

5. Notice of Violation

A notice of violation is a formal, written notification of significant noncompliance and is sent with a cover letter. The notice of violation is issued for violations of law, regulations, permits, certifications, licenses or registrations that warrant legal action if not corrected. It alerts the violator that serious, potentially serious or repeated violations exist, and that the violator is or will be requested to take certain steps to address the violation. A notice of violation should not come as a surprise to a responsible party. Staff should make a reasonable effort to directly contact the responsible party in person or by telephone as part of the conference, conciliation and persuasion process before the notice of violation is issued. For some violations, an notice of violation may be required without earlier conference, conciliation and persuasion. In addition, conference, conciliation and persuasion may not be possible for high priority violations if they are severe in nature and have the potential to adversely impact public health or the environment.

Criteria for issuing notices of violation are determined by the programs, and are at the end of this section. These criteria cover the majority of instances where notices of violation are to be issued; however if other situations arise that are not addressed here, consult the Compliance and Enforcement staff from the appropriate program to determine if a notice of violation or other action is warranted for the specific situation.

Notices of violation are generally not issued in the field. This is to provide an opportunity for quality assurance and review by supervisory staff, to avoid errors in legal citations and to ensure legibility. A notice of violation should cite all of the appropriate documented violations and be sent by certified mail, return receipt requested. Notices of violation documented through inspections, investigations or records reviews should be sent within 10 working days of the completion of the inspection or investigation, unless awaiting sample results or information from the facility. In situations where samples were collected, notices of violation should be sent within 10 days of receipt of the sample results.

Upon the issuance of a notice of violation the matter is normally transferred to the Compliance and Enforcement Section of the appropriate program (except for water) as an enforcement referral. Program case managers should first discuss the case with the regional office staff or others who investigated and documented the violation and continue communication as needed as the case progresses. The office issuing the notice of violation will provide the receiving section sufficient background information on the violations to enable the section to proceed with effective and enforceable legal actions. This is generally starts with a copy of the file beginning with the first evidence of a responsible party's violations for the time period spanning the statute of limitations (for most violations, usually two years; for past due fees, usually five years), whichever is shorter. Older file material may be included to the extent that it appears necessary to establish a pattern of noncompliance. The office issuing the notice of violation may also provide any recommendations regarding appropriate relief to mitigate the violation(s). The referring office may use the enforcement action request form to organize the package, or may also provide the information less formally, as specified by the program. The notice of violation and transfer are tracked in the Assistance, Compliance and Enforcement system, or ACE.

The issuance of a notice of violation does not signal the end of conference, conciliation and persuasion or compliance assistance. These remain integral components of the department's approach to resolving noncompliance. As stronger compliance measures are used, staff must ensure the violator is aware of the problems and the department's interest in assisting the violator in resolving them.

Where multimedia violations are present, the office issuing the notice of violation and initiating the referral must notify the Compliance and Enforcement Sections of each program whose laws and regulations were violated. This will help ensure appropriate coordination at the program level. Whenever possible, the involved programs will work together in one coordinated enforcement action, although there are cases where this is not possible or prudent. The involved programs will decide which one will be in the lead on a coordinated enforcement action. Coordinated multimedia enforcement allows the violator to achieve compliance in all regulated environmental areas simultaneously, and improves the department's effectiveness by reducing the level of effort to address violations.

5.1 Air Pollution

Letter of Warning, Notice of Excess Emissions and Notice of Violation Letters of warning, notices of excess emissions and notices of violation are the way to document noncompliance. On rare occasions, a simple noncompliance notification process can address very minor deviations, but these should be discussed with the Compliance/Enforcement Section chief prior to their use. Letters of warning and noncompliance notifications should only be used in the case of a first time offense. Failure to respond appropriately to either a letter of warning or a noncompliance notification should result in the issuance of a notice of violation.

Appropriate use of a Letter of Warning Permits

- **Small Businesses** – An entity meeting the definition of a small business (a source of air contaminants that employs less than 100 people and emits less than 50 tons of any regulated pollutant per year and less than 75 tons of all regulated pollutants per year) is found to be in noncompliance for failure to obtain a minor source permit or a basic operating permit. The entity should be given 30 days to submit a permit application.
In some cases, it may not be apparent if a permit is required or not. In those cases, the inspector may simply require an entity to submit a permit application or a permit determination request with 30 days. After it is determined that a permit is required, a letter of warning should be issued.
- **Record Keeping** – An entity is found to not have the required records when requested by an inspector. Upon this type of finding, the inspector shall give the entity two working days to submit the records.
- **Annual Compliance Certifications and Semi-annual Monitoring Reports** – An entity is found to have failed to submit an annual compliance certification or semi-annual monitoring reports as required by their operating permit. The entity will be given 30 days to submit the certifications or reports.
- **Failure to Report Deviations on Annual Compliance Certifications or Semi-annual Monitoring Reports** – An entity failed to report a deviation on their annual compliance certification or semi-annual monitoring reports that occurred during that reporting period. The entity shall be required to submit a corrected report within 30 days.
- **Portable Source Relocations** – An entity fails to submit a portable source relocation request. The entity will be required to submit the appropriate request within 10 days. If a source relocates to a previously unapproved site and the subsequent review indicates that the relocation would have been disallowed, a notice of violation shall be issued.
- **Submittal of Renewal Application for an Operating Permit** – 10 CSR 10-6.065 requires that source submit a renewal application six months prior to expiration of the operating permit. A letter of warning can be issued if the source has failed to submit the renewal application by the six month deadline if the application is subsequently received prior to expiration of the operating permit.
- **Other Required Submittals** – In general, a letter of warning should be issued for failure to submit reports required by permits unless direction is otherwise given by the Air Pollution Control Program. The entity will be required to submit the required report within 10 days.

