



Air Pollution Control District
San Luis Obispo County

CERTIFIED MAIL

July 6, 2017

Mathew Fuzie
Deputy Director, OHMVR Division
California Department of Parks and Recreation
1725 23rd Street, Suite 200
Sacramento, California, 95816

SUBJECT: San Luis Obispo County Air Pollution Control District Notice of Violation
Number 2963

Dear Mr. Fuzie:

On June 12, 2017, the Off-Highway Motor Vehicle Recreation Division (OHMVR) of the California Department of Parks and Recreation (State Parks) was issued a Notice of Violation (copy enclosed) for violations of California Health and Safety Code and the Rules and Regulations of the San Luis Obispo County Air Pollution Control District (District or APCD). The three specific violations are listed below:

- Failure to implement a control site monitor required under Rule 1001 section C.2.a. This occurred for 99 days starting when the Osos control site monitor was disconnected on December 15, 2016 and removed without authorization; the monitor was not reinstalled to operational status until March 25, 2017.

C.2. *"The operator of a CDVAA shall prepare and implement an APCO-approved Particulate Matter Reduction Plan (PMRP) to minimize PM10 emissions for the area under the control of a CDVAA operator. The PMRP shall contain measures that meet the performance requirements in C.3 and include:*

a. *An APCO-approved PM10 monitoring network containing at least one CDVAA Monitor and at least one Control Site Monitor."*

For this type of infraction, California Health and Safety Code Section 42402.b specifies a civil penalty of up to \$10,000.00 per day for each day of violation.

- Failure to meet the PM10 performance standard of Rule 1001 C.3 on 31 days from March 25, 2017 until June 15, 2017.

C.3. *"The CDVAA operator shall ensure that if the 24-hr average PM10 concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM10*

concentration at the Control Site Monitor, the 24-hr average PM10 concentration at the CDVAA Monitor shall not exceed 55 ug/m3."

For this type of violation, California Health and Safety Code Section 42402.1 specifies a civil penalty of up to \$25,000.00 per day for each day of violation.

- Violating Rule 402, Nuisance, by discharging or allowing the discharge of quantities of air contaminants (Particulate Matter) which has caused injury, detriment, nuisance or annoyance to a considerable number of persons or to the public on 31 days from March 25, 2017 until June 15, 2017.

For this type of violation, California Health and Safety Code Section 42402.1 specifies a civil penalty of up to \$25,000.00 per day for each day of violation.

Removing the Oso control site monitor without notification and authorization from the District, failure to develop and implement an APCO-approved Particulate Matter Reduction Plan (PMRP) in the nearly 6 years since the Rule was adopted, and failure to install the majority of the agreed upon 2017 temporary emission controls and subsequent failure to meet the Rule performance standard identified above are each individually significant violations of Rule 1001. Cumulatively, these actions and inactions constitute a negligent and possibly intentional disregard for the considerable adverse impacts and risks to public health and welfare for residents exposed to the harmful particulate emissions emanating from the Oceano Dunes State Vehicular Recreation Area.

After reviewing the information available in this matter, the Air Pollution Control District is willing to settle the above-referenced violations subject to the penalties and conditions listed below:

1. By September 1, 2017, payment of a fine of \$200,000.00; and
2. By September 1, 2017, payment of a supplemental environmental program fee of \$400,000.00 to be used for an APCD Board-approved residential particulate filtration installation program for residents within the CDF and Mesa 2 impact zones as shown in Figure E-2 of the 2013 APCD Community Monitoring Study; and
3. By September 1, 2017, fence off and prohibit vehicle traffic on a minimum of 100 acres that cumulatively encompass the most emissive areas within emission zones 1, 2, 3, and 4 as shown on the attached ARB modeling domain maps; a map of the proposed fencing areas shall be provided to the APCO for approval prior to installation. The fencing shall remain in place and be maintained until:
 - a. A Particulate Matter Reduction Plan, as required by Rule 1001, has been prepared by OHMVR and approved by the APCO; and
 - b. Dust control measures are in place that provide emission reductions equivalent to those provided by the 100 acres of fencing specified above, as determined by the APCO.
4. Obtain APCO approval for a Particulate Matter Reduction Plan (PMRP) by November 1, 2017.

