basis by the Division, however it shall be the responsibility of the violator to design, recommend or suggest such plans, with guidance by the Division. Environmental compliance and audits programs shall be made available to the Division during or after the NOV conference, but in no case after a compliance order has been issued.
- 4) Substantial economic impact of a penalty on the violator shall reduce the civil penalty by not more than the total allowable reduction (50%), if a violator provides economic information to substantiate the effects of economic impact for noncompliance. However, if no documentation is presented by the violator, no reduction to the base penalty shall be considered. Unsubstantiated information shall not be a consideration for reductions in penalties.
- 5) Nonfeasance shall be considered an act of attempted compliance during the time when a violation was discovered and when the source was notified by the Division. If within thirty days of determination of a violation, a source gains regulatory compliance, the civil penalty shall be reduced by 10%.
- 6) Other mitigating factors may be considered by the Division on a case-by-case basis. However, the reduction in civil penalty shall not exceed 50%.

The combination of the following items represent the complete civil penalty assessment:

- 1) Items 1-8 for assessment of penalties,
- 2) Items 1-6 for reducing/eliminating penalties,
- 3) Base penalty,
- 4) Size of facility,
- 5) Repeat occurrence penalty,
- 6) Noncompliance penalty, and
- 7) Cost of compliance.

10 Violations of Final Orders Issued by the Division or Commission

Section 25-7-121, C.R.S, Injunctions, states that in the event any person falls to comply with a final order of the Division, or the Commission, that is not subject to stay pending administrative or judicial review, the Division may request the Attorney General to bring suit for injunctive relief. Section 25-7-115(3)(b), C.R.S., authorizes the Division to assess penalties for failure to comply with a final order of the Division in accordance with section 25-7-122, C.R.S., in the amount up to \$15,000 per day of violation.

ATTACHMENTS

Attachments to this policy include Section 609 Economic Benefit Matrix. Additional information regarding penalty calculations and assessments may be obtained from the Division.

SECTION 609 ECONOMIC BENEFIT MATRIX Economic Benefit Calculated Since January 30, 1993

Number of Months	Economic Benefit	Number of Months	Economic Benefit	Number of Months	Economic Benefit
1-3	\$115	22-24	\$1,103	43-45	\$2,494
4-6	\$236	25-27	\$1,274	46-48	\$2,733
7-9	\$363	28-30	\$1,454	49-51	\$2,984
10-12	\$496	31-33	\$1,642	52-54	\$3,247
13-16	\$637	34-36	\$1,840	55-57	\$3,520
16-18	\$785	37-39	\$2,048	58-60	\$3,811
19-21	\$940	40-42	\$2,266		

AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM

ASBESTOS PENALTY PROCEDURES

AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES
ASBESTOS PENALTY PROCEDURES

APPROVAL: These procedures have been reviewed and approved by the following persons for use in determining penalty assessments for violations of Air Quality Control Commission's Regulation No. 8

May 18, 2000

Margie Perkins, Director
Air Pollution Control Division

David R. Ouimette, Program Manager
Stationary Sources Program

Steven D. Fine, Supervisor
Asbestos Unit

Jill E. Cooper, Legal Administrative Specialist
Stationary Sources Program

1 INTRODUCTION

The purpose of this document is to outline strategies and procedures the Air Pollution Control Division (Division) will follow in calculating the asbestos abatement penalties referred to in the Colorado Air Quality Control Act. The procedures found in this document are intended solely for the use by of Division staff. They are not intended, nor can they be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the State of Colorado. The Division reserves the right to act at variance with these general procedures and to alter these procedures as circumstances warrant, as determined by the Division.

2 CRITERIA FOR CALCULATION OF PENALTIES

The Legislature set forth criteria for calculating penalties in section 25-7-511 (4), C.R.S.:

"[T]he division may assess a penalty of up to twenty-five thousand dollars per day of violation or such lesser amount as may be required by applicable federal law or regulation. In determining the amount of the penalty to be assessed, the Division shall consider the seriousness of the danger to the public's health caused by the violation, whether or not the violation was willful, the duration of the violation, and the record of the person committing such violation."

3 IMPLEMENTATION OF LEGISLATIVE INTENT

Evaluation of the threat to the public health requires the Division to quantify, albeit subjectively, the actual or potential release of asbestos fibers into the environment. The more significant the release, the higher the impact on public health.

Quantifying SERIOUSNESS OF THE DANGER TO THE PUBLIC'S HEALTH is done by considering several factors: the *potential* for fiber release; the likelihood of exposure to members of the public as a result of the violation; and the duration of those violations. The longer the activities that contribute to these factors occur, the greater the potential impact on public health.

The Legislature also directed the Division to consider the willfulness of the violations and the prior record of the party committing the violations when determining the appropriate penalty. Using S=seriousness, D=duration, W=willfulness; and PR=prior record, the equation for determining penalties using these considerations might be expressed as follows:

$$\text{Penalty} = S \times D \times PR \times W$$

This formula will be modified throughout the remainder of this document as the discussion of factors influencing the penalty calculation continues.

4 PENALTY COMPONENTS

4.1 Component S: Seriousness of the Danger to the Public's Health

Some violations will have a greater impact on the *potential* for fiber release and the likelihood of exposure to members of the public as a result of the violation than other violations. These differences are accounted for by assigning different ranges of monetary penalties to each of the citations in the Air Quality Control Commission's (AQCC's) Regulation No. 8 (see Appendix A).

Because the public's exposure to asbestos fibers is closely tied to the **duration** of the activities giving rise to the release or potential release of asbestos, consideration is given to the fact that some violations are more serious the longer they continue while others are not (see formula for the effect duration has on the penalty assessment). To account for this difference SERIOUSNESS OF THE DANGER TO PUBLIC'S HEALTH has been divided into two distinct parts: one for which duration has no impact on potential exposure and another for which duration has a significant impact on potential exposure. We've called these two parts S(i) and S(ii). S(i) violations are those for which SERIOUSNESS OF THE DANGER TO THE PUBLIC'S HEALTH is not affected by duration; S(ii) violations are those for which SERIOUSNESS OF THE DANGER TO THE PUBLIC'S HEALTH is compounded by duration. Appendix A lists the citations from Regulation No. 8 and classifies them, for the purpose of penalty calculations, as either S(i) or S(ii) violations.