Emission Inventory Questionnaires and Emission Fees

Emission inventory questionnaires and fees are due by June 1 of each year. Shortly after the deadline, the Air Pollution Control Program's Emission Inventory Unit will initiate direct contact with those entities that have failed to submit the questionnaires and fees and attempt to compel them to comply. After approximately 45 days, the Emission Inventory Unit will submit a list of those sources in noncompliance to the Compliance and Enforcement Section. Sources that do not have a previous instance of noncompliance will be required to submit the emission inventory questionnaires and fees within 30 days. Failure to comply will result in the issuance of a notice of violation. Sources with a previous instance of noncompliance will receive a notice of violation. If the regional offices discover a source that has failed to submit an emission inventory questionnaire, they will require the source to submit the questionnaire within 45 days.

Open Burning

For relatively small amounts of material being burned, inspectors may use discretion in issuing a letter of warning for a first time offense. If the material being burned, despite the amount, creates the potential for a public health hazard or results in highly toxic emissions, the inspector shall issue a notice of violation.

Asbestos

- Failure to notify – The only time it is appropriate to issue an letter of warning in lieu of a notice of violation is when an asbestos inspection was conducted, no asbestos was found and the notification was simply overlooked.
- Failure to have proof of certification or registration on-site – If a certified worker or a registered contractor does not have proof of either on-site, it is appropriate to issue a letter of warning for the first offense.
- Other minor infractions – There may be some other instances where a letter of warning is appropriate and the inspector should feel free to discuss these with the Compliance/Enforcement Section chief.

Notice of Excess Emissions

A notice of excess emissions, or NOEE, should be issued in cases where an actual emission in excess of the allowable limits is observed by an inspector. For example, odor, fugitive dust and opacity exceedences should result in the issuance of a notice of excess emissions. Additionally, some calculated emission exceedences can be dealt with via a notice of excess emissions, but these instances should be discussed with the Compliance/Enforcement Section chief.

It has also been decided that minor infractions of Stage II vapor recovery requirements for the St. Louis metropolitan area contained in Missouri State Rule 10 CSR 10-5.220 may be dealt with via a notice of excess emissions.

Notice of Violation

A notice of violation should be issued for all infractions except for those covered under the letter of warning and notice of excess emissions categories. As this policy relates to federal regulations, notices of excess emissions may be issued for emission related violations. Letters of warnings may be appropriate for minor infractions of federal regulations (except for asbestos) provided they are discussed with the Compliance/Enforcement Section chief prior to issuance. This is due to the compliance and enforcement agreement with EPA that requires certain responses to noncompliance.

Air Pollution Control Program also reserves the right to issued notices of violation instead of letters of warning to first time violators in situations of extreme circumstances.

5.2 Drinking Water

Criteria for Issuing Notices of Violation

- Notices of violations shall be issued as outlined in the general conference, conciliation and persuasion guidance of this manual, except for program-specific modifications detailed in the Public Drinking Water Branch's [Escalation Policy](#) (see [Appendices](#)). Upon issuance of a notice of violation, the violation may be addressed through a bilateral compliance agreement issued by the regional office or, if appropriate, through referral to the Public Drinking Water Branch's Compliance and Enforcement Section. Notices of violations may be issued for other serious violations with concurrence of the Public Drinking Water Branch's Compliance and Enforcement Section.

5.3 Hazardous Waste

Criteria for Issuing Notices of Violations

- For hazardous waste facilities, notices of violation are issued when a department representative observes high priority violations, acute violations or when a facility does not correct Class I violations. For underground storage tank facilities, notices of violation are issued when violations remain unresolved after a letter of warning is issued. A template notice of violation letter for the regional offices to transmit to the facility representative is in [Section 5.A](#).

See the appendices for a list of Hazardous Waste citations with recommendations for LQGs and SQGs.

Upon issuance of a notice of violation, the program will conduct follow-up enforcement actions.

