

**SOLID & HAZARDOUS WASTE DIVISION  
STORAGE TANK PROGRAM (STP)  
GUIDANCE DOCUMENT #25**

**SUBJECT:** ENFORCEMENT PROCEDURES

**SCOPE:** This guidance document explains the procedures to use when an enforcement action is needed.

**INTRODUCTION:** Storage Tank Program violations requiring enforcement can be found during an inspection or a follow up inspection; or administratively when sending out reminder notices to tank owner/operators, reviewing facility-submitted data, or during file review.

**GUIDELINES:**

**1. Inspection or Follow Up Inspection Enforcement**

**A.** If a violation is found during an inspection or follow up inspection, the inspector brings the violation(s) to the attention of facility onsite personnel. The violations may be resolved at the time of inspection.

**B.** When the inspector returns to the office, the inspector and compliance supervisor discuss the violation(s) to determine if enforcement is warranted.

(i) The inspector issues a Letter of Violation (LOV). If a violation was not resolved at the time of the inspection, the LOV will include a deadline for resolving the violation(s).

(ii) If the violation(s) is/are fuel delivery prohibition (“Red Tag”) violation(s) (WWQRR, Chapter 17, Section 44(a)) that has/have not been resolved, a “Red Tag” Notice of Violation (NOV) will be issued.

(iii) If the violations are serious or are repetitive (same violations discovered on consecutive inspections) and have been resolved, or the violation(s) is/are not “Red Tag” violation(s), an NOV will be issued (in addition to an LOV) and a settlement agreement will be negotiated.

(iv) An NOV with an Order to bring the facility into compliance may be issued for unresolved violations that are not “Red Tag” violations.

**C.** The NOV enforcement memo is submitted by the compliance supervisor to the STP manager within 45 days of the inspection. NOVs are submitted to the administrator within 60 days of violation discovery or within 45 days of the deadline stated in the LOV to correct the violation.

**D.** After a violation is resolved, a Letter of Compliance is issued.

**2. Administrative Enforcement.** In an attempt to keep facilities in compliance, queries on the STP database are conducted and notices are sent to facility owners that have tank systems due for: 1) cathodic protection testing, 2) line tightness testing for US suction systems, or 3) submittal of an

Operator's Annual Inspection (OAI). Notices are also sent to facility owners that do not have a licensed storage tank operator or one of their storage tank operators' licenses is about to expire. The notices are sent at least every 60 days. The STP also reviews site data to determine if the fees have been paid for a facility or a contaminated site. Additionally, file reviews may indicate the need for an enforcement action.

**A. Cathodic Protection or Line Tightness Testing Due**

- (i) An LOV is issued for facilities that are past due for testing.
- (ii) If a facility is over 90 days past due for testing, a file review is conducted to determine if there was a data entry error.
- (iii) The facility owner/operator's contact is contacted regarding the violation. If the testing has been completed, the documentation must be submitted to the STP immediately.
- (iv) If testing has not been conducted, an NOV with "Red Tag" Order is submitted to the Administrator within 60 days of violation discovery.

**B. OAI**

- (i) An LOV is issued for facilities that are past due for submitting an OAI.
- (ii) If a facility is over 90 days past due for submitting an OAI, a file review is conducted to determine if there was a data entry error.
- (iii) The facility owner/operator's contact is contacted regarding the violation. If the OAI has been completed, it must be submitted to the STP immediately.
- (iv) If an OAI has not been conducted, an NOV with "Red Tag" Order is submitted to the Administrator within 60 days of violation discovery.

**C. Storage Tank Operator License Expiration**

- (i) If a facility does not have a licensed Storage Tank Operator, an LOV is issued.
- (ii) If a facility has gone longer than 90 days without a licensed Storage Tank Operator, an NOV is issued within 60 days of violation discovery.

**D. Fees.** The STP becomes aware that fees are past due by using queries or when looking at facility information in the STP database. The STP checks to see if a contaminated site's fees have been paid prior to adding the site to a project or prior to issuing a closure letter.

(i) Fee invoices for all sites are sent in November. A second batch of invoices is sent in late January early February. A third batch of invoices is sent in April, which includes late fees.

(ii) An LOV is issued by May 15th to contaminated site owners with a deadline of June 15th for paying the fees. If the owner fails to pay the fees by the deadline, an NOV and Order is issued by August 15<sup>th</sup>.

(iii) By October 15th an NOV and Order with Red Tag is issued to active tank facilities that have not paid fees by September 1 for the current year.

**E.** Violations may be discovered during a file review.

(i) The inspector will contact the owner regarding any violations discovered during a file review to determine if the violations have been resolved.

(ii) If the violations are serious and warrant further enforcement action, the person discovering the violation(s) will discuss the matter with the compliance supervisor. It will then be decided if an LOV, NOV, or NOV with Order will be issued.