In the formula used for calculating penalties only S(ii) violations are increased as the duration of those violations increases as follows:

$$\text{Penalty} = \left[(\text{S(ii)} \times \text{D}) + \text{S(i)} \right] \times \text{PR} \times \text{W}$$

4.2 Component W: Willfulness of the Violation

The most difficult determination to make when assessing penalties is the willfulness on the part of the violator in committing the violations. This determination can be reasonably ascertained by piecing together information obtained during the inspection in conjunction with information obtained through the investigation process, such as responses to Letters of Inquiry and Section 111 letters or during the Notice of Violation Conference itself, and may include the following considerations:

1. Is the owner/operator a Colorado certified GAC? Should/could they have known better? What type of contractor performed the work? How familiar are they with current asbestos regulations?
2. Was prior bulk testing and analysis performed on the materials involved? Did the violator have knowledge of the results?
3. Was a professional, experienced in asbestos related issues, hired to assist in the decision making prior to the violation?
4. Were bids obtained for the work from asbestos abatement contractors?

TABLE 11
Willfulness

WILLFULNESS	MULTIPLIER
Not willful	1.0
Willful	1.5

4.3 COMPONENT EB: Economic Benefit

The amount of the penalty should be at least as much as the violator saved or stood to save by committing the violations. In determining economic benefit, the question that needs to be answered is, “How much did the violator save or expect to save by committing the violations?”

The Division sometimes determines the economic benefit by using the lowest, known legitimate bid for having the original work done properly, as well as any other known costs avoided by committing the violations. If no bid is available, the Division may use figures currently used by the EPA for determining likely abatement costs. EPA's cost estimating table appears in Appendix C.

In determining economic benefit, the Division *may* consider whether any monies were spent to remedy the situation, excluding legal fees. The penalty amount may be reduced by applying a portion of the cost incurred by the violator to correct the problems and/or conduct the cleanup operations. The formula incorporating Economic Benefit is:

$$\text{Penalty} = \left[\{ (S(ii) \times D) + S(i) \} \times PR \times W \right] + EB$$

4.4 Component D: Duration of the Violation

As stated earlier, many violations can increase potential exposure the longer the duration. In the penalty formula these violations are multiplied by a duration factor from Table 2. Duration of the violations begins on the earliest date for which it can reasonably be shown that the violations did occur and ends on the day that the violations can be shown to have ceased. Any fraction of a day is counted as a full day.

TABLE 2
DURATION FACTORS

DURATION (in days)	MULTIPLIER
11	1.00
2 - 7	1.25
8 - 30	1.50

> 30	2.00
------	------

The duration factor effectively increases the penalty assessed to an alleged violator and may be disregarded at the discretion of the Division, using the number of days of violation as a substitute for the multiplier shown in Table 2.

4.5 Component PR: Record of the Person Committing the Violation

The prior record of the alleged violator is taken into consideration when calculating the penalty. Any prior violation of Regulation No. 8, in Colorado, though not necessarily of the same citation, will count towards determination of a prior record of violation. Table 3 should be used to determine a multiplier for increasing the penalty when a prior record is established. (For public information purposes the slate can never be wiped clean for the violator, with respect to their prior record; however, when determining a prior record for purposes of penalty calculation, the Division will go no further than 3 years prior to the date of the alleged violation.)

Changing the company name does not alter the prior record of the contractor. If, in the opinion of the Division, the company is essentially the same as one with a prior record, the appropriate prior record multiplier will be used. (In the case where the contractor is certified in the State of Colorado, further action will be taken if prior violations exist. This may be in the form of revocation or suspension of certification. See Appendix A for more details on certification violations.)

TABLE 3
Prior Record

NUMBER OF PRIOR CONVICTIONS	MULTIPLIER
0	1.00
1	1.25
2	1.50
3	2.00
4	2.00 plus 30 day suspension of certification
5 or more	2.00 plus revocation of certification

5 Additional Factors

There are two additional factors which the Division believes influences the level of the seriousness of the danger to the public's health the: 1) size of the project; and 2) proximity to the public. As is the case with

Duration, there are certain violations for which SERIOUSNESS OF THE DANGER TO THE PUBLIC'S HEALTH is affected by the size of the project and, to a degree, the proximity to the public, and there are some violations for which they are not. Not coincidentally, the S(ii) category of violations are affected by size and proximity and the S(i) violations are not. The penalty formula accounts for these differences:

$$\text{Penalty} = \left[\left\{ (S(ii) \times (D + S_z + P_x)) + S(i) \right\} \times PR \right] + EB$$

5.1 Size of project

The size of the project is considered by the Division to have an impact on the potential for asbestos fiber release. The best determinant of project size is the amount of asbestos containing material impacted. Using total linear and/or square footage of asbestos containing materials impacted upon the Division will distinguish between small, medium and large projects. Project size classifications have been adapted from Regulation No. 8 and both EPA's NESHAPs and AHERA regulations, and are outlined in Table 4, below.

TABLE 4
Size of Project

SIZE OF PROJECT	LINEAR/SQUARE FEET	MULTIPLIER
small	50/32 - 260/160	0.00
medium	260/160 - 1500/500	0.25
large	Greater than 1500/500	0.50

5.2 Proximity to the Public

The closer the abatement project is to an area of public access, the greater the potential for exposure to the general public. Distance to the public is taken into account in the penalty calculation using the "proximity to the public" factor, and is incorporated as shown in Table 5:

TABLE 5
Proximity to the Public

DISTANCE (in meters)	MULTIPLIER
Less than 100	0.25
>= 100	0.00

5.3 Cooperation

One final factor the Division will consider is how cooperative the violators were with the Division in resolving the problems. For example, the Division may consider questions such as:

Did the contractor make every effort to comply with the Division's/inspector's requests and recommendations for eliminating the problem?

Did the parties provide the Division with all information requested, in a timely manner?