High Priority Violations would include:

- Any situation with actual "imminent hazard" of fire.
- Explosion or release of hazardous waste or hazardous constituents can be documented in a hazardous waste management area (i.e., unsafe condition or operation of storage tank or impoundment, open flames or sparks around ignitable waste etc.).
- Knowing or willful exposure of people to hazardous wastes.
- Hazardous waste container integrity is compromised to point that waste is leaking or a leak is imminent.
- Incompatible hazardous waste is stored in the same container, tank or secondary containment structure.
- Treatment, storage or disposal of hazardous waste at or by an unauthorized facility.
- Generation of a regulated quantity of hazardous waste without registering as a generator.
- Generation and storage or management of more than 100 pounds of waste without determining if it is hazardous.
- Shipment of hazardous waste by an unlicensed transporter, operating as a treatment, storage or disposal facility without first obtaining a permit (includes managing hazardous waste from other generators, storage of waste in excess of one year and illegal disposal into the environment).
- Violation of the "substantial" conditions of a permit or agreement (i.e., facility capacity, unauthorized waste streams, unauthorized treatment/disposal, methods or capacities, management in unauthorized areas, etc.).
- Violation of any permit, certification or agreement condition or schedule (i.e., a consent decree, consent agreement, permit, enforcement compliance schedule, etc.) that results in a release of hazardous waste or constituents to the environment.

Acute violations include:

- Visible evidence that hazardous waste is released onto the ground (soil).
- Hazardous waste released into waters of the state.
- Hazardous waste burned on-site.
- Ignition source in area that stores ignitable characteristic hazardous waste.
- Incompatible hazardous wastes stored in the same container, tank or secondary containment structure.
- Hazardous wastes not compatible with the containers that hold them.

- Please see [Chapter 2.1 Enforcement Process, Hazardous Waste Program](#) for a description on how notices of violation fit in the Hazardous Waste Program's regulatory process.

5.4 Land Reclamation

Criteria for Issuing Notices of Violation

Industrial Minerals

Notices of violation may be issued by any properly trained and deemed qualified representative of the Land Reclamation Commission after approval by the program director who will decide if the violation fits the criteria for a significant violation or a minor violation. The law and regulations require the notice of violation be approved for issuance by the program director following the use of conference, conciliation and persuasion. Issuance is completed by certified mail or hand delivery to the mine site business address, or to a registered agent.

When an inspector detects a violation at a permitted mine site and subsequent to discussions concerning a recommendation to the program director, the following procedure is used to determine if an notice of violation will be prepared.

Minor Violations

The operator will receive a letter of warning in the form of an inspection report. In most instances the letter will specify a 30 day period to achieve compliance. Minor violations include:

- First time operators who have never had a permit to operate a surface mine.
- Disturbance of minor number of acres beyond the permitted acreage. A minor number of acres is less than the average number that would normally be affected during a 12 month period.
- In-stream sand and gravel operators who are operating without a permit.

Significant Violations

Upon approval, the inspector will issue the operator a notice of violation for the following violations:

- Operators who are creating significant department-wide or division-wide violations or where major citizen or legislator complaints are received or where there are obvious threats to the environment or to public health, safety or livelihood.
- Any operator who knowingly violates the law or rules by failing to permit a site or an area of land that exceeds the average acreage affected during the 12 month permit cycle or any performance requirement listed in the regulations. Knowingly violates is defined as any operator who has been issued a permit to operate a surface mine or who has been previously informed of the permitting or performance requirements.
- Any operator who has not abated a minor violation within the 30 days allowed.

Operations without a permit that are in violation are subject to referral to the Attorney General's Office by the program director, with a request for that office to obtain an injunction. The notice of violation must clearly and concisely state:

- The nature of the violation.
- The law, rule or permit violated.
- Remedial action required, including any interim steps.
- A description of the portion of the mine or area to which the notice of violation applies.

A notice of violation issued under the Land Reclamation Act is accompanied or followed by a proposed penalty assessment.

Coal

The Land Reclamation Commission is charged with enforcing the Surface Coal Mining Law. As such, per the law, Land Reclamation Commission staff issues all routine enforcement actions such as notices of violation, notices of delinquent reclamation, and cessation orders. Administrative enforcement actions are taken by the commission itself.

Notices of violation may be issued under the same criteria defined in the Industrial Minerals section above. In addition, the following enforcement tools may also be chosen if appropriate for the situation.

Notice of Delinquent Reclamation

A notice of delinquent reclamation is required to be issued when:

- Topsoil is not replaced within 270 days of the completion of rough backfilling and grading,
- Permanent cover of vegetation sufficient to control erosion is not in place within two years of completion of initial seeding; or
- When the reclaimed land does not qualify for a Phase II bond release, and
- The request for release is not submitted within four years of the completion of initial seeding.

