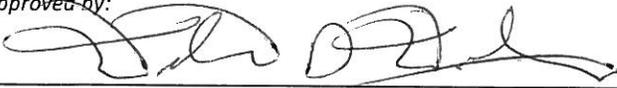


 Maricopa County Air Quality Department	Number: PP-2013-002 Title: Violation Reporting and Enforcement			
	<table border="1"> <tr> <td rowspan="3">Author:</td> <td>Issue Date: November 22, 2013</td> </tr> <tr> <td>Revision Date</td> </tr> <tr> <td>Review Date: November 22, 2015</td> </tr> </table>	Author:	Issue Date: November 22, 2013	Revision Date
Author:	Issue Date: November 22, 2013			
	Revision Date			
	Review Date: November 22, 2015			
Approved by: 				
William D. Wiley, Director				

I. Purpose

The purpose of this policy is to establish an appropriate process for documenting air quality violations, notifying alleged violators, and initiating enforcement action to ensure violations are addressed in a timely and appropriate manner. This policy supersedes the Air Quality Violation Reporting and Enforcement Policy (DPPN-10-00-06 ES).

II. Statement of Policy

The department will respond appropriately, consistently, and timely to instances of noncompliance. The response will be tailored to reflect the nature, scope and origin of the violation and be commensurate with the significance and cause of the violation. Compliance with the rules is essential to the Maricopa County Air Quality Department's mission and to ensuring a level playing field for all.

III. Inspection/Identification/Documentation of Violations

- A. Inspections of permitted sources shall be conducted in accordance with Arizona Revised Statutes (A.R.S.) §41-1009 and §49-471.03, except that §41-1009, subsection O, paragraph 1 does not apply.
- B. Upon entering a site for inspection purposes, the inspector(s) will identify themselves and present appropriate photo identification. In addition, the inspector(s) will explain the legal authority for conducting the inspection and present a list of inspection rights to the responsible person representing the entity being inspected. See Attachment A for the Notice of Inspection Rights.
- C. If consent to entry of a regulated premises for the purpose of conducting an inspection is denied while attempting to follow the procedures specified in A.R.S. §41-1009 and §49-471.03, the inspector shall take appropriate action pursuant to Maricopa County Air Pollution Control Regulation, Rule 100 section 105, and department personnel shall assist the Control Officer and/or Deputy County Attorney in the preparation of all documents required pursuant to A.R.S. §49-488 to obtain a Special Inspection Warrant.

- D. A copy of an inspection report will be provided at the time of inspection or within 30 working days in accordance with (A.R.S.) §41-1009(D) and §49-471.03. The inspection report will indicate the compliance status of the site at the time of inspection.
- E. When noncompliance is identified, the inspector will issue a warning notice, an Opportunity to Correct (OTC) or a Notice of Violation (NOV), as appropriate, at the time of inspection or later after consultation with his or her supervisor. These notifications are used to put the responsible party on notice that the Department believes a violation has occurred See Attachment B Enforcement Case Flow Diagram.
 - 1. If a warning notice, an NOV or OTC is issued, it must be issued to an owner, operator, responsible official or permit holder.
 - 2. If the owner, operator, responsible official or permit holder is not available or refuses to sign the warning notice, NOV or OTC, the document will be mailed and/or provided electronically.
 - 3. The warning notice, NOV and OTC documents will contain the following:
 - a. Information specific to the violator (name, address, location of violation, permit/notification/certification/registration number),
 - b. Date of inspection and date of occurrence,
 - c. A citation to the specific provisions of the rule, permit condition or statute,
 - d. Identification of any documents relied on as the basis for the noncompliance.
 - e. An explanation stated with reasonable specificity of the regulatory and factual basis for the noncompliance known to the department at the time of issuance, and
 - f. Instructions for obtaining a timely opportunity to discuss the cited noncompliance with the department and/or request Ombudsman review. The 10 business day period runs concurrent with the requirement that anyone receiving notice of noncompliance provide to the department a written response to the notice within 10 business days of receipt identifying how the noncompliant activity has been corrected.
 - 4. A separate disposition inspection will be conducted if the violation is not corrected at the time of the inspection.
 - 5. The findings of a disposition inspection shall be documented. When a disposition inspection reveals the violation was not corrected, the inspector will issue an NOV or issue an additional NOV(s) to document the continuing violation.
- F. When an NOV is issued, the inspector shall prepare a referral report that describes the rules and statutes the department believes the party has violated and includes the name, title, address,

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telephone numbers and any relevant statements made by the responsible party and witnesses. The referral report shall also include supporting evidence such as OTCs and NOV, photographs, videos, compliance inspection reports, correspondence, records, analytical test results and other appropriate documentation.