If the Division believes that the violator was very cooperative in responding to the Division's instructions, the Division may reduce the penalty by a certain percentage. See Table 6, below:

TABLE 6
Cooperation

COOPERATION	MULTIPLIER
Excellent	1.00 - 0.50
Fair - Good	1.00 - 0.70
Poor	1.00

Using C=cooperation, the formula is now:

$$\text{Penalty} = \left[\{ (S(ii) \times (D + Sz + Px)) + S(i) \} \times W \times PR \right] \times C + EB$$

6 Appeals and Settlement Discussions

Should the violator wish to appeal the Division's findings they have the right to request a hearing regarding this matter before the Air Quality Control Commission (AQCC), pursuant to section 25-7-511(5), C.R.S. The person must make a request to the AQCC in writing, within 30 days of the date of the Compliance Determination Letter, to the following address:

Chairman, Air Quality Control Commission
Colorado Department of Public Health and Environment
APCD-CC-B1
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

A copy of the hearing request must also be mailed to the two addresses below:

Legal Administrative Specialist
Colorado Department of Public Health and Environment
APCD-SS-B1
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Casey Shpall

Attorney General's Office
1525 Sherman Street
Denver, Colorado 80203

If the Compliance Determination is issued to an individual, he or she must be represented by an attorney in any adjudicatory hearing before the AQCC or must represent themselves pro se. If the Compliance Determination is issued against a business, the business must be represented by an attorney before the AQCC, unless it is appearing in accordance with section 13-1-127, C.R.S. (regarding closely held corporations).

The AQCC's Procedural Regulation, 5 CCR 1001-1, Section 1.6.2.(3), requires that all requests for adjudicatory hearings contain:

1. Identification of the person(s) requesting such hearing, including address and telephone number.
2. A statement of the relief requested and a general statement of the factual basis and legal justification [including a description of the legal issues which the prospective party intends to raise] for the requested action.
3. A copy of any Division compliance order, noncompliance penalty determination or permit which is the subject of the request.
4. A statement identifying the date of receipt of the compliance order, date of issuance of the noncompliance penalty determination, or date of publication of public notice for a permit.
5. An estimate of the time required for the hearing.

The Division encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement. Settlements may take the form of "creative settlements" in which portions of any monetary penalties may be suspended in exchange for the violator's participation in activities designed to prevent or reduce the potential for future violations of the regulation or which may assist the Division in educating the regulated community with regard to proper treatment and handling of asbestos-containing materials in buildings.

Parties may confer informally with the Division concerning the alleged violations and the proposed penalty and may choose to be represented by an attorney at settlement conferences. To request a settlement conference, the party should contact Jill E. Cooper, Legal Administrative Specialist, Colorado Department of Public Health and Environment, Air Pollution Control Division, APCD-SS-B 1, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530 (303) 692-3269. A request for an informal settlement conference in itself does not serve as an answer or as a request for hearing. The party is also requested to send a copy of the party's answer and/or request for hearing to Jill E. Cooper at the address listed above.

CALCULATION OF PENALTY FOR:

XYZ Asbestos Abatement
P.O. Box XYZ
Northglenn, Colorado 80233

Project Site: 100 Main Street, Boulder, Colorado 80302

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COMPONENT S(i): SERIOUSNESS OF THE DANGER TO THE PUBLIC'S HEALTH (excluding duration)

Citation (Reg. 8)	Description of the Violation	Penalty
III.C.1.d.	Original permit not posted on site	\$ 50.00
II.A.6.	Training certificates not on site	100.00
Component S(i) Total		150.00

COMPONENT S(ii): SERIOUSNESS OF THE DANGER TO THE PUBLIC'S HEALTH (including duration)

Citation (Reg. 8)	Description of the Violation	Penalty
III.C.2.a.	Negative air machine not operating during abatement	\$ 500.00
III.C.2.i.	Dry removal	1000.00
II.A.1.c.	Workers not trained in asbestos abatement	1,000.00
Component S(ii) subtotal		2,500.00

SUMMARY OF COMPONENTS

Description of the Component	Component	Factor/Penalty
Seriousness of the Danger to the Public's Health (excluding duration)	S(i)	\$ 150.00
Seriousness of the Danger to the Public's Health (including duration)	S(ii)	\$ 2,500.00
Project Size: 8,000 ft ²	Sz	0.50
Proximity to the Public: 45 meters	Px	0.25
Cooperation: Excellent	C	0.50
Willfulness Factor	W	0.50
Economic Benefit	EB	\$ 1,000.00
Duration of the Violation	D	1.25
Prior Record of the Person Committing the Violation	PR	1.25
Total Penalty = [{ (S(ii) × (D + Sz + Px)) + S(i) } × W × PR] × C + EB		2,609.38

APPENDIX A

REGULATION NO. 8, PART B PENALTY AMOUNTS

PENALTY DETERMINATIONS

Violation	Penalty Range	Component
Section II.		
Company not certified	\$ 100 - 2,500 ¹	S(i)
Individual not certified	\$ 100 - 1,000 ¹	S(ii)
Individual not trained	\$ 100 - 1,000	S(ii)
	* plus existing certification fees	
Section III.		
B. Notification		
1. Notices	\$ 100 - 5,000	S(i)
a.(i) Falsifying of information	\$ 100 - 5,000	S(i)
C. Requirements in Public Access Areas		
1. Permits	\$ 100 - 5,000	S(i)
a. Permit Applications	\$	
b. Permit/Project Modifications	\$	
c. Multiple Phase Projects	\$	
d. Permit not posted in visible location	\$\$ 50 - 100	S(i)
2. Asbestos Abatement Work Practices		
a. Containment barriers	\$ 100 - 1,000	S(ii)
b. Decontamination unit	\$ 100 - 1,000	S(ii)
c. cleaning of surfaces	\$ 100 - 1,000	S(ii)
d. HEPA vacuuming	\$ 100 - 1,000	S(ii)
e. wet wiping	\$ 100 - 1,000	S(ii)
f. glovebags	\$ 100 - 1,000	S(ii)
g. airless sprayers	\$ 100 - 1,000	S(ii)
h. manometer/pressure gauge	\$ 100 - 1,000	S(ii)
i. wetting	\$ 100 - 25,000	S(ii)
j. disposal containers	\$ 100 - 1,000	S(ii)
k. encapsulant	\$ 100 - 1,000	S(ii)
l. coveralls	\$ 100 - 1,000	S(ii)
m. enclosures	\$ 100 - 5,000	S(ii)
n. removing facility components	\$ 100 - 1,000	S(ii)
o. elevated friable asbestos	\$ 100 - 1,000	S(ii)
p. cold temperature wetting	\$ 100 - 1,000	S(ii)
q. structurally unsound buildings	Not applicable	
r. air cleaning	\$ 100 - 25,000	S(ii)
s. waste load-out area	\$ 100 - 1,000	S(ii)
3. Special Projects		
a. Resilient floor tile, sheet vinyl and transite	Not applicable	
b. Asbestos-contaminated soil	\$ 100 - 1,000	S(ii)
c. Asphaltic roofing materials	Not applicable	
d. Asbestos cement products		
e. Work practices for non-friable ACM		
4. Alternative Procedures and Variances	Not applicable	

