

State of Vermont
Agency of Natural Resources
Department of Environmental Conservation

Financial Procedure:	NOAV Procedure	Effective Date:	4/10/2023
Applicable To:	WSMD Wastewater Management Program	Revision Date:	9/21/2023
Prepared/ Revised by:	WSMD Wastewater Management Program, Business Operations and Support Services Program	Approved By:	Amy Polaczyk

Procedure Objective

The purpose of this SOP for issuing Notice of Alleged Violations (NOAVs) is to improve the internal review process, increase the accuracy of the NOAVs, reduce the time and effort needed to address recurring problems.

Impacted Departments or Divisions

- WSMD

Required Resources

- WWInv
- Permittee compliance info: WR-43s, inspections, correspondence, etc.
- SNC Procedure: <https://dec.vermont.gov/sites/dec/files/documents/wsmd-procedure-determining-significant-noncompliance-wpc-permit-program-1995-09-03.pdf>
- NOAV Template: *insert location here.*
- NOAV mailing procedure: *insert location here.*
- Outlook Email

Governing Documents

State statute requiring NOAVs issued via certified mail
SNC procedure
Federal SNC regs for Direct Discharge and Pretreatment

When to issue a Notice of Alleged Violation

NOAVs may be sent to address:

- a) findings of Significant Non-Compliance (SNC) during a compliance review;
- b) *significant** violations identified during a facility visit or site inspection;
- c) *significant** violations identified following facility non-compliance report; and
- d) violations determined during follow-up of a complaint, dry-weather overflow, etc. the decision to send an NOAV should be made in consultation with the section supervisor or program manager

*Incidents / violations outside of SNC that are considered significant include but are not limited to: those that result in a threat to human health, environment, pass-through/interference with the receiving WWTF. Proper operation and maintenance violations; certified operator/adequate staffing violations; lab/QAQC violations.

NOAV based on finding of SNC:

- a) Wastewater Program staff make recommendation to issue NOAV. The Wastewater Program Manager (Program Manager) determines that an NOAV is needed during an SNC meeting or on an as-needed basis. An NOAV is sent when a facility is SNC.
- b) Mari Cato, BOSS Compliance Specialist, drafts the NOAV using the standard approved template. The NOAV includes the following:
 - Alleged Violation of Monitoring Requirement, Directive, and Potential Future Action by the Department
 - Formal language is used; this is a directive - limit use of “please”; any abbreviations are spelled out for the first usage.
 - A written response is requested within 10 days. A shorter time period may be specified in the NOAV.
 - Due dates for NOAV responses are State business days to avoid confusion (no holidays or weekend dates).
 - If the permittee is a pretreatment facility, the Chief Operator of the municipal WWTF is copied.
 - The NOAV template is reviewed, updated if necessary, and saved each SNC period.
 - Mari sends draft NOAV to the assigned O&M inspector and the Program Manager for review with a time frame to reply by (no longer than 3 business days for review, unless an extension is approved by the Program Manager).
 - The O&M inspector and the Program Manager shall send one jointly revised NOAV to Mari.
 - Mari sends revised final NOAV to the assigned O&M inspector and the Program Manager for final review with a time frame to reply by (3 business days). If appropriate to the violation, the Program Manager will review and approve the NOAV within a shorter timeframe after seeking input of the O&M inspector.

- NOAVs for SNC ONLY do not need legal review prior to signature.
- The final NOAV is sent to the Division Director for approval and signature.
- The Program Manager sends the signed final NOAV to Mari.
- Mari sends out the signed final NOAV to the permittee and the courtesy copy (cc:) recipients.

NOAVs for violations other than SNC

- An NOAV should be sent to formally notify a facility they may be in violation of their permit. This step is appropriate to compel voluntary compliance prior to referral for formal enforcement actions.
- Consult the program manager before drafting the NOAV to obtain programmatic support.
- If an EEO has been involved in investigations that lead to an NOAV, that investigator should be consulted to discuss their observations and determine roles and responsibilities in the process.
- In general, program staff should draft and issue the NOAV if all the observed violations are under the authority of the NPDES direct discharge program, and if the investigation observations by the EEO form a portion of the information cited in the violations section.
- In general, ECD should take the lead in the NOAV if it needs to address violations under multiple authorities (Haz waste, solid waste, and discharge) or if the EEO is the sole source of information on the violations. ECD will typically avoid writing detailed directives in an NOAV, rather the respondent will be required to reach out to the appropriate analyst. Therefore the analyst should have a plan for follow-up requirements when an NOAV is sent by ECD.
- If a WW program staffer determines there may be violations of other DEC authority and an EEO is not involved (ie, haz waste discharged based on inspection finding) the staff should consult with the program manager of the affected program to coordinate decision making on the contents of the NOAV.
- NOAVs issued in conjunction with other WSMD programs are rare but possible and should be discussed with the program managers to determine the appropriate course of action based on the facts.
- NOAVs sent for this purpose should contain:
 - (1) Alleged Violation of statute, rule, or permit limits/conditions, and a clear directive with deadlines that can be acted on.
 - (2) Formal language is used; any abbreviations are spelled out for the first usage.
 - (3) A written response is requested within 3-10 days, depending on the severity of the violation.
- Due dates for NOAV responses are State business days to avoid confusion (no holidays or weekend dates).
- If the permittee is a pretreatment facility, the Chief Operator of the municipal WWTF is copied.

- Once an initial draft is complete the NOAV should be discussed with the section supervisor. Depending on the violations and directives, these NOAVs may need legal review. To expedite review, analysts should flag any specific questions that may need management or legal input.

General guidance on legal review. Review NOT required when:

- Citing ONLY SNC for effluent limits and permit condition requiring secretary notification of violation
- Citing only permit conditions that are suspected to be violated

Distribution of NOAVs

- Per State Statute: NOAVs must be sent by CERTIFIED mail (Refer to the WSMD Certified mailing procedure). They may also be hand-delivered (by an EEO).
- An NOAV can also be sent electronically IN ADDITION to the hard copy.
- Reasonable deadlines should be set based on SPECIFIC DATES and consider the time it will take for the certified letter to arrive. The timeline for response may also be written to depend on the date the green card is signed.
- If the green card is not returned within 1 week of sending, but tracking indicates delivery, follow-up should be done with the permittee to discuss compliance directives

Notices

- These procedures are intended to support the Agency of Natural Resources internal control environment.
- the objective should be on adherence and not on rationalizing ways and means for circumvention.
- Nothing in this document shall limit or supersede any applicable Federal or State laws, statutes, bulletins, or regulations.