This settlement shall not constitute an admission of liability nor shall any such admission be inferred in any administrative or judicial proceeding. In addition, APCD recognizes the

ability of OHMVR to submit this proposed settlement offer to the Special Master for a recommendation in accordance with Section 6.c. of the Consent Decree Agreement.

Should OHMVR choose this path, it is important to note the following:

- A meeting with the Special Master must be convened within the timeframe specified under Section 6.c of the Consent Decree Agreement.
- The Special Master has no authority to provide a recommendation on whether or not a violation of Rule 1001 occurred or on the amount of any fine proposed by the District in Conditions 1 and 2 above. The Special Master's recommendations shall be limited to Conditions 3 and 4 above which relate to his area of expertise.
- The authority of the APCO to pursue the Rule 402 Nuisance Violation is independent from the Consent Decree Agreement process. Rather, it is subject to the nuisance abatement process established by the Health and Safety Code and District Rule provisions applicable to District Hearing Board procedures.

Please sign below your acknowledgment of the settlement as set forth in this letter and **return it by July 21, 2017.**

Upon receipt of the signed settlement acknowledgment, payment of the penalty and completion of any conditions required as part of this settlement, you will be released from liability under the terms as set forth above. If this settlement is not accepted, or if alternate arrangements have not been made with the District within the time period set forth above, the offer will be revoked and these violations will be referred to our legal counsel for further prosecution within the full extent provided by law.

Please call me at (805) 781-5912 if you have any questions or need additional information regarding this matter.

Very truly yours,



LARRY R. ALLEN
AIR POLLUTION CONTROL OFFICER

The foregoing terms and conditions of mutual settlement are hereby agreed and accepted.

Dated: _____

Mathew Fuzie, Deputy Director, OHMVR Division
California Department of Parks & Recreation

LRA/lmg

Enclosures: Copy of Violation
ARB Modeling Emission Zone Map
Mutual Settlement Pamphlet

cc: Raymond A. Biering, District Counsel



**SAN LUIS OBISPO COUNTY
AIR POLLUTION CONTROL DISTRICT**

3433 Roberto Court • San Luis Obispo, CA 93401
(805) 781-5912 • FAX: (805) 781-1002 • website: slcleanair.org

NOTICE OF VIOLATION **NO** **2963**

Name Cal. Department of Parks and Recreation - OHMVR Div. Telephone (916) 324-4442
Address 1725 23rd Street, Ste. 200, Sacramento, CA 95816
Re Premises or Operations at Oceano Dunes SVRA, Oceano, CA

You are hereby notified that pursuant to:

- | | |
|---|--|
| <input type="checkbox"/> Rule 202, H&SC 42300
(No Permit/Authority to Construct) | <input type="checkbox"/> Rule 206, H&SC 42301
(Failure to meet permit conditions) |
| <input type="checkbox"/> Rule 401, H&SC 41701
(Visible Emissions) | <input checked="" type="checkbox"/> Rule 402, H&SC 41700
(Public Nuisance) |
| Opacity/Ringlemann _____ %/# | <input type="checkbox"/> Rule 701, 40 CFR, Part 61
(NESHAPS - Asbestos) |
| <input type="checkbox"/> Rule _____ H&SC _____ | <input checked="" type="checkbox"/> <u>Rule 1001-Coastal Dunes
Dust Control Requirements</u> |

An offense has been committed through the failure to comply with sections C.2, F.1.f, F.1.g and C.3 of District Rule 1001, and the creation of a public nuisance in violation of District Rule 402.

Point of observation Oso Flaco Air Monitoring Site

Weather N/A Wind N/A

APCD Permit to Operate Number N/A

Emissions from: Basic Control Open Fire _____

Was source emitting in violation at end of observation? Yes No

Issued by Dora K. Duenas Date June 12, 2017

Time: Arrival N/A Departure N/A Issued by Certified Mail

Violation Date(s): December 15, 2016 - March 24, 2017. ongoing nuisance events noted.

Please advise the Air Pollution Control Officer in writing by June 26, 2017 of corrective action on this violation and measures taken to prevent further occurrences. Your response does not preclude further legal action.