5. Asbestos Spill Response	\$ 100 - 1,000	S(ii)
6. Renovation and Demolition Projects	\$ 500 - 25,000	S(i) or S(ii)
7. Measuring Asbestos Levels		
a. clearing abatement projects	\$ 250 - 10,000	S(ii)
(i) visual inspection	\$ 100 - 10,000	S(ii)
(A) aggressive monitoring	\$ 100 - 10,000	S(ii)
(v) number of samples	\$ 500 - 5,000	S(ii)
b. Max. Allowable Asbestos Level	\$ 100 - 1,000	S(ii)
8. Handling Waste Material		
a. packaging	\$ 100 - 1,000	S(ii)
b. labeling	\$ 100 - 1,000	S(ii)
c. storage	\$ 100 - 1,000	S(ii)
d. transport	\$ 250 - 15,000	S(ii)
e. disposal	\$ 100 - 1,000	S(ii)
f. waste water	\$ 100 - 1,000	S(ii)
D. Asbestos in Manufacturing, etc.	Not applicable	

APPENDIX B
TABLES OF MULTIPLIERS

TABLE 1
Willfulness

WILLFULNESS	MULTIPLIER
Not willful	1.00
Willful	1.50

TABLE 2
DURATION FACTORS

DURATION (in days)	MULTIPLIER
1	1.00
2 - 7	1.25
8 - 30	1.50
> 30	2.00

TABLE 3
Prior Record

NUMBER OF PRIOR CONVICTIONS	MULTIPLIER
0	1.00
1	1.25
2	1.50
3	2.00
4	2.00 plus 30 day suspension of certification
5 or more	2.00 plus revocation of certification

TABLE 4
Size of Project

SIZE OF PROJECT	LINEAR/SQUARE FEET	MULTIPLIER
small	50/32 - 260/160	0.00
medium	260/160 - 1500/500	0.25
large	Greater than 1500/500	0.50

TABLE 5
Proximity to the Public

DISTANCE (in meters)	MULTIPLIER
Less than 100	0.25
≥ 100	0.00

TABLE 6
Cooperation

COOPERATION	MULTIPLIER
Excellent	1.00 - 0.50
Fair - Good	1.00 - 0.70
Poor	1.00

APPENDIX C
EPA'S PENALTY PROCEDURES

APPENDIX I SAMPLE LETTER FOR MINOR AND/OR MODERATE VIOLATIONS

[date]

[Name of facility]
[Name of agent or responsible official]
[address]

RE: Notice of Violation and Proposed Settlement
In the Matter of [name of source]

Dear [name]:

On [date], an inspector for the Colorado Air Pollution Control Division (APCD) conducted an inspection of the [name] facility located at [address]. At the time of the inspection, the following noncompliance was discovered:

1. [describe violation]
2. [describe violation]

In light of the above, the APCD has determined that [name of source] is in violation of Air Quality Control Commission Regulation No. __, § ____.

The Colorado Air Pollution Prevention and Control Act, at § 25-7-122, C.R.S., specifies that the penalty for such violations can include civil penalties of up to \$[00] for each day of each violation. The monetary amount of the APCD's settlement offer specified below is derived from a pre-established schedule of penalties, which takes into account, among other factors, the magnitude and severity of the violation, cooperation of the source, as well as the prior history of violations of a similar nature at the facility. All parties we deal with, whether private, commercial, or governmental, are treated similarly in the settlement process with any settlement offers being based upon the evaluation of the same factors and criteria in all cases.

If you are interested in settling this violation, I am authorized to offer settlement in accordance with the APCD's settlement policy as follows:

1. Payment of a civil penalty in the sum of \$[00]. Payment of a civil penalty precludes further civil or criminal prosecution for the above described violation(s) against the named source. The APCD retains its authority to take enforcement actions based on any and all violations not specifically described above.
2. Proof of present compliance must be submitted in writing, if not already provided.
3. In the event any further violations occur, the APCD may consider the violation(s) described above in assessing a penalty for the subsequent violations, in accordance with the provisions of § 25-7-122, C.R.S.
4. Entering into this settlement shall not constitute an admission of violation of the air quality laws, nor shall it be inferred to be such an admission in any administrative or judicial proceeding. The described violation will constitute part of the source's compliance history for any purpose for which such history is relevant.

This letter constitutes an offer of settlement and is not a demand for payment. Please contact Robert Jorgenson at 303-692-3171 if you wish to discuss this offer of settlement. We will be glad to consider any information you wish to submit related to settlement of the violation(s).

If the above terms are acceptable to you, sign and return a copy of this letter together with written proof that the facility is now in compliance, and a check in the sum of \$[00], made payable to the Colorado Department of Public Health and Environment, within twenty (20) days of receipt, to:

Legal Administrator
Colorado Department of Public Health and Environment
Air Pollution Control Division
4300 Cherry Creek Drive South
APCD-SS-B1
Denver, Colorado 80246-1530

[Moderate violations] You may write or call Robert Jorgenson, at the above phone number, to request a settlement conference if you wish to discuss the matter with representatives of the APCD's compliance staff. A conference must be scheduled for a date within twenty (20) days of your receipt of this settlement proposal letter.

If we do not hear from you within twenty (20) days, we will assume that you are not interested in resolving this matter as outlined above and will refer the violation to formal enforcement process.

Sincerely,

Robert Jorgenson
Supervisor
Compliance, Monitoring & Enforcement

IF YOU HAVE ANY LEGAL QUESTIONS REGARDING SETTLEMENT, PENALTIES, OR PROCEDURES, YOU SHOULD SEEK THE ADVICE OF YOUR ATTORNEY.