- G. An inspector shall submit the referral report and supporting evidence to his or her supervisor for evaluation and possible referral to the Enforcement Section. The supervisor will determine whether a referral report is sufficiently documented and appropriate for processing by the Enforcement Section.
- H. At any time, a warning notice, an OTC or NOV may be rescinded if it is determined that the evidence for the warning notice, OTC or NOV is insufficient, an error has been made in the document, or for any other reason deemed appropriate in the interest of fairness and equity.
- I. The department in its discretion may issue an NOV for any documented noncompliance. Generally, NOV, s will be issued for noncompliance that does not qualify as a minor violation based on the criteria and considerations provided in Opportunity to Correct Policy, PP-2011-003, or when an OTC has been issued and the noncompliance is not corrected within 24 hours and a written response is not received within 10 business days. Please refer to the Opportunity to Correct Policy, PP-2011-003, for details. If an NOV is issued based on failure to correct noncompliance documented by an OTC, the date of violation shall be considered to begin upon initial discovery of the noncompliance.
- J. If the department has not yet received delegation of authority for any new or revised provision of a federal New Source Performance Standard (40 CFR Part 60) or National Emission Standard for Hazardous Air Pollutants (40 CFR Parts 61 and 63), the department may issue a warning notice advising a regulated person of instances of noncompliance with those new or revised provisions of the federal rules. The department may also issue a warning notice for the first violation of a Maricopa County ordinance.

IV. To Dispute the Inspection Findings for Initial Notices of Noncompliance

- A. Each OTC or NOV will state that a formal request for ombudsman review of the notice must be made in writing within 10 business days of receipt. If a respondent does not take the opportunity to request Ombudsman review within the 10 business days provided, a second opportunity to request review will be provided under Section X.A. Please see Attachment B Enforcement Case Flow Diagram and refer to the Ombudsman Review Policy for details. However, requests made after the 10 day period may be considered when circumstances warrant and acceptance for review is at the discretion of the Ombudsman. To be considered timely, the department assumes an additional 5 days will account for mail delivery or e-mail receipt and counts 15 days from the day the letter is mailed.
- B. Under A.R.S. §49-1009(G) and §49-471.03, a regulated person not offered an opportunity to correct may also request a written explanation of the reason an opportunity to correct was not allowed.

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V. Enforcement

- A. An enforcement officer will review each referred NOV to determine an appropriate course of action and shall maintain a database reflecting the current status of all enforcement actions. The department's NOV status database will be available on the department's website.
- B. When necessary, the enforcement officer will consult with appropriate staff or the County Attorney, as part of the review and enforcement process. See Attachment B for the Enforcement Case Flow Diagram.
- C. Certain violations may be enforceable by the U.S. Environmental Protection Agency (EPA). The department may refer cases to EPA at its discretion or, where the department does not have the authority to enforce a federally enforceable provision as described in Section III. I above, will notify EPA of that discovery.
- D. Arizona Revised Statutes authorize the following enforcement actions for any violation under the jurisdiction of the Control Officer:

- 1. Order of Abatement by Consent (OAC)

Under A.R.S. §49-511.E, the Control Officer may enter into an Order of Abatement by Consent. The Control Officer may agree to accept monetary payments and may include supplemental environmental projects in lieu of a portion of the monetary payment as part of the negotiated terms of an Order of Abatement by Consent. The terms of an Order of Abatement by Consent shall be determined by agreement of the parties. An enforcement officer is responsible for negotiating the terms of an Order of Abatement by Consent.

- 2. Order of Abatement

- a. Under to A.R.S. §49-511, the Control Officer may issue an Order of Abatement to address ongoing violations. An Order of Abatement is prepared by an enforcement officer and must be approved and signed by the Control Officer. The Order of Abatement will be served upon the respondent either in person or by certified mail. Copies of an Order of Abatement may be sent to the compliance division manager, inspector, enforcement officer, EPA, the Arizona Department of Environmental Quality (ADEQ), the County Attorney's office, and members of the Air Pollution Control Hearing Board.
- b. An inspector shall conduct follow-up investigations to determine whether there has been compliance or noncompliance with the provisions of an Order of Abatement. The inspector shall send a follow-up investigation report to the designated enforcement officer.

