



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**



Nevada Department of
**CONSERVATION &
NATURAL RESOURCES**

Your Facility has been Referred to Enforcement: What Now?

August 20, 2024

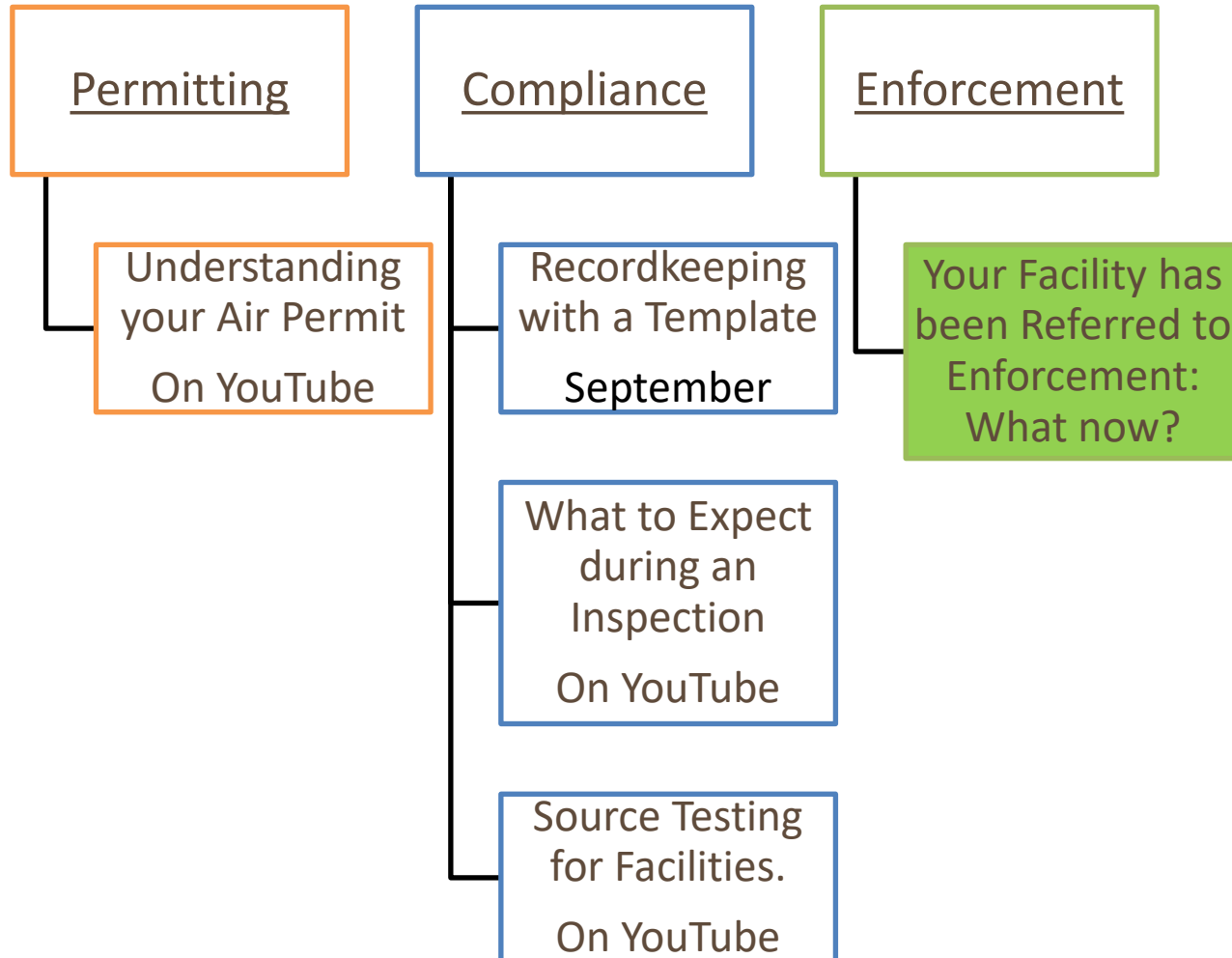
Presented by

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LAYOUT OF WEBINAR SERIES

TODAY'S TOPIC:

- YouTube @nevadadcnr



AGENDA

- How did we get here?
- Types of Violations
- Letter of Alleged Findings
- Enforcement Conference
- Outcomes
- Penalty Matrix Walkthrough
- Appeals
- Case Closed-Now what?