I have read the above settlement and agree to the terms and conditions of this offer.

[NAME OF SOURCE]

[Name of signatory]

Title

Date

APPENDIX J SAMPLE LETTER FOR MAJOR VIOLATIONS

Sample Letter for a Major Violation Settlement Offer

[date]

[Name of facility]
[Name of agent or responsible official]
[address]

RE: Notification of Noncompliance and Offer to Settle
In the Matter of [Name of Source]

Dear [name]:

On [date], an inspector for the Colorado Air Pollution Control Division ("APCD") conducted an inspection of the [name] facility located at [address]. At the time of the inspection, the following noncompliance was discovered:

1. [describe violation]

In light of the above, the APCD has determined that [name of source] is in violation of Air Quality Control Commission Regulation No. ____, § __.

State law provides for criminal or civil penalties in order to deter air pollution violations.⁵ The APCD seeks penalties for most alleged violations for this purpose.

The APCD's policy is to attempt to settle this matter without the need for formal enforcement action. In an effort to settle this matter, we would like to meet with you at an office settlement conference. The purpose of this conference is to discuss any "mitigating circumstances" or facts which should cause the penalties to be reduced, and address the possibility of mutually settling this matter without the need for further formal action.

The following factors and any other relevant circumstances determine the size of penalties in settling air pollution violations, including any violations in this case:

1. the type of violation, and impact on or threat to public health or welfare or environment as result of violation;
2. good faith efforts by source to comply after notice of violation;
3. the length of time over which the violation occurred;
4. the compliance history of the source;
5. the record of maintenance and other good air pollution practices by the source (existence and scope of comprehensive environmental compliance or audit program);
6. prompt disclosure by the source of all relevant information concerning the violation after discovery;

⁶Colorado statute specifies the maximum penalty for the alleged violations as follows:

- a. Civil penalty of up to \$15,000 per day for each day of violation for those violations described in § 25-7-122(1)
- b. Civil penalty of up to \$15,000 per day for each violation for those violations described in § 25-7-122(1)(d), C.
- c. Criminal penalties, through criminal prosecution, with fines as described in § 25-7-122.1, C.R.S.

7. cooperation by the source, including entering into a legally enforceable commitment where appropriate;
8. any action taken, including the nature, extent, and time of response to mitigate the violation;
9. financial burden of penalty to the violator;
10. payment by source of penalties previously assessed for similar violation;
11. economic benefit of noncompliance;
12. malfeasance or nonfeasance;
13. whether legal and factual theories were advanced for purposes of delay;
14. other mitigating factors, as appropriate; and
15. penalty reduction for early settlement.

If you wish to participate in an office settlement conference, or to discuss this matter, please call Robert Jorgenson at (303) 692-3171 within twenty (20) days of receipt of this letter. Additionally, you may send written information that you wish to have considered by the APCD to the above address. Failure to settle this matter in a timely manner will result in no penalty reduction for early settlement.

If you do not respond within twenty (20) days of receipt of this letter, the APCD will refer this matter to formal enforcement action. Thank you for your cooperation.

Sincerely,

Robert Jorgenson
Supervisor
Compliance, Monitoring & Enforcement Unit

cc: Dave Ouimette, APCD
Jill Cooper, APCD
[local county]

APPENDIX K SAMPLE COMPLIANCE ORDER ON CONSENT



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM**

BEFORE THE AIR POLLUTION CONTROL DIVISION
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
STATE OF COLORADO

COMPLIANCE ORDER ON CONSENT

In the Matter of:

(NAME)

This Compliance Order on Consent (“Consent Order”) is issued by the Colorado Department of Public Health and Environment through the Air Pollution Control Division (“Division”), pursuant to the Division’s authority under section 25-7-115(3)(b), C.R.S. (1989 & 1996 Supp.), with the express consent of (NAME). The Division and (NAME) may be referred to collectively as “the Parties.”

I. STATEMENT OF PURPOSE

The mutual objectives of the parties in entering into this Order on Consent are:

1. To bring (NAME) into compliance with the Colorado Air Pollution Prevention and Control Act, sections 25-7-101 to 512, C.R.S., and its implementing regulations, 5 CCR 1001, et seq.
2. To resolve the violations of the environmental statute and regulations as discovered the Division during an inspection on (DATE) and described below at the (FACILITY).

II. FINDINGS OF FACT

3. (Description of facility, location, etc.)
4. (Relevant facts leading up to inspection)
5. (Description of and relevant facts concerning inspection)
6. (Results of any tests, etc.)

COMPLIANCE ORDER ON CONSENT
IN THE MATTER OF (NAME)

7. On (DATE2), the Division issued a Notice of Violation (“NOV”) to (NAME). A NOV conference was held on (DATE3). At the conference, (relevant discussion and facts from conference).

8. The Division and (NAME) entered into settlement discussions for the violations as determined by the Division. The Parties reached a settlement agreement that is detailed in this Consent Order.

III. VIOLATIONS

9. (NAME) failed to (list violations).

IV. ORDER ON CONSENT

Based on the foregoing factual and legal determinations, and pursuant to its authority under sections 25-7-115(3)(b) and (c), C.R.S., the Division orders, and (NAME) agrees to the following:

10. Effective immediately, (NAME) shall comply with (provisions violated) of the Colorado Air Pollution Prevention and Control Act and its implementing regulations in the regulation and control of air pollutants from the (FACILITY).

11. (INSERT ALL NECESSARY COMPLIANCE ACTIONS)

V. PENALTIES / SUPPLEMENTAL ENVIRONMENTAL PROJECT

12. Based upon the factors set forth in section 25-7-122, C.R.S., the Division has assessed a civil penalty in the amount of _____ Dollars (\$____.00) against (NAME) for violations of Colorado Air Pollution Prevention and Control Act and its implementing regulations cited in Section III. of this Consent Order. A copy of the penalty calculation is attached.

13. (Discussion about negotiated penalty amount.)

14. (NAME) has indicated a desire to perform a Supplemental Environmental Project (“SEP”) to offset the penalties identified in paragraphs __ above. The Division will generally allow approvable SEPs to offset up to 80% of the civil penalty assessed above, at a cost ratio of 1:1.5 of penalty to SEP dollars expended.

15. (INSERT description of SEP). (NAME) shall undertake the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. (Describe SEP; include dates, specific milestones, goals or objectives.)