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3. Civil Complaint

Under A.R.S. §49-513, the Control Officer may refer a violation to the County Attorney and request the filing of an action in Superior Court seeking civil penalties. All violation referrals under this subsection will be the responsibility of the Enforcement Section.

4. Notice to Appear and Complaint (Criminal Complaint)

Under A.R.S. §49-502, and A.R.S. §49-514, the Control Officer may issue a Notice to Appear and Complaint. This legal remedy requires an enforcement officer to meet with the County Attorney's office to review evidence and determine a course of action. When a complaint is filed under this authority, Enforcement Section personnel may assist the County Attorney's office in related activities, including arraignments, pre-trial conferences and meetings with defendants.

5. Notice to Appear and Complaint (Civil Complaint)

Under A.R.S. §11-871 and A.R.S. §11-876, the Control Officer may issue a Notice to Appear and Complaint. This legal remedy requires an enforcement officer to meet with the County Attorney's office to review evidence and determine a course of action. When a complaint is filed under this authority, Enforcement Division personnel may assist the County Attorney's office in related activities, including arraignments, pre-trial conferences and meetings with defendants.

6. Injunctive Relief

Under A.R.S. §49-512, the Control Officer may refer a violation to the County Attorney and request the filing of an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law.

VI. High Priority Violation Reporting

Violations discovered at major sources and synthetic minor sources that meet one or more of the criteria listed in the department's High Priority Violation (HPV) Determination Checklist (Attachment C) or any site determined by the department to be a "chronic or recalcitrant violator", as defined in the EPA's Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs) are entered and tracked in the EPA Aerometric Information Retrieval System (AIRS) database by the AIRS coordinator. Reporting and enforcement under this subsection shall follow the requirements of the EPA's current edition of the Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs).

VII. Penalty Calculations

Enforcement Division personnel shall utilize the Maricopa County Air Quality Violation Penalty Policy, its Appendices (including but not limited to the Asbestos Demolition and Renovation Penalty Guidelines – PP-2012-001), Computation Worksheets and guidelines to calculate appropriate

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settlement penalties for all violations, except those listed below which are specifically covered by statute, ordinance, state, federal or department policy.

- A. Unlawful open burning violation penalties shall be assessed pursuant to A.R.S. §49-501 and Maricopa County Air Quality Department's Violation Penalty Policy.
- B. Leaf Blower Restriction Ordinance (P-25) violation penalties shall be assessed pursuant to the Maricopa County Ordinance.
- C. Vehicle Idling Restriction Ordinance (P-21) violation penalties shall be assessed pursuant to the Maricopa County Ordinance.
- D. Residential Woodburning Restriction Ordinance (P-26) violation penalties shall be assessed pursuant to the Maricopa County Ordinance.
- E. Travel Reduction Program violation penalties shall be assessed pursuant to the procedures established in the Travel Reduction Division's violation guidelines. An NOV shall be issued by the division manager to a major employer that fails to come into compliance. Continuing noncompliance requires that the matter be referred to the Regional Travel Reduction Task Force, the County Attorney's office and the Board of Supervisors for a penalty which is assessed pursuant to A.R.S. §49-593.
- F. Penalties for self-reported violations are discussed in the Self-Reporting Policy, PP-2012-002.

VIII. Self-Reporting Violations

Under the Violation Self-Reporting Policy, the department may reduce all or a portion of the proposed civil penalties for violations that are voluntarily discovered and promptly disclosed and corrected. Please refer to the Violation Self-Reporting Policy, PP-2012-002, for details.

IX. Supplemental Environmental Projects (SEPs)

A Supplemental Environmental Project may be accepted in lieu of a portion of the monetary payments assessed and incorporated into an Order of Abatement by Consent in accordance with the Supplemental Environmental Projects Policy PP-2012-003. A proposal for a SEP must meet the minimal value identified in the SEP policy.