The notice of delinquent reclamation must be issued in writing and signed by the inspector. The following information shall be included:

- The nature of the delinquency.
- The law(s), regulation(s), or permit term(s) violated.
- A description of the portion of the mine or area the notice of delinquent reclamation applies.
- A map clearly indicating the location of the violation.
- The time(s) for abatement.
- The remedial action(s) required.

Cessation Order

A cessation order is required to be issued when an inspector discovers a violation of the law, regulations, or permit that has not been previously addressed that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent, environmental harm to land, air, or water resources. A cessation order must be issued in writing and signed by the program director. The following items shall be included:

- The nature of the violation.
- The law(s), regulation(s) or permit term(s) violated.
- The remedial or affirmative action required and interim steps if needed.
- The times for abatement which may include times for abatement of interim steps.
- A description of the portion of the mine or area to which Land Reclamation Program the cessation order applies.
- A map clearly indicating the location of the violation.

Additionally, a cessation order must include the activity, operation or area that is being ceased and the grounds for cessation.

Failure to Abate Cessation Order

Another type of cessation order is a failure to abate cessation order. This is issued if the inspector discovers that a notice of violation issued at a previous inspection has not been abated within the required time frames. A failure to abate cessation order requires the same information as a cessation order. This is provided by attaching a copy of the unabated notice of violation. A failure to abate cessation order must be signed by the program director.

Metallic Minerals

Notices of violation may be issued by any properly trained and qualified representative of the Land Reclamation Program after approval by the department director or the program director. The director(s) will decide if the violation fits the criteria for a significant violation or a minor violation. The Metallic Minerals Waste Management Act requires the notice of violation be issued following the use of conference, conciliation and persuasion. Issuance is completed by certified mail or hand delivery to the mine site business address, or to a registered agent.

When an inspector detects a violation at a permitted waste management site, the following procedure is used to determine if a notice of violation will be prepared. This procedure is subsequent to discussions concerning a recommendation to the department or program director.

Minor Violations

Minor violations result in the operator being given a letter of warning in the form of an inspection report. The letter, in most instances, will specify a 30 day period to achieve compliance. Minor violations possess a small potential to harm the environment or human health or cause pollution, are not knowingly committed and are not defined by the EPA as other than minor.

Significant Violations

Significant violations shall be cause to issue an notice of violation after approval of the department or program director. Significant violations have caused, or have the potential to cause, a risk to human health or the environment or has caused or has the potential to cause pollution or was knowingly committed.

5.5 Solid Waste

Criteria for Issuing Notices of Violations

In addition to the general guidance regarding notices of violation, violations that warrant the prompt issuance of a notice of violation are detailed in 3.A Appendices - Solid Waste Management Program's high priority violation list. Please remember, though, that prior to the issuance of any notice of violation, concurrence from Solid Waste Management Program's Compliance and Enforcement Section must be obtained. This should be accomplished by e-mailing the Compliance and Enforcement section chief a summary of the situation, violation(s), and parties involved, with pictures and all other pertinent information necessary for the section chief to make a decision.

Once the section chief concurs with the issuance of a notice of violation, the issuing party must refer to [5A. Appendices - Solid Waste Management Program's Enforcement Referral Checklist](#) for guidance as to what must be submitted to the Solid Waste Management Program's Compliance and Enforcement Section. In order for the referral to be complete and the Solid Waste Management Program to initiate formal enforcement action, each of items on the checklist must be addressed. For questions regarding a referral, please contact the Solid Waste Management Program Compliance and Enforcement Section.

If there is any question regarding whether a violation could be considered a criminal violation, contact the Solid Waste Management Program's Compliance and Enforcement Section to discuss the situation before correspondence is sent to the responsible parties. If an notice of violation is not warranted for a violation, please refer to Chapter 4 of this manual.

5.6 Water

Water Pollution Control Branch Criteria for Issuing a Notice of Violation or Heightened Enforcement Response

[Common Citation of the Missouri Clean Water Law and its Implementing Regulation](#)

[Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#)

The purpose of this guidance is to provide staff with defined criteria for significant noncompliance with the Missouri Clean Water Law and its implementing regulation and to promote enforcement consistency through out the state. This guidance is not intended to restrict or otherwise direct as the only appropriate response when there is significant noncompliance. The regional offices retain discretion to deviate from this guidance to use its best judgment under extenuating circumstances.

The following paragraphs describe criteria for significant noncompliance that warrant the issuance of Notice of Violation. The Water Pollution Control Branch will send sixty day letters to Major and 92-500 facilities notifying the responsible parties they are in significant noncompliance if the facility has not been previously informed of the noncompliance by the regional office.