16. (INSERT cost of SEP). The total expenditure for the SEP shall be not less than _____ Dollars (\$____.00). (NAME) shall provide the Division with documentation of the expenditures made in connection with the SEP within thirty (30) days of making such expenditure.

COMPLIANCE ORDER ON CONSENT
IN THE MATTER OF (NAME)

17. (NAME) hereby certifies that, as of the date of this Consent Order, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is (NAME) required to perform or develop the SEP by agreement, grant or an injunctive relief in this or any other case or in compliance with state or local requirements. (NAME) further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

18. (NAME) shall submit a SEP Completion Report to the Division by (COMPLETION DATE). The SEP Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;
- c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

(NAME) agrees that failure to submit the Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order and (NAME) shall become liable for stipulated penalties pursuant to paragraph __ below.

19. Periodic reports (if necessary -- describe).

20. In the event that (NAME) fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph __ above, (NAME) shall be liable for stipulated penalties as follows:

(NAME) shall pay stipulated penalties within fifteen (15) days of receipt of written demand by the Division. Method of payment shall be as follows: by certified or cashier's check drawn to the order of "Colorado Department of Public Health and Environment," c/o Legal Administrator, Colorado Department of Public Health and Environment, Air Pollution Control Division, Mail Code APCD-SS-B1, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Nothing herein shall be construed as prohibiting, altering or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of (NAME'S) violation of this agreement or of the statutes and regulations upon which this agreement is based, or for (NAME'S) violation of any applicable provision of law.

COMPLIANCE ORDER ON CONSENT
IN THE MATTER OF (NAME)

21. In consideration of the above SEP, (NAME) shall pay a civil penalty of _____ Dollars (\$_____.00), reflecting the SEP mitigation, in accordance with the provisions of paragraph ___ above within thirty (30) days of the effective date of this Consent Order.

22. Any public statement, oral or written, made by (NAME) making reference to the SEP shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment, Air Pollution Control Division, for violations of _____.”

VI. (NAME’S) AGREEMENT TO CONSENT ORDER

23. (NAME) agrees to the terms and conditions of this Consent Order. This Consent Order shall constitute a requirement under articles 7 of title 25 of the Colorado Revised Statutes. (NAME) agrees not to challenge the factual or legal determinations made by the Division herein, the Division’s authority to bring, or the court’s jurisdiction to hear, any action to enforce the terms of this Consent Order under the Air Pollution Prevention and Control Act.

24. Notwithstanding the above, (NAME) does not admit to any of the factual or legal determinations made by the Department herein, and any action undertaken by (NAME) pursuant to this Consent Order shall not constitute an admission of liability by (NAME) with respect to conditions of the facility property. (IF REQUESTED BY COMPANY)

VII. SCOPE AND EFFECT OF ORDER ON CONSENT

25. The Parties agree and acknowledge that the Consent Order constitutes a full and final resolution of the noncompliance addressed in this Consent Order, and further agree not to challenge the terms and conditions of this Consent Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

26. This Consent Order constitutes a final agency order upon execution by (NAME) and the Division and shall be enforceable by either party in the same manner as if this Consent Order had been entered by the Division without agreement by (NAME). The Parties agree that any violation of the provisions of this Consent Order by (NAME) concerning the Colorado Air Pollution Prevention and Control Act (“the Act”), or its implementing regulations, shall be a violation of a final order of the Division for the purposes of sections 25-7-121 and 122, C.R.S. (NAME) agrees not to challenge the factual or legal determinations made by the Division herein, the Division’s authority to bring, or the court’s jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

27. The Parties’ obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

COMPLIANCE ORDER ON CONSENT
IN THE MATTER OF (NAME)

28. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the Act, or any implementing regulations under the Act, or any subsequent violation of any requirement of this Consent Order, the above Act, or its regulations.

29. Entering into this settlement shall not constitute an admission of violation of the air quality laws by (NAME), nor shall it be inferred to be such an admission by (NAME) in any administrative or judicial proceeding. The described violation will constitute part of (NAME'S) compliance history for any purpose for which such history is relevant, including considering the violation described above in assessing a penalty for any subsequent violations, in accordance with the provisions of section 25-7-122, C.R.S., against (NAME).

30. (NAME) shall comply with all applicable Federal, State, and/or Local laws or regulations and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Consent Order and perform its obligations required hereunder. The Division makes no representation with respect to approval and permits required by Federal and Local laws or regulations or State laws or regulations other than those specifically referred to herein.

VIII. NOTICES

31. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Jill E. Cooper, Legal Administrative Specialist
Air Pollution Control Division
Colorado Department of Public Health and Environment
Mail Code APCD-SS-B1
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For (NAME):

IX. EFFECT OF BANKRUPTCY PETITION

32. The obligations imposed by this Consent Order require the performance by (NAME) of actions which are reasonably designed to protect public health and welfare and the environment. Any enforcement of the obligations imposed by this Consent Order constitutes, solely for the purposes of 11 U.S.C. section 362(b)(5) (1988), the enforcement of a judgment, other than a money judgment, obtained in an action to enforce the State's regulatory and police powers.

X. MODIFICATIONS

COMPLIANCE ORDER ON CONSENT
IN THE MATTER OF (NAME)

33. This Consent Order may be modified only upon mutual written agreement of the Parties. The Division may extend any deadlines set forth herein, and upon acceptance of such extension by (NAME), any such extension shall constitute a modification to this Consent Order.

XI. COUNTERPARTS

34. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

XII. RESERVATION OF RIGHTS

35. The Division reserved the right to bring any action or to seek civil or administrative penalties for any past, present or future violations of the Colorado Air Pollution Prevention and Control Act and its implementing regulations, not specifically addressed herein. Further, the Division has the right to bring any action to enforce this Consent Order and to seek any authorized penalties for any violation of this Consent Order.