X. Further Review of Orders of Abatement by Consent or Orders of Abatement

A. Order of Abatement by Consent (OAC)

1. **Respondents that have not requested ombudsman review of specific findings at the time they received the NOV:** Within 10 business days after the receipt of a Final Offer to Settle letter, a respondent may request ombudsman review to dispute the inspection findings for the violations identified in the proposed OAC. Please refer to the Ombudsman Review Policy for details.

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2. **Further review before an administrative law judge:** As a prerequisite to requesting a hearing before an administrative law judge to dispute the inspection findings, appellants must utilize MCAQD ombudsman services. Please refer to the Administrative Hearing Policy for details. Depending on when a respondent utilizes MCAQD Ombudsman services, the respondent may request a hearing before an administrative law judge to dispute the inspection findings for the proposed OAC within one of the following two timeframes:
 - a. Within 10 business days after receipt of the Ombudsman letter of final decision or recommendation, or
 - b. Within 10 business days after receipt of a Final Offer to Settle letter.

B. Order of Abatement

1. Within 30 days of the date of issuance of an Order of Abatement, the respondent may request a hearing for review by the Air Pollution Control Hearing Board. For review by the Air Pollution Control Hearing Board, please refer to Rule 400 for details.
2. When the respondent of an Order of Abatement requests a hearing before the Air Pollution Control Hearing Board, the hearing administrator is responsible for scheduling and publicizing the hearing pursuant to A.R.S. §49-490 and §49-498.

XI. Attachments

Attachment A—Notice of Inspection Rights

Attachment B—Enforcement Case Flow Diagram

Attachment C—High Priority Violation (HPV) Determination Checklist

XII. References

Arizona Revised Statutes (A.R.S.) - Title 41 and Title 49

Maricopa County Air Pollution Control Regulations

P-21 Vehicle Idling Restriction Ordinance

P-25 Leaf Blower Restriction Ordinance

P-26 Residential Woodburning Restriction Ordinance

P-27 Vehicle Parking and Use on Unstabilized Vacant Lots Ordinance

P-28 Off-Road Vehicle Use in Unincorporated Areas of Maricopa County Ordinance

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Maricopa County Air Quality Violation Penalty Policy

Maricopa County Air Quality Asbestos Demolition and renovation Penalty Guidelines (Violation Penalty Policy Appendix A)

Maricopa County Air Quality Self-Reporting Policy

Maricopa County Air Quality Ombudsman Review Policy

Maricopa County Air Quality Administrative Hearing Policy

Maricopa County Air Quality Supplemental Environmental Projects Policy

EPA's Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)

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Maricopa County
Air Quality Department

Maricopa County Air Quality Department
1001 N. Central Avenue
Phoenix, AZ 85004
Phone: (602) 506-6010
Fax: (602) 506-2537

NOTICE OF INSPECTION RIGHTS

Company/Permit/ Notification Holder: _____	Permit Number: _____
Date: _____	Time: _____
Inspector: _____	Phone: _____
If you have any questions, you may contact the inspector's supervisor: _____ at phone number: 602.506.6734	