Domestic Waste Permitted Facilities

A Notice of Violation may be issued to a responsible party of permitted facilities receiving primarily domestic waste without a prior course of conference conciliation and persuasion when:

The guidance below is based upon [40 CFR Chapter I Section 123.45\(a\)\(2\)\(B\)\(ii\),\(iii\)](#), and [Appendix A](#)

1. Based upon available records the discharge or activity results in the following conditions:

Facilities with Monthly Reporting Requirements

- Two or more violations of the applicable monthly average or the weekly average effluent limitation of a specific parameter at a given permitted outfall by a factor of 1.4 for [Group I Pollutants](#) and by a factor of 1.2 for [Group II Pollutants](#), during a six consecutive month review period. For permitted effluent limitations that are below the minimum quantification level (ML) and specifically listed in the Missouri State Operating Permit any analytical value reported greater than or equal to the ML is a violation of the permit limitation. Values reported less than (<) the ML will be considered in compliance with the permit limitation.
- Two or more pH values that are outside the pH range of 5.0 to 10.0 or four or more pH values between 5.0 and 6.0 or 9.0 and 10.0 during a six consecutive month review period with the exception of lagoon systems, which may exceed the upper pH limit during the summer months due to biological activity.
- Four or more violations of the applicable permitted monthly average effluent limitation or the weekly average effluent limitation of a specific parameter at a given outfall by any amount during a six consecutive month review period.
- One or more monthly discharge monitoring reports are not submitted within 30 days of the due date during a six consecutive month review period and it can be clearly documented that the responsible party was informed at least once, in writing, of the requirement to submit timely and complete discharge monitoring reports.
- Discharge monitoring reports submitted are incomplete and the missing data is for the same parameter(s) at a specific permitted outfall for two or more monthly reporting periods during a six consecutive month review period and it can be clearly documented the responsible party was informed at least once, in writing, of the requirement to submit the missing data.

Facilities with Quarterly Reporting Requirements

- One or more violations of the applicable monthly average or the weekly average effluent limitation of a specific parameter at a given permitted outfall by a factor of 1.4 for [Group I Pollutants](#) and by a factor of 1.2 for [Group II Pollutants](#), during a two consecutive quarters. For permitted effluent limitations that are below the minimum quantification level and specifically listed in the Missouri State Operating Permit any analytical value reported greater than or equal to the minimum quantification level is a violation of the permit limitation. Values reported less than the minimum quantification level will be considered in compliance with the permit limitation.
- One or more pH values that are outside the pH range of 5.0 to 10.0 or two pH values between 5.0 and 6.0 or 9.0 and 10.0, during a two consecutive quarters with the exception of lagoon systems, which may exceed the upper pH limit during the summer months due to biological activity.
- Two violations of the applicable permitted monthly average effluent limitation or the weekly average effluent limitation of a specific parameter at a given outfall by any amount during a two consecutive quarters.
- One or two discharge monitoring reports are not submitted within 30 days of the due date during two consecutive quarters and it can be clearly documented that the responsible party was informed at least once of the requirement to submit timely and complete discharge monitoring reports.
- DMR(s) submitted are incomplete and the missing data is for the same parameter(s) at a specific permitted outfall for one quarterly reporting period and it can be clearly documented the responsible party was informed at least once of the requirement to submit the missing data.

Facilities with Annual or Semi-annual Reporting Requirements

- Any violation of the applicable monthly average or the weekly average effluent limitation of a specific parameter at a given permitted outfall by a factor of 1.4 for [Group I Pollutants](#) and by a factor of 1.2 for [Group II Pollutants](#), during the reporting period. For water effluent limitations that are below the minimum quantification level and specifically listed in the Missouri State Operating Permit any analytical value reported greater than or equal to the ML is a violation of the permit limitation. Values reported less than the ML will be considered in compliance with the permit limitation.
- One or more pH values that are outside the pH range of 6.0 to 9.0 during the reporting period with the exception of lagoon systems, which may exceed the upper pH limit during the summer months due to biological activity.
- The annual or a semi-annual DMR is not submitted within 30 days of the due date and it can be clearly documented that the responsible party was informed at least once of the requirement to submit timely DMRs.
- The annual or a semi-annual DMR submitted is incomplete and the missing data is and it can be clearly documented the responsible party was informed at least once of the requirement to submit the missing data.

All Domestic Waste Permitted Facilities

- Other reports (annual inflow and infiltration, construction completion, pretreatment, annual, etc.) are not submitted within 30 days from the date specified in either an enforcement order, settlement agreement or the Missouri state operating permit and can be clearly documented that the responsible party was informed of the requirement to submit the report.
- A responsible party has failed to start or complete construction and attain final compliance within 90 days from the date specified in the Missouri State Operating Permit.