HOW DID WE GET HERE?

COMPLIANCE

- Completed an inspection, reviewed records, or reviewed source tests
- Found issues that they feel are out of compliance with the Facility's permit
- For Class 2 minor violations, the inspector may issue a field NOAV directly to the Facility
 - What to Expect During an Inspection
- These issues will be communicated to the Facility verbally and by email once the final report is completed
 - Record Search <https://ecms.nv.gov/ndep/>
- Any alleged violations will be sent to Enforcement
- Important! Enforcement is about things that have already happened
- Getting back into compliance saves the Facility from future violations

BEGINNING OF ENFORCEMENT

- Enforcement Staff receives the compliance report
- We examine the alleged violations to ensure they are viable
- Can dismiss if we find other information contradicting the violation
- Move forward with those that remain
- Write a Letter of Alleged Findings aka LOAF



MINOR VIOLATIONS

ONLY FOR CLASS 2 SOURCES

Minor Violations - Class II and III sources [NAC 445B.281](#)(2) and (3)

	First Offense	Second Offense	Third Offense
NAC 445B.22037 , fugitive dust	\$500	\$1,000	\$2,000
NAC 445B.22067 , open burning	\$250	\$500	\$1,000
NAC 445B.2207 , incinerator burning	\$250	\$500	\$1,000
NAC 445B.22087 , odors	\$250	\$500	\$1,000
Subsection 3 or 4 of NAC 445B.232 , reporting of excess emissions	\$250	\$500	\$1,000
Subsection 8 of NAC 445B.252 , testing and sampling reporting	\$250	\$500	\$1,000
Subsection 2 of NAC 445B.265 , reporting of monitoring systems.	\$250	\$500	\$1,000
Paragraph (e) of subsection 1 of NAC 445B.275 , recordkeeping, monitoring, reporting or compliance certification	\$250	\$500	\$1,000
NAC 445B.331 , change of location	\$250	\$500	\$1,000

MAJOR VIOLATIONS

- Class 1 and Class 2
- Any minor violations after the 3rd offense of the same type within the last 60 months
- Except as otherwise provided in NAC 445B.001 to 445B.395, inclusive, any violation of the provisions of those sections is classified as a major violation
- Major Violations up to \$10,000 per day per violation
 - We calculate recommended penalties using a penalty matrix set up between the Division and the State Environmental Commission

LOAF

- Consists of:
 - Cover Letter- contains general information that is sent to everyone, along with a time and date for the enforcement conference
 - Items to be discussed
 - General overview with link to more in depth info in the Appendixes
 - Order to Appear
 - Appendixes with supplemental information if needed

ENFORCEMENT CONFERENCE

- Informal meeting to discuss contents of the LOAF
 - Responsible Official (RO) required to be present
 - The Facility can bring lawyers if desired, but if they do, the Division may also bring legal counsel
 - In person or virtual depending on the case
- Opportunity to present additional information, explain circumstances, take responsibility, and/or inform the Division of corrections that have been made
- The Division may request more data/records to help with decisions
 - Priority will be given to original records collected by compliance
- Answer any questions the Facility may have
- Discuss potential outcomes

OUTCOMES- NOTICE OF ALLEGED VIOLATION (NOAV)

- Dismissal
- Warning
- Administrative Fines
- Settlement
 - Supplemental Environmental Project (SEP)
- Consent Decree

DISMISSAL

- Evidence has been presented that the violation did not occur
- Many cases will contain partial dismissals