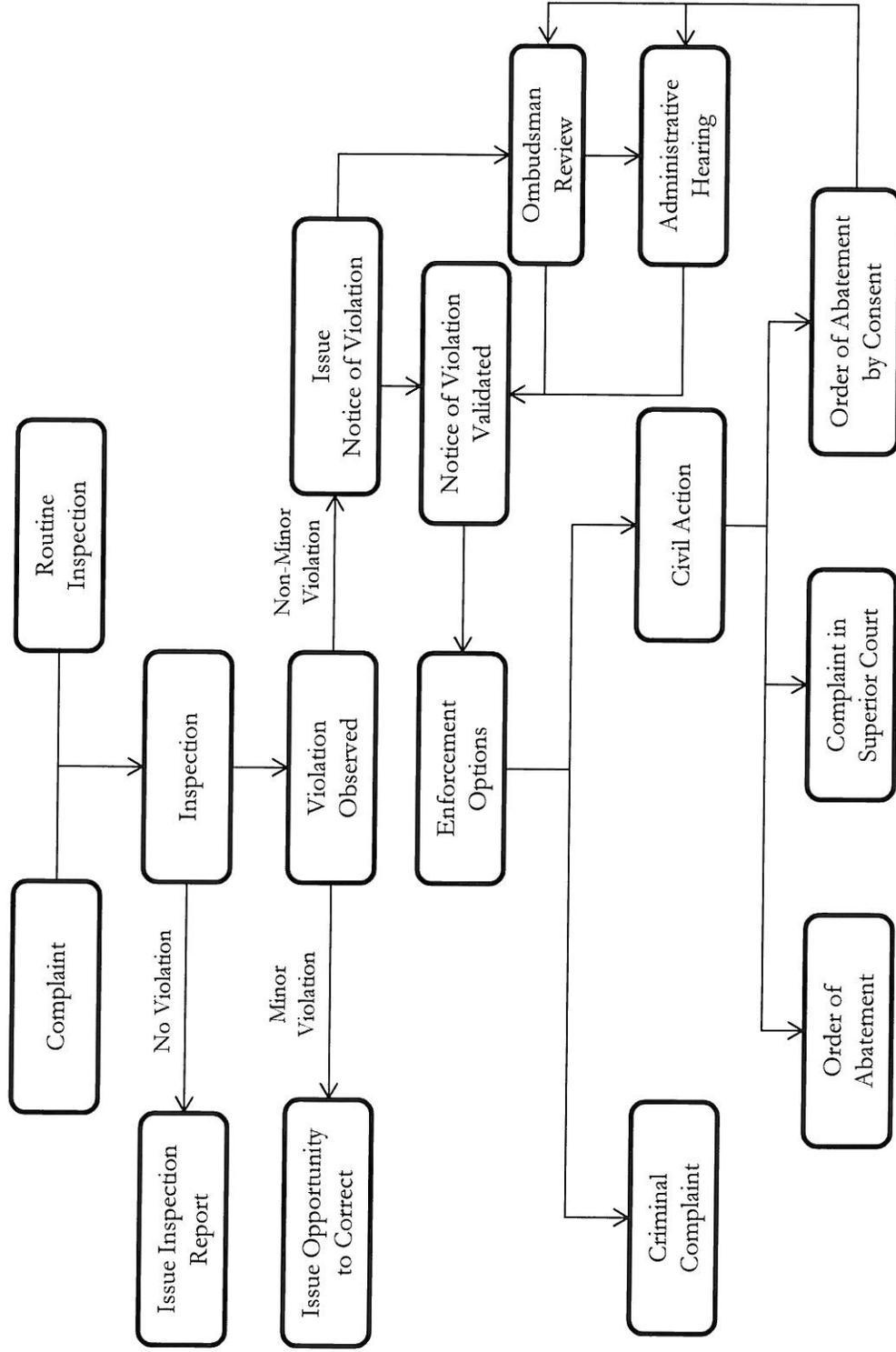
1. The Maricopa County Air Quality Department (hereinafter "department") representative(s) identified above was/were present at the above regulated site at the above listed date and time. Upon entry to the premises, the department representative(s) met with me, presented photo identification indicating that they are a department employee(s) and explained that:
 - The purpose of this inspection is:
 - To determine compliance with Arizona Revised Statutes (A.R.S. Title 49, Chapter 3, Article 3) and/or Maricopa County Air Pollution Control Regulations.
 - To determine compliance with an Air Quality Permit issued pursuant to A.R.S. § 49-480, and Maricopa County Regulations Rule 100, Section 105.
 - To determine compliance with an administrative or judicial order issued pursuant A.R.S. § 49-491, § 49-511, § 49-512.
 - This inspection is being conducted pursuant to A.R.S. § 49-473, § 49-474, § 49-488, and/or the inspection and entry provisions in an Air Quality Permit or conditional order. There are no direct fees for this inspection.
2. I understand that I may accompany the department representative(s) on the premises, except during confidential interviews.
3. I understand that I have the right to copies of any original document(s) taken during the inspection, and that the department will provide copies of those documents at the department's expense.
4. I understand that I have the right to request copies of any documents that will be relied upon to determine compliance with licensure or regulatory requirements, if the agency is permitted by law to release such documents. Instructions for requesting records are available at www.maricopa.gov/airq/contact_us/public_records/Default.aspx.
5. I understand that I have a right to a split of any sample(s) taken during the inspection, if the split of the sample(s) would not prohibit an analysis from being conducted or render an analysis inconclusive.
6. I understand that I have the right to copies of any analysis performed on sample(s) taken during the inspection and that the department would provide copies of this analysis at the department's expense.
7. I understand that each person interviewed during the inspection will be informed that their statements may be included in the inspection report.
8. I understand that each person whose conversation will be tape-recorded during the inspection will be informed that the conversation is being tape-recorded.
9. I understand that if an administrative order is issued or a permit decision is made based on the results of the inspection, I have the right to appeal that administrative order or permit decision. I understand that my administrative hearing rights are set forth in A.R.S. § 49-482, § 49-498 et seq. and Maricopa County Air Pollution Control Regulation IV, Rule 400. If I have any questions concerning my rights to appeal an administrative order or permit decision, I may contact the department Ombudsman at 602-506-1813.
10. I understand that the issuance of an Opportunity to Correct or a Notice of Violation is not appealable. I understand that if I have any questions or concerns about this inspection, or I wish to dispute the inspection findings, I may contact the department Ombudsman at 602-506-1813.
11. If a Notice of Violation is issued, I understand that I may check its status at www.maricopa.gov/airq/divisions/enforcement/nov/nov_status.aspx.
12. I understand that audit reports may be subject to privilege under A.R.S. 49-1402. The department may refuse to accept reports for which privilege is claimed.
13. Your feedback is essential in helping us achieve outstanding customer service, so please take a moment to tell us what we do well and what needs improvement by completing a Feedback Form located at www.maricopa.gov/airq under "Contact Us".
14. While I have the right to decline to sign this form, the department representative(s) may still proceed with the inspection/investigation.