Served to Mathew Fuzie Title Acting Dep. Director

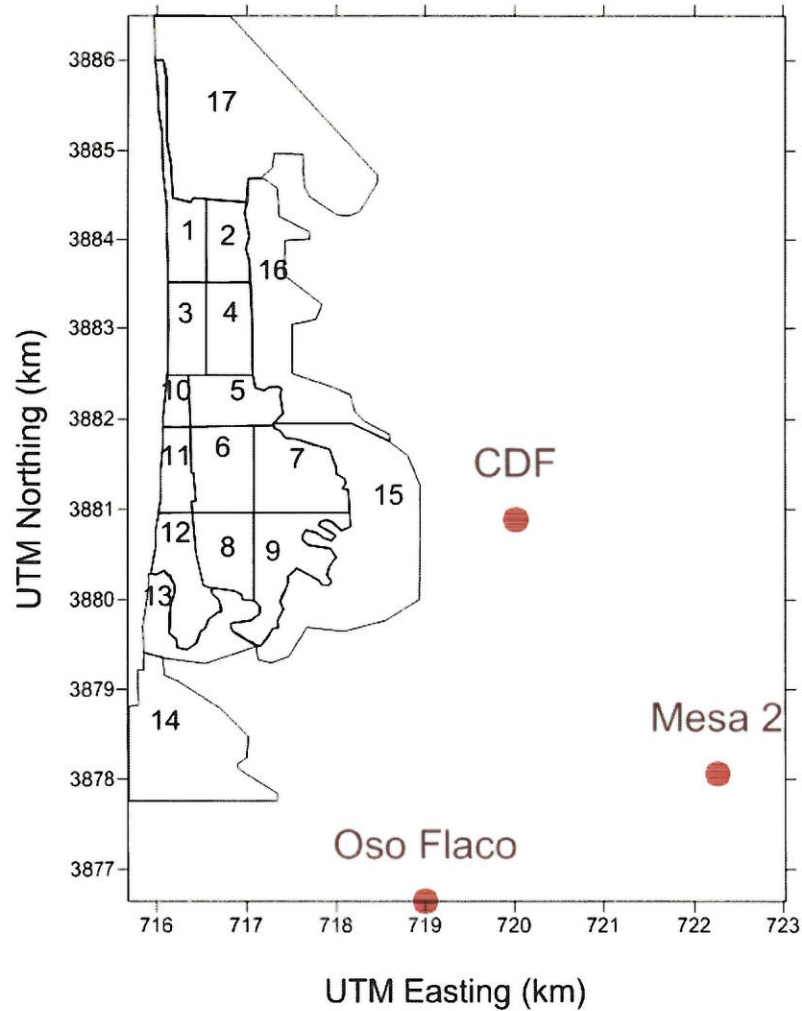
SIGNING THIS NOTICE IS NOT AN ADMISSION OF GUILT:
sent via e-mail and certified mail.