XIII. BINDING EFFECT AND EFFECTIVE DATE

36. This Consent Order is binding upon the Parties to this Consent Order and their corporate subsidiaries or parents, their officers, directors, agents, attorneys, employees, contractors, successors in interest, and assigns. The undersigned representatives certify that they are authorized by the party or parties whom they represent to enter into this Consent Order and to execute and legally bind that party or those parties to the terms and conditions of the Consent Order. This Consent Order shall become effective as of the date on which the last of all required signatures has been obtained.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By: _____ Date: _____
Steven Arnold
Deputy Director
Air Pollution Control Division

By: _____ Date: _____
David R. Ouimette, Manager
Stationary Sources Program
Air Pollution Control Division

(NAME)

By: _____ Date: _____

(Responsible Person)
(Title)

cc: Air Quality Control Commission
Bob Jorgenson, APCD
Jill Cooper, APCD
Casey Shpall, Office of Attorney General
Cindy Reynolds, US EPA
(Local Agency)

APPENDIX L SAMPLE NOTICE OF VIOLATION



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM**

CERTIFIED MAIL NO. P
RETURN RECEIPT REQUESTED

BEFORE THE AIR POLLUTION CONTROL DIVISION
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
STATE OF COLORADO

NOTICE OF VIOLATION

In the matter of:
(NAME)

This Notice of Violation is being issued by the Colorado Department of Health through the Air Pollution Control Division ("Division") to (Name) pursuant to the Division's authority under section 25-7-115(2), C.R.S., as amended.

I. ALLEGED FINDINGS OF FACT

1. This Notice of Violation is a follow up to a (Inspection, stack test, etc.), at (Name's) (Facility description) facility located at (Address). This facility contains (Source equipment) which are subject to Air Quality Control Commission Regulation Number (No.), Section (No.) and Construction Permit Number (No.). Condition number (No.) of Construction Permit Number (No.) requires that (Name) operate the facility in compliance with a permit limit for (Emission) at (Emission limit).

2. (Relevant facts leading up to inspection)
3. (Description of and relevant facts concerning inspection)
4. (Results of any tests, etc.)

II. PROVISIONS OF THE LAW ALLEGED TO HAVE BEEN VIOLATED

1. (Name) operated (Source equipment) in excess of (Emission limit) in violation of Construction Permit Number (No.), condition number (No.), which provides:

(Permit condition language)

III. STANDARD PENALTY PROVISION FOR THE VIOLATION AS ALLEGED

1. Section 25-7-122(1)(b), C.R.S., as amended, provides that any person who violates any requirement of an applicable emission control regulation of the Commission shall be subject to a civil penalty of not more than Fifteen Thousand Dollars (\$15,000.00) per day for each day of violation.
2. Section 25-7-115(5), C.R.S., as amended, requires the Division to determine if a noncompliance penalty is applicable. If a noncompliance penalty is found to be applicable, such penalty generally must be assessed for any period of violation from the date of this notice until the date on which the emission source is brought into compliance. The amount of noncompliance penalty is calculated in accordance with the provisions of section 25-7-115(5)(b), C.R.S.

IV. CONFERENCE REGARDING THE ALLEGED VIOLATION

1. In accordance with the requirements of section 25-7-115(3), C.R.S., a conference regarding the violations described above has been scheduled for (Date), at the Air Pollution Control Division office, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246, at (Time). This conference will provide (Name) an opportunity to submit data, views, and arguments concerning the violation and whether assessment of civil and noncompliance penalties is appropriate. The Division may provide further opportunity for you to respond after the conference if circumstances warrant. Should the scheduled date and time be inconvenient for you, contact (Contact) with the Division at (Phone number) for rescheduling.
2. As a result of the conference, a determination will be made as to whether a Compliance Order will be issued and whether a civil penalty and noncompliance penalty must be assessed.
3. If you have any questions concerning the conference or other matters prior to the scheduled conference, please contact this office.
4. The conference is an informal proceeding. You may, however, have legal counsel attend with you.

V. ADDITIONAL ACTION BY THE DIVISION

Failure to attend the conference will result in the issuance of a Compliance Order and possible assessment of penalties against (Name). Subsequent violation of the Compliance Order may subject (Name) to further enforcement action under section 25-7-121, C.R.S. (court injunction) and section 25-7-122, C.R.S. (civil penalties up to \$15,000.00 per day of violation).

VI. EFFECTIVE DATE OF NOTICE

This Notice of Violation shall become effective upon receipt. Dated this __ th of (Month, Year).

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

(Supervisor
(Title
(Program)
Air Pollution Control Division

(Inspector)
(Title)
(Program)
(Agency)

cc: Colorado Air Quality Control Commission
Jill Cooper, Air Pollution Control Division
Casey Shpall, Office of the Attorney General
Cindy Reynolds, U.S. EPA Region VIII
(Local Agency)

AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM**

CERTIFICATE OF MAILING

This is to certify that a signed copy of the NOTICE OF VIOLATION ISSUED TO (NAME), (CITY, COUNTY), COLORADO, was deposited in the mail on this ___ th day of (Month, Year) to the following:

1. UNITED STATES POSTAL SERVICE, CERTIFIED MAIL NO. P
2. UNITED STATES POSTAL SERVICE, FIRST CLASS MAIL

BY:

Ellen Evans, Administrative Assistant
Air Pollution Control Division

APPENDIX M SAMPLE COMPLIANCE ORDER AND ASSESSMENT OF CIVIL PENALTY



CERTIFIED MAIL NO. P 335 619 160
RETURN RECEIPT REQUESTED

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM**

BEFORE THE AIR POLLUTION CONTROL DIVISION
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
STATE OF COLORADO

COMPLIANCE ORDER AND ASSESSMENT OF CIVIL PENALTY

In the matter of:

(NAME)

This Compliance Order is being issued by the Colorado Department of Public Health and Environment through the Air Pollution Control Division ("Division"), to (Name) pursuant to the Division's authority under section 25-7-115(3)(b), C.R.S., as amended.

I. FINDINGS OF FACT

1. (Description of facility, location, etc.)
2. (Relevant facts leading up to inspection)
3. (Description of and relevant facts concerning inspection)
4. (Results of any tests, etc.)

5. Pursuant to the above Findings of Fact, the Division issued a Notice of Violation ("NOV") to (Name) dated (Date), alleging violations of Regulation No. (No.) as described. The NOV scheduled an informal conference to provide (Name) with an opportunity to present data, arguments, and other information concerning the alleged violations.

6. At the NOV conference, held at the Division's offices on (Date), (Name) presented information that demonstrated that (summary of information presented).