**3. NOV Preparation.** There are two types of NOV's that are issued: 1) NOV for negotiating a settlement agreement, and 2) NOV with an Order. The steps for preparing an NOV are:

**A.** The compliance supervisor prepares the red NOV folder, obtains the docket number from the F drive, and obtains the certified return receipt. A subfolder for the NOV is set up on the S drive in the Scanned Documents folder for the facility.

**B.** The compliance supervisor identifies a recent NOV with the same or similar violation(s), which will be used as the template for the new NOV. The NOV, cover letter, and memo templates are placed in the docket subfolder.

**C.** All NOV's are tracked on the tracking sheet to ensure deadlines are met.

**D.** The NOV process depends on if we are issuing: 1) an NOV for negotiating a settlement agreement, 2) an NOV with an Order, or 3) an NOV with an Order and Red Tag.

(i) Procedure for NOV for negotiating a settlement agreement

a. The compliance supervisor prepares a memo to the program manager summarizing the facility owner's name, owner's address, and chronology of events leading to the NOV. The memo includes the penalty amount calculated using the penalty calculation policy or a Supplemental Environmental Project (SEP).

b. The program manager writes the NOV. The NOV package includes a memo, cover letter, and the NOV for the director and administrator's signatures. The NOV is peer reviewed and printed by the compliance supervisor and given to the administrator.

c. After the NOV and letter are signed, a copy is sent certified to the owner. The STP retains a copy and posts it on the website.

d. The owner and compliance supervisor negotiate either a penalty amount or a SEP.

e. The compliance supervisor writes the settlement agreement, which includes a cover memo to the director and a cover letter. The package is peer reviewed by the program manager, printed by the compliance supervisor, and given to the administrator.

f. The director and administrator sign two copies of the settlement agreement.

g. The package is sent to the owner, who sends one signed copy back with payment unless a SEP was negotiated. If a SEP was negotiated, the STP will follow up to make sure the SEP was completed within the time frame outlined in the NOV. If the SEP was not completed, the compliance supervisor sends a letter to the owner requesting payment for the amount that would have been credited for completing the SEP.

h. If the owner fails to comply with the settlement agreement, the matter is referred to the Attorney General's Office (AGO).

(ii) Procedure for NOV with an Order

a. The compliance supervisor prepares a memo to the program manager summarizing the owner's name, owner's address, chronology of events leading to the NOV, a list of items that need to be completed with a deadline for completing them to bring the facility into compliance, and the docket number. The memo is submitted to the program manager within 45 days of the inspection of the Monday of the week the inspection was completed.

b. The program manager writes the NOV. The NOV package includes a cover letter and the NOV for the director and administrator's signatures. The package includes, "Chapter 1, Section 3 of the DEQ Rules of Practice and Procedures." The package is peer reviewed and printed by the compliance supervisor and given to the administrator.

c. After an NOV/Order is signed, copies are sent to the EQC and to the owner (certified). A copy is posted on the website.

d. The NOV/Order goes before the EQC to be confirmed.

e. The STP follows up to ensure the facility is brought into compliance within the deadline. If so, a letter of compliance is issued. The EQC receives a copy of the letter of compliance. If the facility does not comply with the NOV, the matter is referred to the AGO.

(iii) Procedure for NOV with an Order and Red Tag

a. The compliance supervisor contacts the Fuel Tax Administration to determine which supplier(s) deliver fuel to the facility. The compliance supervisor prepares a memo to the program manager summarizing the owner's name, owner's address, chronology of events leading to the NOV, a list of items that need to be completed with a deadline for completing them to bring the facility into compliance, the name(s) of the fuel supplier(s) for the facility, and the docket number.

b. The program manager writes the NOV. The NOV package includes a cover letter, the NOV for the director and administrator's signatures, and "Chapter 1, Section 3 of the DEQ Rules of Practice and Procedures." The NOV also notifies the owner and fuel supplier(s) that no fuel can be delivered to the tank(s). The NOV is peer reviewed and printed by the compliance supervisor and given to the administrator.

c. After the NOV/Order is signed, copies are sent to the EQC, to the owner (certified), and to the fuel supplier(s) for the facility. A copy of the NOV is posted on the website. The facility is added to the list of Red Tagged facilities on the website with a link to the NOV.

d. The NOV/Order goes before the EQC to be confirmed.

e. The STP follows up to ensure the facility is brought into compliance within the deadline. If so, a letter of compliance is issued, which also removes the Red Tag. The EQC receives a copy of the letter of compliance, and it is posted to the website. The fuel supplier(s) are notified that the Red Tag has been lifted, and the facility is removed from the list of Red Tagged facilities. If the facility does not comply with the NOV, the matter is referred to the AGO.