Signature _____ Date _____

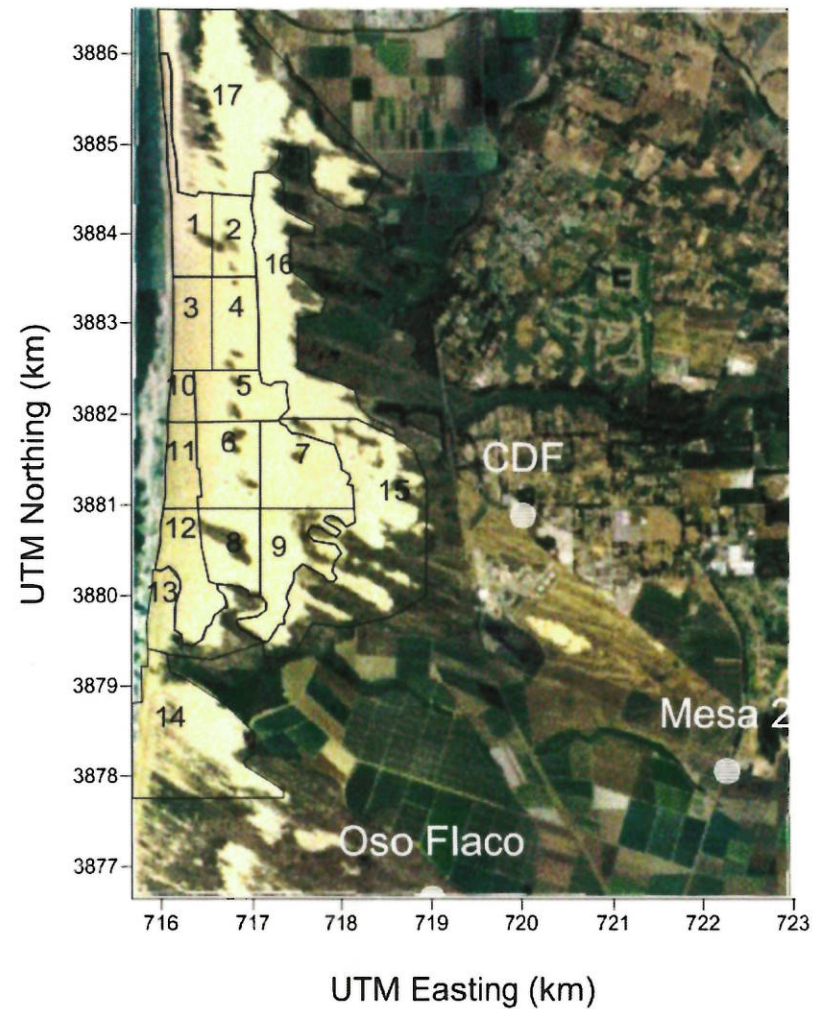
Emission Zones

7

Locations of Monitors and Emissions Zones



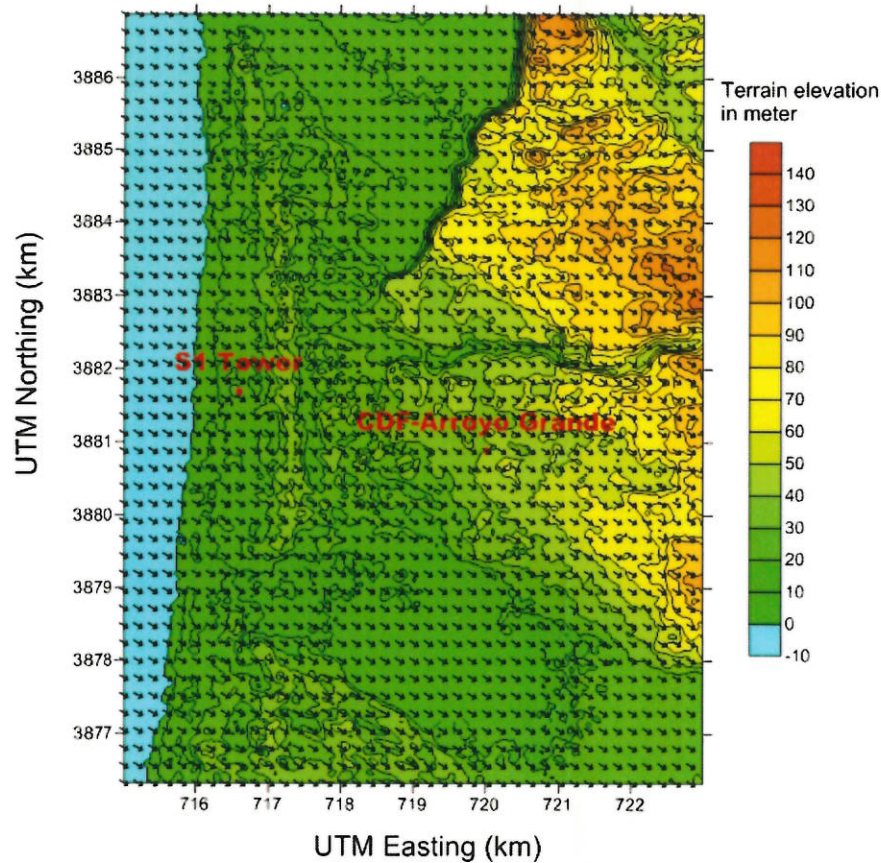
Locations of Monitors and Emissions Zones