COMPLIANCE ORDER AND ASSESSMENT OF CIVIL PENALTY
IN THE MATTER OF (NAME)

II. CONCLUSION OF LAW

1. The Division has determined that (Name) violated Air Quality Control Commission Regulation No. (No.), Section (No.), which establishes a (Emission) emissions limitation of (Limit). The Division has determined that these violations occurred continuously from (Date) through (Date).
2. (Any other violations)

III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to sections 25-7-115(3)(b) and (c), C.R.S., as amended, (Name) is hereby ordered to comply with the following requirements:

1. Effectively immediately, (Name) shall comply with Regulation No. (No.), Section (No.), establishing an emissions limitation of (Emissions limit).
2. (Name) is a stationary source that is subject to the noncompliance provisions of the Colorado Air Pollution Prevention and Control Act as set forth in section 25-7-115(a)(I), C.R.S. (Name) shall calculate noncompliance penalties for the operation of its unit in violation of the Regulation No. (No.) standard described above. Such calculation shall be performed in accordance with section 25-7-115(5)(b), C.R.S. (Name) shall submit the calculation with a payment schedule and all information for verification to Harry Collier at the Division within forty five (45) days of the date of this Compliance Order.

This Compliance Order shall constitute a final order of the Division.

IV. CIVIL PENALTIES

1. After due consideration of those factors listed in sections 25-7-122(2)(a) and (b), C.R.S., as amended, the Division has assessed a civil penalty in the amount of (Penalty) Dollars (\$__.00) against (Name) for violation of section 25-7-123(2)(a), C.R.S., and Regulation No. (No.), Section (No.) (a copy of any applicable regulation can be purchased from the Division if requested). A penalty calculation sheet is attached for reference.
2. The civil penalty of \$_____ shall be paid by (Name) to the Colorado Department of Public Health and Environment, Air Pollution Control Division within thirty (30) days of the effective date of this order. The penalty shall be sent to Legal Administrator, Air Pollution Control Division, Colorado Department of Public Health and Environment, Mail Code APCD-SS-B1, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.
2. The civil penalty of (Penalty) Dollars (\$__.00) shall be paid by to the Colorado Department of Public Health and Environment, Air Pollution Control Division within thirty (30) days of the effective date of this Compliance Order. The penalty shall be sent to Legal Administrator, Air

COMPLIANCE ORDER AND ASSESSMENT OF CIVIL PENALTY
IN THE MATTER OF (NAME)

Pollution Control Division, Colorado Department of Health, Mail Code APCD-SS-B1, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

V. OPPORTUNITY TO APPEAL

Pursuant to section 25-7-115(4)(a), C.R.S., as amended, (Name) has the right to file a written petition with the Air Quality Control Commission within twenty (20) days of receipt of this Compliance Order, requesting a hearing to determine any one or all of the following items.

1. Whether the alleged violation or noncompliance exists or did exist.
2. Whether a revision of the State Implementation Plan or revision of a regulation or standard which is not part of the State Implementation Plan should be implemented with respect to such violations or noncompliance.
3. Whether the owner or operator is subject to civil or noncompliance penalties under section 25-7-115(5), C.R.S., as amended.

The Air Quality Control Commission Procedural Rules, at Section 1.6.2(3), mandates that all petitions for review of this determination shall contain the following items.

1. Identification of the person(s) requesting such hearing, including address and telephone number.
2. A statement of the relief requested and a general statement of the factual basis and legal justification [including a description of the legal issues which the prospective party intends to raise] for the requested action.
3. A copy of any Division compliance order, noncompliance penalty determination or permit which is the subject of the request.
4. A statement identifying the date of receipt of the compliance order, date of issuance of the noncompliance penalty determination, or date of publication of public notice for a permit.
5. An estimate of the time required for the hearing.

All hearing requests must be addressed to Chairman, Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, with one copy sent to Ms. Casey Shpall, Esq., Attorney General's Office, State of Colorado, Natural Resources Section, 1525 Sherman Street, 5th Floor, Denver, Colorado 80203, and one copy to Legal Administrator, Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Mail Code APCD-SS-B1, Denver, Colorado 80246-1530.

COMPLIANCE ORDER AND ASSESSMENT OF CIVIL PENALTY
IN THE MATTER OF (NAME)

All persons requesting an adjudicatory hearing before the Commission must be represented by an attorney before the Commission unless they are representing themselves *pro se*, or unless they are appearing in accordance with section 13-1-127, C.R.S., as amended (regarding closely held entities).

VI. NOTICE OF POTENTIAL LIABILITY FOR ADDITIONAL CIVIL PENALTIES AND INJUNCTIVE RELIEF

Section 25-7-121, C.R.S., as amended, states that in the event any person fails to comply with a final order of the Division, or the Commission, that is not subject to stay pending administrative or judicial review, or in the event any person fails to comply with any term or condition contained in any permit required under Title 25, Article 7, C.R.S., as amended, the Division may request the Attorney General to bring suit for injunctive relief. Section 25-7-115(3)(b), C.R.S., as amended, authorizes the Division to assess penalties for failure to comply with a final order of the Division in accordance with section 25-7-122, C.R.S., as amended, in an amount up to \$15,000.00 per day of violation per violation.

VII. EFFECTIVE DATE OF ORDER

This Compliance Order shall become effective upon receipt. Dated this ___th of (Month, Year).

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Steve Arnold
Acting Deputy Director
Air Pollution Control Division

David R. Ouimette, Manager
Stationary Sources Program
Air Pollution Control Division

cc: Colorado Air Quality Control Commission
Bob Jorgenson, APCD
Jill Cooper, APCD
Casey Shpall, Attorney General's Office
Cindy Reynolds, US EPA
(Local Agency)

COMPLIANCE ORDER AND ASSESSMENT OF CIVIL PENALTY
IN THE MATTER OF (NAME)



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM**

CERTIFICATE OF MAILING

This is to certify that a signed copy of the COMPLIANCE ORDER IN THE MATTER OF (NAME), (CITY, COUNTY), COLORADO, was deposited in the mail on this ___ th day of (Month, Year) to the following:

1. UNITED STATES POSTAL SERVICE, CERTIFIED MAIL NO. P
2. UNITED STATES POSTAL SERVICE, FIRST CLASS MAIL

BY:

Ellen Evans, Administrative Assistant