

CANCELLED

ALASKA DEPARTMENT OF LABOR
DIVISION OF LABOR STANDARDS AND SAFETY

Received

DOSH Program Directive No. 83-8

December 23, 1983

To: All DOSH Staff

Subject: Notice of Violation Procedures

1. Purpose: This program directive provides guidelines for using the Notice of Violation (NOV) procedures.
2. Directives Affected: None
3. Background: The 1982-1983 State Legislature adopted Senate Bill 263 which allows the Department of Labor to issue a Notice of Violation in lieu of a citation when an employer agrees to correct within a reasonable time violations that are not serious. See Appendix A of this Directive for the text of this change in law.

If properly used, the NOV system will result in decreased paperwork for Compliance Officers, Industrial Hygienists, and employers and will result in more timely correction of violations. This procedure covers both fixed and nonfixed worksites.

Compliance Officers will be required to make decisions in the field as to whether or not a NOV is applicable. Therefore, administrators and supervisors will be depending more heavily on Compliance Officers to understand and to properly apply the criteria for what is a serious and non-serious violation. The NOV procedure is not to be used as an excuse not to cite a serious violation if one is warranted. The Deputy Director or the Chiefs may, if warranted, disallow the use of NOV procedures if a Compliance Officer or Industrial Hygienist abuses these procedures.

4. Inspection Procedures:
 - A. The Compliance Officer (CO) will explain the NOV procedure to the employer and employee representative(s) at the closing conference. (Do not explain the procedure during the opening conference). The CO, during the closing conference, will inform the employer that a NOV will be issued only for other than serious violators without monetary penalties; that the employer will assure correction of the hazard(s) immediately, or as quickly as possible and that verification of abatement will be sent in writing to the OSH section; and that the employer is willing to give up any appeal rights if a NOV is issued.

- B. The NOV will be handwritten in the field.
- C. Should an employer desire to contest the validity of the violation or the abatement date, the Compliance Officer shall issue a citation. If the employer indicates he or she wishes to appeal some violations and not to appeal others, a citation shall be issued for those the employer wishes to appeal and a NOV may be issued for those that are not to be appealed. Also if these are both serious and "other" violations alleged at a worksite, the CO can issue NOV's for the "other" violations and a citation(s) for the serious violation.
- D. Any citation or NOV shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the act, standard, rule, regulation, or order alleged to have been violated. Any citation or NOV shall fix a reasonable time or times for the abatement of the alleged violation.
- E. During the closing conference, the CO will explain the NOV procedures. Once the employer agrees to accept this option, the NOV will be completed by the Compliance Officer and signed by the employer or the employer's representative in the establishment. If the employer or the employer's representative is unwilling to sign the NOV, the Compliance Officer shall follow procedures for the issuance of a citation. The original of the NOV shall be presented to the employer for posting on the employer's bulletin board. The duplicate will be mailed to the employer, and triplicate shall be retained for the central files. (See Appendix B for copy of the DOSH, Notice of Violation.)
- F. The CO will also inform the employer and employee representative(s) that in certain circumstances a NOV may be rescinded. This can occur if a violation(s) is determined to be repeat, due to instances of an incorrect violation being cited; or if the supervisor disagrees with the classification initially given the hazard by the CO.
- G. The procedure for issuing serious, willful, repeat, and/or failure to abate violations shall be followed. If the violation is serious, willful, repeat, and/or failure to abate, the Notice of Violation will not be used. Repeat and failure to abate violations can and will be issued to an employer based on a Notice of Violation. The CO/IH will examine the file upon returning to the OSH Office. If a violation is a repeat, a citation will be issued even though a notice may have already been issued. A letter of explanation will be sent to the employer if this occurs.


- H. NOVs normally are to be delivered before the termination of the inspection. If the CO needs to do additional research before a NOV can be issued, the CO may return to the office to complete research on the hazard. In such cases, the inspection will be kept open. Once the CO has completed work on the NOV, the CO will hold a closing conference and issue the NOV. Remember NOVs will only be issued for nonserious violations after agreement has been reached with the employers to correct the violation and the employer waives the right to appeal.
- I. If the employer or employee representative, for some reason, decides that he or she wishes to appeal a NOV after one has been issued, the NOV will be rescinded and a citation will be issued.
- J. If the supervisor disagrees with the classification of the violation, the Chief will contact the employer and verbally explain the basis of decision and will inform the employer that a citation will be issued. A letter of explanation will also accompany the citation.
- K. The CO shall provide the employer with a self-addressed card which can be used by the employer to inform the OSH section that the hazard has been abated. If this card is not received within 15 days after the close of an inspection, a follow-up inspection may be conducted. If the violation has not been corrected, a failure to abate violation per Section AS 18.60.093(a) may be issued.

5. MIS Procedures:

When a Notice of Violation is issued, the CO/IH must prepare and sign the original and copies of the NOV Form. A copy must accompany the inspection case file when the report is complete. An 'S' must be entered on the AK DOSH 2 in the Related Event Code, Item 12, to indicate to the MIS that this citation was issued as NOV. If, at a later time, a penalty is issued, it must be issued as an amended citation.

When both a NOV and a citation are used in an inspection, the NOV and citation will have the same identification number.

6. Effective Date: This directive is effective February 1, 1984.



Bob Bacolas, Director

Reviewed and Approved.



Jim Robison, Commissioner