Site Contact: _____ Title: _____

SIGN HERE: _____

- Declined to Sign
- Not on Site

Maricopa County Air Quality Department Enforcement Case Flow Diagram



**MARICOPA COUNTY AIR QUALITY DEPARTMENT (MCAQD) - COMPLIANCE
HIGH PRIORITY VIOLATION (HPV) DETERMINATION CHECKLIST**

The following criteria trigger HPV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by the management of Maricopa County Air Quality Department.

Source: _____ Permit #: _____ Pollutant of Concern: _____ CDS # _____

Date(s) of Inspection: _____

More explanation of general and matrix criteria can be found in EPA document The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)

Yes No

		General Criteria #1	Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
		General Criteria #2	Violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.
		General Criteria #3	Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)
		General Criteria #4	Violation of any substantive term of any local, state or federal order, consent decree or administrative order.
		General Criteria #5	Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.
		General Criteria #6	Substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
		General Criteria #7	Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
		General Criteria #8	A violation of an allowable emission limit detected during a reference method stack test. NOTE: A violation of this General Criteria ALSO constitutes a violation of Matrix Criteria #1 "Emission violation detected by stack test". Violation Code MC1.
		General Criteria #9	Clean Air Act (CAA) violations by chronic or recalcitrant violators. NOTE: This refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by the EPA Region IX & MCAQD that the source should be bumped up into HPV status.
		General Criteria #10	Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan).
		Matrix Criteria #1	Violation of applicable emissions limitation, detected by coating analysis, fuel samples, other process materials sampling, or raw / process materials usage reports.
		Matrix Criteria #2	Violation of parameter limits where parameter is a direct surrogate for an emissions limitation, detected by continuous / periodic parameter monitoring.
		Matrix Criteria #3	Exceedance of applicable non-opacity standard, detected by Continuous Emission Monitoring Systems (CEMS).
		Matrix Criteria #4	Exceedance of applicable opacity standard detected by Continuous Opacity Monitor (COM) or by Visible Emission (VE) observation.
		DIS	Discretionary HPV. For violations that DO NOT fit the General or Matrix criteria, but MCAQD and EPA agree that the violation(s) are severe enough to justify HPV status. (i.e., specific violations may be of limited duration and magnitude but indicate unacceptable, egregious behavior.)

Yes No

			Was the site in violation for any non HPV related issues?
--	--	--	---

HIGH PRIORITY VIOLATORS MUST BE REPORTED TO THE EPA WITHIN 45 DAYS OF DETERMINATION !

Approve	Disapprove	Date
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>

Inspector Name: _____

Supervisor Name: _____

Division Manager Name: _____

Original to Permanent File
Copy to: Eric Raisanen - AFS (AIRS Facility Subsystem) Coordinator