



# DEPARTMENT OF NATURAL RESOURCES

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## MEMORANDUM

DATE: July 1, 2005

TO: Air Pollution Control Program Policy Manual

FROM: Leanne Tippett Mosby, Director (*original signed by Leanne Tippett Mosby*)  
Air Pollution Control Program

SUBJECT: Issuing Letters of Warning (LOW) and Notices of Violation (NOV)

Terms used in this policy:

NOV – Notice of Violation, or formal notice of a violation of an air pollution law or regulation.

LOW – Letter of Warning. A formal notice of noncompliance, in letter form, issued for certain first time violations in lieu of a formal NOV.

Source – A person or business that is the subject of an air pollution inspection or investigation. For purposes of establishing compliance history in accordance with this policy, the term “source” means either:

- A single facility, even if the same company controls two or more facilities in different locations; or,
- An individual, in the case of laws and regulations affecting individuals, such as the open burning regulations.

Local Agency – An agency with jurisdiction for inspection and enforcement activities. At the time of signature on this policy, the department’s Air Pollution Control Program (APCP) delegated local agencies in the following jurisdictions: the city of St. Louis, St. Louis County, Kansas City (proper) and Springfield (proper).

Regional Office – the department’s five offices that conduct the majority of air pollution inspection and investigation activities: St. Louis Regional Office, Kansas City Regional Office, Northeast Regional Office, Southwest Regional Office, and Southeast Regional Office.

Director – Director of the APCP in the Missouri Department of Natural Resources.

**Policy:**

Historically, the APCP has instructed regional office and central office inspectors to issue a formal NOV when an inspection or investigation reveals noncompliance. Effective immediately, the APCP is revising this policy. The program will institute use of a formal LOW for certain violations, described in numbers 1-8 below. The department will generally issue LOWs only in the instance of a source's first violation of the law or regulation in question. However, the Compliance/Enforcement Section (C/E Section) Chief may grant the use of a LOW for a subsequent violation on a case-by-case basis, as he or she deems appropriate due to special circumstances. Also, delegated local agencies may choose to be stricter, but not less strict, than this guidance.

- 1) **Record keeping** – If an entity is found to not have records when they are requested by an inspector, the entity will be given a verbal requirement to submit the records within two working days (records sent by mail must be postmarked within two working days of the request. Records sent by facsimile must be received within two working days of the request) followed by a letter of warning. If the APCP does not receive the records in that time period, the department will issue a NOV. (The purpose of this flexibility is to recognize some facilities keep records in a central office location, rather than at the actual site of the inspection. The department does not intend to allow a source an opportunity to “catch up” on record keeping. The source shall perform all record keeping with the frequency required by law, regulation or permit.)
- 2) **Annual Compliance Certifications (ACC) and Semi-annual Monitoring Reports (SAMR)** – Upon discovering an entity failed to submit an ACC or SAMR, the APCP or Regional Office will issue a LOW requiring submittal of the document within 30 days. If the report is not received in that time period, an NOV will be issued.
- 3) **Emission Inventory Questionnaires (EIQs) and Emission Fees** – EIQs and fees are due by April 1 of each year. Beginning shortly after April 1, the program's Emission Inventory Unit (EIU) will initiate direct contact with those entities that have failed to submit the EIQ and the fee and attempt to compel the source to comply. On June 1, the EIU will submit a list to the C/E Section of the APCP of entities that have still not remitted the EIQ and fee. The C/E Section will send a LOW to these entities giving them 30 days to submit the EIQ and fees. Anyone failing to comply with this deadline will receive a NOV. Sources discovered by the regional offices that have failed to submit an EIQ will be sent a warning letter and be given 45 days to submit the EIQ.
- 4) **Failure to Report Deviations on an ACC or SAMR** – If the APCP reviews an ACC or SAMR and finds an entity failed to report a deviation, a LOW will be issued giving the entity 30 days to submit a corrected report.

- 5) **Open Burning** – For relatively small amounts of material being burned (especially untreated wood waste), inspectors shall use discretion in issuing a LOW instead of a NOV for first time offenders. If the material being burned, despite the fact it is a small amount, creates a distinct public health hazard or results in highly toxic emissions, the inspector may issue a formal NOV.
- 6) **Reports, Submittals, etc.** – In general, the APCP will issue LOWs for failure to submit reports. However, there may be exceptions. Some of these will need to be reviewed on a case by case basis.
- 7) **Portable Source Relocations** – If a portable source relocates to a previously permitted site prior to approval, the APCP will send a LOW requiring compliance within ten days. If the source does not obtain proper approval within ten days, the department will issue a NOV.
- 8) **Other** – It is impossible for the APCP to include every scenario for which a LOW may be appropriate in lieu of a formal NOV. However, the program will review new scenarios as circumstances dictate and periodically review/adjust this policy, as needed.

All LOWs will contain deadlines, web page addresses and phone numbers of the APCP or the department's Environmental Assistance Office to aid the recipient in obtaining compliance assistance.

To reiterate, this guidance will apply to first time violators only. The APCP also reserves the right to issue NOVs instead of LOWs to first time violators in situations of extreme circumstance as determined by the director on a case-by-case basis.

This guidance shall not be applied to violations of asbestos law or regulations, vapor recovery regulations, violations of federal law or regulations, and violations that result in the unauthorized release of a regulated air pollutant, except as expressly outlined above.

LTM:sft