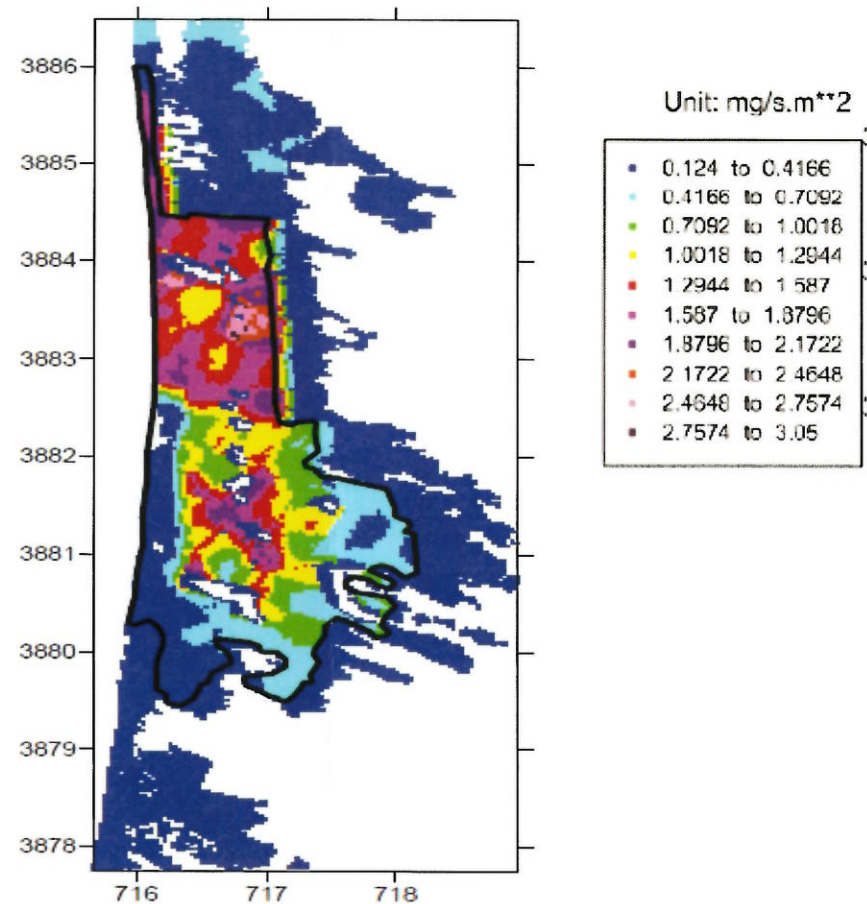
Modeling Inputs

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Gridded Wind Field



Gridded Emissions Field



Implications for Air Quality Forecasting in the South County

Detailed analysis of the study data and the particulate concentration relationships between each monitoring site under various meteorological conditions was used to generate more detailed forecast maps than previously possible for both the Nipomo Mesa and Oceano areas. Figures E-2 and E-3 below define the typical areal influence of the dust plume on each area during strong northwesterly winds. The APCD will use these maps to provide a numerical forecast of the Air Quality Index (AQI) for each forecast zone based on the approximate magnitude of the forecasted particulate concentrations. Each forecast zone is related to PM concentrations measured at the three permanent APCD monitoring stations on the Nipomo Mesa: CDF (Willow Road), Mesa2 (Guadalupe Road) and NRP (Nipomo Regional Park). Areas outside of the zones shown in these figures should use the San Luis Obispo monitoring station for particulate air quality guidance, unless otherwise noted.