Laboratory or field analysis of effluent sample(s) or available records the document that the discharge or activity grossly:

- Exceeded the applicable permitted monthly or weekly average effluent limitation by a factor of 2.0 or more.
 - Exceeded the applicable permitted daily maximum effluent limitation by a factor of 1.2 or more.
 - Exceeded the applicable permitted daily minimum effluent limitation for dissolved oxygen by 20 percent or more.
2. The following criteria determine if a NOV needs to be issued for non-disinfecting or disinfecting facilities.
 - If a large exceedance (>20%) of a permit's fecal coliform or E. coli limits is discovered then a notice of violation should be issued along with a schedule of compliance to install disinfection equipment if such equipment is not present.
 - For facilities that violate their fecal coliform or E. coli limits more than once for the same issue and have not installed disinfection equipment they should be issued a notice of violation and be put on a schedule of compliance to install the disinfection equipment needed to meet the limits within their permit.
 - If it is clear the facility cannot meet disinfection requirements, an NOV should be issued.
 3. The discharge or activity results in a violation of the Missouri Water Quality Standards general or specific criteria. See the [Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#).
 4. A responsible party of an approved Public Owned Treatment Works fails to implement its approved pretreatment program adequately including failure to enforce industrial pretreatment requirements on industrial users as required in the approved program.

5. There is a discharge or release from an industry or institution which causes an interference with treatment processes or operation of the receiving treatment facility, or of its sludge handling and disposal processes, or passes through the treatment facility in quantities or concentrations which cause pollution or violates any condition of the applicable Missouri state operating permit or effluent regulation.
6. A responsible party fails to submit an application to renew their Missouri state operating permit within 180 days prior to the expiration date and it can be clearly documented that the responsible party was informed of the requirement to submit an application for renewal.
7. Bypassing and Sanitary Sewer Overflows of untreated or partially treated sewage is a violation of the Missouri Clean Water Law. It should be handled by conference, conciliation and persuasion, the issuance of a Notice of Violation and enforcement.

When there is an overflow from a sanitary sewer system, particularly a dry weather bypass, a notice of violation shall be issued:

- If the overflow/bypass causes a violation of the Water Quality Standards general or specific criteria, the regional office will notify the Compliance/Enforcement Section, and the matter will be referred to them requesting action. See the [Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#)
- If it is determined that the overflow is caused by failure to implement standard operation and maintenance procedures and it can be clearly documented the responsible party was informed on at least one occasion of this cause; then the matter will be referred to the Compliance/Enforcement Section requesting action. Each National Pollutant Discharge Elimination System-permitted wastewater treatment facility and the tributary collectors, interceptors and pump stations are considered a system for purposes of this description.
- If it is determined that the overflow is due to inadequate system capacity in dry weather to handle the flow and it can be clearly documented that the responsible party was informed on at least one occasion of this cause; then the matter will be referred to the Compliance/Enforcement Section requesting action. If an owner or operator has multiple wastewater systems, this determination shall be made system by system. If it is concluded by the regional office after careful consideration that the overflow is due to inadequate capacity in dry weather but the owner or operator disputes this, the regional office shall request submission of an engineering evaluation.
- In all other cases, the issuance of Notices of Violation will be left to the discretion of the regional office directors. Overflows that have, or are likely to have, significant human health or environmental concerns are an example of overflows where a Notice of Violation should be issued.
- Further direction and updates for bypass and SSO in the near future.

Industrial Stormwater Permitted Sites

A Notice of Violation may be issued to responsible parties (owners or continuing authorities) of permitted industrial stormwater sites without a prior course of conference, conciliation and persuasion when:

The guidance below is based upon [40 CFR Chapter I Section 123.45\(a\)\(2\)\(B\)\(ii\),\(iii\), and Appendix A](#)

1. Based upon available records the discharge or activity results in the following conditions:

Facilities with Monthly Reporting Requirements

- Two or more violations of the applicable monthly average or the weekly average effluent limitation of a specific parameter at a given permitted outfall by a factor of 1.4 for [Group I Pollutants](#) and by a factor of 1.2 for [Group II Pollutants](#), during a six consecutive month period. For permitted effluent limitations that are below the minimum quantification level and specifically listed in the Missouri State Operating Permit any analytical value reported greater than or equal to the ML is a violation of the permit limitation. Values reported less than the ML will be considered in compliance with the permit limitation.

- Two or more pH values that are outside the pH range of 5.5 to 10.0 or four or more pH values between 5.5 and 6.5 or 9.0 and 10.0 during six consecutive month review.
- Four or more violations of the applicable permitted monthly average effluent limitation or the weekly average effluent limitation of a specific parameter at a given outfall by any amount during a six consecutive month review period.
- One or more monthly discharge monitoring reports are not submitted within 30 days of the due date during a six consecutive month period and it can be clearly documented that the responsible party was informed at least once of the requirement to submit timely and complete DMRs.
- DMRs submitted are incomplete and the missing data is for the same parameter(s) at a specific permitted outfall for two or more monthly reporting periods during a six consecutive month review period and it can be clearly documented the responsible party was informed at least once of the requirement to submit the missing data.