WARNING

- A violation did occur
- Full violation, but the Division is not recommending a monetary penalty
- Many reasons to issue a warning
 - Ex: Failed source test (low exceedance) and rescheduled test immediately and passed, were able to prove that the reason why they failed had only been in place a few days
- Can be appealed
- Will stay on Facility record for the next 60 months

ADMINISTRATIVE FINES-MINOR

- Penalty amount based off the table shown earlier
- Issued as a Field NOAV or part of a LOAF
- Can get multiple minor violations at once
 - Ex-1st, 2nd, and 3rd record keeping violations and 1st fugitive dust violation
- Can be appealed
- Must be paid or appealed within 10 days of receiving the NOAV

ADMINISTRATIVE FINES-MAJOR

- Penalty amount based off calculation from the penalty matrix
 - Take into consideration any elements specified in the matrix for the type of violation
- Can get multiple major violations at once
- Final NOAVs will be issued
 - Can be appealed 10 days following receipt
- After appeal period has passed, the Division will request the NOAV to be heard at a future State Environmental Commission (Commission) hearing
- Commission's purview to hand down the final penalty amount

PENALTY MATRIX

- Made by the Division and the Commission
- Split out by permit class and penalty type
- Depending on the penalty type
 - Per emission unit or system
 - Per test or reporting period
 - Per pollutant
 - Time Basis-daily, weekly, per event
- Pollutant type
- Let's look at the penalty matrix and the penalty calculation worksheet

APPEALS

- Warnings and Administrative fines can be appealed within 10 days of receipt with the Commission's Appeal Form #3
- Appeals are only to say the final NOAV does not have merit
 - Talking about the penalty amount should be reserved for the actual Commission Hearing
- Appeals are to be held with 20 days of receipt by the Commission
 - 20 days can be waived for both sides to get their legal counsel together
- A specific schedule and timeframes for each side to present arguments will be decided upon by the Commission
- If the Commission decides to uphold the final NOAV then the normal Commission hearing will happen at a future date to decide on the penalty amount
- If the Commission does not uphold the final NOAV, then the NOAV will be dismissed

COMMISSION HEARING

- The Division will present the NOAVs to the Commission
 - Explain what happened
 - Why it is important that facilities do not commit those violations
 - Walk through how we came to the amount
- The Commission will ask clarifying questions of the Division
- The Facility will have a chance to speak-Optional
 - Can speak about penalty amount
 - This is not the time to talk about the merits of violation
- The Commission will ask clarifying questions of the Facility
- The Commission will make a final ruling on the penalty amount
 - Typically stay with recommendation, but can go up or down
- This must be paid within 30 days, failure to pay is a misdemeanor

SETTLEMENT

- Agreement between the Division and the Facility
- Can include a mixture monetary penalties, installation of additional controls, updates to the facility, updates to record keeping programs, etc.
- Final NOAVs will still be issued with a Settlement
- If Settlement talks fall through, we will go back to a Commission hearing

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

- Environmentally beneficial project which the facility agrees to undertake to settle an enforcement action equal to at least 125% of the penalty
- Must meet certain criteria
 - Public health, pollution prevention/reduction, environmental restoration and protection, assessments and audits, or environmental compliance promotion
- Cannot be:
 - Unrelated to environmental protection
 - A project which the defendant/respondent is already legally required to perform
 - A project for corrective or preventive measures that would otherwise be required to prevent recurrence of the violation
 - A project that provides the Division with additional resources to perform an activity for which the Legislature has specifically appropriated funds

CONSENT DECREE

- Similar to a Settlement, but with a Judge overseeing the final agreement

CASE CLOSED-NOW WHAT?

- Appeal periods have passed
- Penalties have been levied and paid
- All portions of Settlement/Consent Decree have been completed
- All final NOAVs stay on the Facility's record for 60 months
 - This will be used as a multiplier if the facility has further violations in the next 60 months-History of Non-compliance

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
Within previous year (12 months) = 3X (+300%)
Within previous three years (36 months) = 2X (+200%)
Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
(+5%) X (Number of recent Violations) = X = _____

Total Penalty Adjustment Factors - Sum of A & B: _____ %

Questions?



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