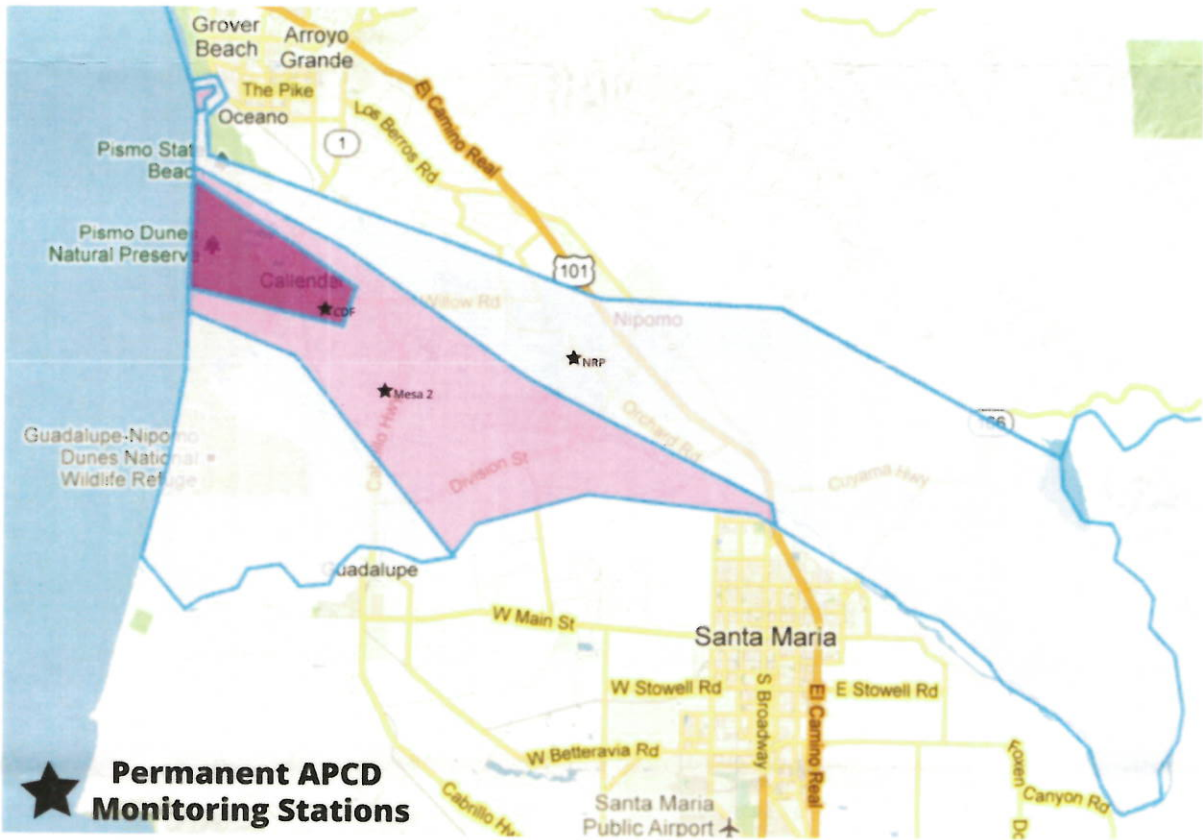


Figure E-2 - Nipomo Area Forecast Map. Forecast zones: Dark Pink = CDF, Medium Pink = Mesa2, Light Pink = NRP

■ The Office Conference

In most cases, violations are successfully resolved through the District's Mutual Settlement Program. However, you may request a discussion of the settlement offer at a voluntary **office conference**.

The purpose of the "informal" office conference with the District enforcement staff is to openly share documentary and other support for the Notice of Violation, in an effort to reach a mutual resolution.

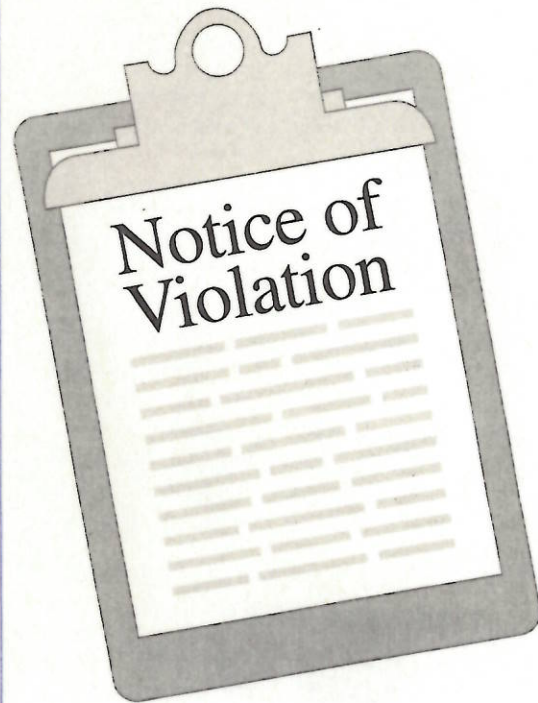
You may present evidence in defense or mitigation, considering factors such as those listed previously. If you are able to provide evidence that a **minor violation** was caused by an act that was not the result of intentional or negligent conduct, no further action may be taken. Your evidence will be taken into consideration in further evaluating the proposed settlement, and may result in amendments to the proposed settlement.

If you do not respond to the settlement proposal letter, or if the matter cannot be resolved through an office conference, it will be referred to the District's legal counsel.

■ Legal Action

Violations which the Mutual Settlement Program are unable to resolve will be handled by the District's legal counsel (District Attorney or County Counsel). Some of these cases may be settled out of court. However, the referral of a violation to legal counsel may result in civil or criminal prosecution.