Facilities with Quarterly Reporting Requirements

- One or more violations of the applicable monthly average or the weekly average effluent limitation of a specific parameter at a given permitted outfall by a factor of 1.4 for [Group I Pollutants](#) and by a factor of 1.2 for [Group II Pollutants](#), during a six consecutive month review period. For permitted effluent limitations that are below the minimum quantification level and specifically listed in the Missouri State Operating Permit any analytical value reported greater than or equal to the ML is a violation of the permit limitation. Values reported less than the ML will be considered in compliance with the permit limitation.
- One or more pH values that are outside the pH range of 5.5 to 10.0 or two or more pH values between 5.5 and 6.5 or 9.0 and 10.0 during a six consecutive month review.
- Two violations of the applicable permitted monthly average effluent limitation or the weekly average effluent limitation of a specific parameter at a given outfall by any amount during a six consecutive month review period.
- One or two discharge monitoring report are not submitted within 30 days of the due date during a six consecutive month review period and it can be clearly documented that the responsible party was informed at least once of the requirement to submit timely and complete DMRs.
- DMRs submitted are incomplete and the missing data is for the same parameter(s) at a specific permitted outfall for one quarterly reporting period and it can be clearly documented the responsible party was informed at least once of the requirement to submit the missing data.

Facilities with Annual or Semi-annual Reporting Requirements

- Any violation of the applicable monthly average or the weekly average effluent limitation of a specific parameter at a given permitted outfall by a factor of 1.4 for [Group I Pollutants](#) and by a factor of 1.2 for [Group II Pollutants](#), during the review period. For permitted effluent limitations that are below the minimum quantification level (ML) and specifically listed in the Missouri State Operating Permit any analytical value reported greater than or equal to the ML is a violation of the permit limitation. Values reported less than (<) the ML will be considered in compliance with permit limitations.
- One or more pH values that are outside the pH range of 6.5 to 9.0 during the review period.
- The annual or a semi-annual discharge monitoring report is not submitted within 30 days of the due date and it can be clearly documented that the responsible party was informed at least once of the requirement to submit timely discharge monitoring reports.
- The annual or a semi-annual discharge monitoring report submitted is incomplete and the missing data is for the same parameter(s) at a specific permitted outfall and it can be clearly documented the responsible party was informed at least once of the requirement to submit the missing data.

All Facilities Industrial Stormwater Permitted sites

- Other reports (annual inflow and infiltration, construction completion, pretreatment, annual, etc.) are not submitted within 30 days from the date specified in either an enforcement order, settlement agreement or the Missouri State Operating Permit and can be clearly documented that the responsible party was informed of the requirement to submit the report.
- A responsible party has failed to start or complete construction and attain final compliance within 90 days from the date specified in the Missouri State Operating Permit.
- Based on laboratory or field analysis of effluent sample(s) or available records the discharge or activity grossly:
 1. Exceeded the applicable monthly average effluent limitation by a factor of 2.0 or more.
 2. Exceeded the applicable permitted daily maximum effluent limitation by a factor of 1.2 or more.
 3. Exceeded the applicable permitted daily minimum effluent limitation for dissolved oxygen by 20 percent or more.
- Stormwater discharges from the site results in violations of the Missouri water quality standards, general or specific criteria. See the [Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#)
- Adequate best management practices have not been implemented or maintained to prevent water contaminants from being carried off-site by stormwater as required by the Missouri state operating permit and the stormwater pollution prevention plan.
- Any discharge of a material (i.e. sewage, hazardous substances, petroleum products, wash and/ or rinse waters from concrete trucks) to waters of the state other than stormwater and non-storm water discharges authorized by the Missouri state operating permit.
- A responsible party fails to submit an application for renewal of its Missouri state operating permit within 180 days prior to the expiration date and it can be clearly documented that the responsible party was informed of the requirement to submit an application for renewal.

Land Disturbance Permitted Sites

Notice of violations may be issued to responsible parties of permitted land disturbance sites without a prior course of conference, conciliation and persuasion when:

- Adequate best management practices, or BMPs, have not been implemented or maintained to prevent sediment from eroding off-site as required by the Missouri State Operating Permit and the Stormwater Pollution Prevention Plan and stormwater discharges from the site results in:
 1. A violation of the permitted limitation for settleable solids by a factor of 1.4;
 2. A violation of the Missouri Water Quality Standards general or specific criteria. See the [Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#);
 3. Sediment deposits off-site that pose a threat to waters of the state.
- A responsible party fails to implement or maintain BMPs, regardless of whether there is any evidence of sediment deposits off-site, and it can be clearly documented that the responsible party was informed of the requirements to implement and/or maintain BMPs.
- Any discharge of a material (i.e. sewage, hazardous substances, petroleum products, wash or rinse waters from concrete trucks) to waters of the state other than stormwater and non-stormwater discharges authorized by the Missouri State Operating Permit.
- A responsible party fails to submit an application to renew their Missouri State Operating Permit for land disturbance activities within 90 days prior to the expiration date and it can be clearly documented that the responsible party was informed of the requirement to submit an application for renewal.

Animal Feeding Operations and Concentrated Animal Feeding Operations Permitted Sites

If a notice of violation is warranted for violations at a Class I Concentrated Animal Feeding Operation, or CAFO, regional office staff shall contact the Water Pollution Control Branch Compliance and Enforcement Section Chief to discuss the violation(s) prior to issuing a notice of violation. Responsible parties (owners or continuing authorities) of permitted animal feeding operations and CAFOs that operated under a letter of approval may be promptly issued a notice of violation without a prior course of conference, conciliation and persuasion when:

- Any discharge or activity that violates the Missouri Water quality standards, general or specific criteria. See the [Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#).
- Any discharge of process wastewater that occurred other than during a 25-year, 24-hour event. A notice of violation may be issued if there discharge of process wastewater during a 25-year, 24-hour event responsible party failed maintain the minimum freeboard.
- Any release of process wastewater that is in violation of the terms and conditions of the Missouri State Operating Permit.
- Two or more releases or spills of process wastewater, from a single permitted site that is completely contained onsite or on property not owned or under the control of the permittee, that are a result of failing to correct a specific deficiency in a timely manner.
- Failure to submit other reports (i.e. annual, etc.) within 30 days from the date specified in either an enforcement order, settlement agreement, or the Missouri state operating permit and can be clearly documented that the responsible party was informed of the requirement to submit the report.
- Failure to report to the department within 24 hours of any discharge(s) that occurred other than during a 25-year, 24-hour event.
- A responsible party fails to submit an application to renew Missouri State Operating Permit within 180 days prior to the expiration date and it can be clearly documented that the responsible party was informed of the requirement to submit an application for renewal.

Facilities and Sites Operating Without a Permit

Responsible parties (owners and/or continuing authorities) of facilities and/or sites operating without a Missouri state operating permit shall be promptly issued a notice of violation without a prior course of conference, conciliation and persuasion when:

- There is land disturbance activity of one acre or more without a Missouri State Operating Permit and BMPs are not adequate to prevent sediment from eroding off-site. (Due to the limited time frame for land disturbance and the potential environmental harm, prior notice of the need for a Missouri State Operating Permit is not required.)
- The discharge or activity results in pollution of waters of the state or a violation of the Missouri Water Quality Standards specific or general criteria. See the [Guidance for Issuing Notices of Violations Related to General Criteria of the Water Quality Standards](#).
- Operating, using, or maintaining a water contaminant source, a concentrated animal feeding operation without a Missouri State Operating Permit. Letters of approval clearly indicate that a nondischarge status must be maintained.

5.A Rescinding Notices of Violation and Letters of Warning (8/11)

On rare occasions, the department may rescind a Notice of Violation or a Letter of Warning.

After a NOV or LOW has been issued to a responsible party (owners and/or operators or continuing authorities) of a facility, the department may decide to rescind it for various reasons, including:

- The NOV or LOW was sent to the incorrect party. For example, the site may have been sold to another person without notice to the department or the department records did not correctly identify who is the responsible party.
- New information has come to light and has been verified showing that no violation occurred. Either department staff have conducted further investigation and discovered new information or the responsible party has submitted information that shows the violation did not occur and the NOV or LOW should be rescinded.

The facility or responsible party will be issued a letter rescinding an NOV or LOW and containing the following information. A copy of a template is attached.

- Number and date of NOV or LOW being rescinded
- Name of office originally issuing the NOV or LOW
- Reason for rescission
- Statement that this rescission letter will be retained in the facility's file
- Copy to the appropriate Regional Office or Program

Which Office Drafts Rescissions

Typically the office that issued an NOV or LOW will issue any rescission. However, upon mutual agreement, a NOV or LOW written by a Regional Offices may be rescinded by the Program Compliance and Enforcement Section.

Rescissions should be coordinated between the Regional Office and the appropriate Program and vice-versa.

Recordkeeping

Rescission letters will be directly attached to the NOV or LOW kept in paper files at the Regional Office and/or program office. The person signing the rescission will assure that all database entries (including ACE and/or MoCWIS) are updated in the comment field and NOV number field, if possible, to note the NOV or LOW was rescinded and the date of rescission.

If EPA has records of the NOV or LOW, contact them and request that the record is either deleted or the rescission of the NOV/LOW is noted on the record.

5.B Forms

[Notice of Violation \(Word® Document\)](#)

[Return to Compliance Letter \(Word® Document\)](#)

[Enforcement Action Request \(Word® Document\)](#)

[Solid Waste Management Program's Enforcement Referral Checklist](#)

[Escalation Policy](#)

[Significant Deficiency](#)

[Rescinding Letter \(Word® Document\)](#)

[HW Citation Guide \(PDF\)](#)

[PDW Citation Guide \(PDF\)](#)

[PDW Citations for Common Violations and Cross Reference of Federal and State Citations \(PDF\)](#)