Unusually serious violations which could have been prevented or which show willful disregard for public health and air pollution control laws may be referred for criminal prosecution. Criminal penalties for such violations may be as high as \$75,000 and one year in jail for each day of violation.



■ Penalties

The Mutual Settlement Program fines are based on violation penalties provided by the California Health and Safety Code. The Code states, in part, that any person who violates a provision of a district rule is liable for a civil penalty of up to \$1,000, with each day counted as a separate occurrence. Mitigating factors can reduce penalties from any maximum amount allowed, but other considerations can increase them from this \$1,000 base. For example, violations of actual air contaminant emission limitations can bring penalties of up to \$10,000 per occurrence. If the violation causes injury to members of the public, penalties can be up to \$15,000 per occurrence. If the person who caused an emission violation knew about it and failed to take corrective action within a reasonable time, or falsified records in an attempt to deceive, penalties can be up to \$40,000 per occurrence. If the violation of an emission limit was willful and intentional, penalties of up to \$75,000 per occurrence can apply.

■ When Rules Change

Rule changes can affect your business. It is your responsibility to know the current rules. A copy of the District's **Rules and Regulations** and updates can be purchased from the San Luis Obispo County Air Pollution Control District. To be kept informed of rule changes, you can subscribe to the following individual services: rule updates, public notices of workshops and Board hearings, copies of draft and proposed rules, and staff reports.


Be sure to familiarize yourself with all conditions of your APCD permit, especially if you receive a modified or re-evaluated permit.

■ For More Information

This pamphlet provides answers to commonly asked questions about NOV's and the Mutual Settlement Program. If you have specific questions about your NOV, contact the inspector who issued it. For further information about the Mutual Settlement Program or other compliance issues, call (805) 781-5912 and ask for the Enforcement Division.



3433 Roberto Court
San Luis Obispo, California 93401
(805) 781-5912
www.slcleanair.org

 Printed on recycled paper with soy based ink



**AIR POLLUTION
CONTROL DISTRICT**
COUNTY OF SAN LUIS OBISPO

3433 Roberto Court
San Luis Obispo, CA 93401

Return Service Requested

Notices of Violation and the Mutual Settlement Program



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CONTROL DISTRICT**
COUNTY OF SAN LUIS OBISPO

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The District Compliance Program

The San Luis Obispo County Air Pollution Control District (District) rules are designed to protect public health and comply with state and federal laws. The District is empowered by the California Health and Safety Code to enforce its rules and regulations, settle violations, or refer cases for legal action.

When a Notice of Violation (NOV) is issued to an individual or business, the case will be reviewed by the field inspector's supervisor to determine whether further action appears warranted. If the case does appear to warrant further action, the District will decide whether to:

- refer it for legal action, or
- offer an opportunity to enter into the **Mutual Settlement Program**

The District's **Mutual Settlement Program** is a voluntary procedure for settling violations, both minor and major, without the time and expense of litigation to either party.

What is a Notice of Violation?

A Notice of Violation is the District's official record that someone has violated a District rule, permit condition, or law relating to air pollution. In order to provide consistency and avoid the appearance of favoritism, the District does not give written or verbal warnings. An NOV is issued every time a violation is observed or discovered.

The primary purpose of an NOV is to initiate corrective action which will reduce air pollution. To provide an incentive for continuing compliance, NOV's may result in monetary penalties. Serious or repeated violations which show blatant disregard for the law and for public health, may lead to civil or criminal prosecution.

Mutual Proposal Program

If you receive an NOV, and the District chooses to offer a Mutual Settlement option, you will receive a settlement proposal letter. This informs you of the facts associated with the Notice of Violation. It specifies the penalties prescribed by law and proposes the terms upon which the District would be willing to resolve the violation, including a monetary settlement based on aggravating factors such as:

- extent of harm caused by the violation
- nature and persistence of the violation
- length of time violation occurred
- past violations and
- economic benefit of noncompliance

The following mitigating factors are also considered in the monetary settlement offer:

- extent and record of maintenance
- control equipment usage
- action taken to mitigate violation
- good faith effort to comply
- financial burden to the violator

The letter will invite you to bring the matter to a close. The terms are set in writing for both you and the District to sign. Resolution of a violation through a mutual settlement agreement is not considered an admission of liability.