

## RULE 109. MINOR VIOLATIONS

Adopted: May 26, 1999      Repealed: January 1, 2001  
Adopted & Revised: September 12, 2001

### A. GENERAL

#### 1. Purpose

The purpose of this rule is to implement the provisions of Chapter 3 of Part I of Division 25 of the California Health and Safety Code (Section 39150 et seq.) which defines a minor violation and establishes guidelines for issuing a Notice to Comply.

#### 2. Applicability

This rule applies to any person subject to a state requirement, or District rule, regulation, permit condition, administrative or procedural plan, or request for information from the District.

#### 3. Severability

If a court of competent jurisdiction issues an order that any provision of this rule is invalid, it is the intent of the Board of Directors of the District that other provisions of this rule remain in full force and effect to the extent allowed by law.

### B. DEFINITIONS

#### 1. Administrative Requirements

A provision of a state requirement, District rule, regulation, plan, or permit which requires a specified action but does not directly result in a measurable increase in air contaminant emissions to the atmosphere.

#### 2. Air Contaminant

Any discharge, release, or other propagation into the atmosphere of an air pollutant and includes but is not limited to smoke, charred paper, dust soot, grime, carbon, fumes, gases, odors, Volatile Organic Compounds (VOC), Nitrogen Oxides (NO<sub>x</sub>), Sulfur Oxides (SO<sub>x</sub>), Carbon Monoxide (CO), Hydrogen Sulfide, particulate matter, acids or any combination thereof.

#### 3. Ambient Air Quality Standard

Any National Ambient Air Quality Standard promulgated pursuant to the provisions of 42 U.S.C. 7406 or any State Ambient Air Quality Standards promulgated pursuant to the provisions of the California Health and Safety Code Section 39006.

4. Chronic Violation

A violation of a state requirement, District rule, regulation, plan or permit by a person that reflects a pattern of neglect, disregard or recurrence of the same or similar violation at the same facility, process, or piece of equipment.

5. Information

Data, records, photographs, analyses, plans or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which a permit was issued or applied, or which is subject to a state requirement, District rule, regulation, permit condition, administrative or procedural plan or request for information by the District.

6. Minor Violation

- a. The failure of a person to comply with administrative or procedural requirements of an applicable state requirement, District rule, regulation, permit condition, administrative or procedural plan or request for information by the District which are all of the following;
  - i. It does not result in an increase of emissions of air contaminants; and
  - ii. It does not endanger the health, safety, or welfare of any person or persons; and
  - iii. It does not endanger the environment; and
  - iv. It does not cause or contribute to the violation of any State or National Ambient Air Quality Standard; and
  - v. It does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirement, District rule, regulation, administrative or procedural plan, permit condition, or request for information.
- b. Notwithstanding Section B.6.a, a violation of an applicable State requirement, District rule, regulation, permit, administrative or procedural plan or request for information by the District shall not be considered a minor violation if:
  - i. The violation involves failure to comply with the emissions standard in the applicable rule or regulation, including a requirement for control equipment, emissions rate, concentration limit, opacity limit, product material limitation, or other rule provision or permit requirement associated with emissions; or
  - ii. The violation is knowing, willful, or intentional; or
  - iii. The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
  - iv. The violation is chronic; or
  - v. The violation is committed by a recalcitrant violator,
  - vi. The violation results in a nuisance, as defined by Rule 402 – NUISANCE.

7. Notice to Comply

A written method of alleging a minor violation that:

- a. Is written in the course of conducting an inspection or during any review of the stationary source by the District; and
- b. Clearly states all of the following:
  - i. The nature of the alleged minor violation; and
  - ii. A means by which compliance with the requirements cited by the District may be achieved; and
  - iii. A time limit not to exceed 30 calendar days, by which date compliance must be achieved; and
  - iv. A statement that the inspected site or facility may be subject to reinspection at any time.

8. Permit

An Authority to Construct or Permit to Operate issued pursuant to Rule 200 PERMITS REQUIRED.

9. Procedural Requirement

A provision of a rule, regulation or permit condition that establishes a manner, method, or course of action, but does not specify, limit or otherwise affect air contaminant emissions.

10. Recalcitrant Violator

A person that has engaged in a pattern of neglect or disregard with respect to an applicable federal or state requirement, District rule, regulation, permit condition, administrative or procedural plan or request for information by to District.

C. STANDARDS

1. Notice to Comply

A Notice to Comply shall be issued for all minor violations cited as the result of the same inspection and the Notice to Comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.

- a. Except as otherwise provided in Section D.2 of this regulation, a Notice to Comply shall be the only means by which the Air Pollution Control Officer shall cite a minor violation. The Air Pollution Control Officer shall not take any other enforcement action regarding a minor violation against a person who has received a Notice to Comply if the person is in compliance with Section C.3.

- b. If the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety, or to the environment, including requirements of state and federal law, the Air Pollution Control Officer may take any needed enforcement action authorized by law.

2. Immediate On-Site Corrections

A Notice to Comply shall not be issued for any minor violation that is corrected immediately and in the presence of the inspector. Immediate compliance in this manner may be noted in the inspection report or other District documents, but the person shall not be subject to any further action by the District as a result of that minor violation.

- a. Corrected minor violations may be used to show a pattern of neglect or disregard by a recalcitrant violator, or a chronic violation.

3. Correction Requirements

Notwithstanding an appeal of the Notice to Comply pursuant to Section D.4, a person who receives a Notice to Comply pursuant to Section C.1 shall have no more than the period specified in the Notice to Comply from the date of receipt of the Notice to Comply in which to achieve compliance with the requirements cited on the Notice to Comply.

- a. Within 5 calendar days of achieving compliance, the person shall sign, date, and return the Notice to Comply to the Air Pollution Control Officer stating that the person has complied with the Notice to Comply, and how compliance was achieved.
- b. Notwithstanding any other provision of this rule if a person fails to comply with a Notice to Comply within the prescribed period, or if the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety, or to the environment, the Air Pollution Control Officer may take any needed enforcement action authorized by law.

4. Federal Requirements

Notwithstanding any other provision of this regulation, if the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a penalty pursuant to this rule is warranted or required by federal law, in addition to issuance of a Notice to Comply, the District shall assess a penalty in accordance with Division 26 of the Health and Safety Code, Section 42400, et seq., if the Air Pollution Control Officer makes written findings that set forth the basis for the determination of the District.

- a. The issuance of a Notice to Comply for a violation of state law will not interfere with an agency's duty and ability to enforce all federal requirements or laws.

D. ADMINISTRATIVE REQUIREMENTS

1. Appeal Process

If a person receives a Notice to Comply pursuant to Section C.1 and disagrees with one or more of the alleged violations cited in the Notice to Comply, the person may give written notice of appeal to the District within 5 working days of issuance of the Notice to Comply, stating in sufficient detail the grounds for challenging the Notice to Comply.

- a. The Air Pollution Control officer shall grant or deny the appeal within 5 calendar days of receipt of the appeal. If the Air Pollution Control Officer fails to respond, the appeal shall be deemed denied - The Air Pollution Control Officer's decision shall be final.

2. Penalty

Any person who fails to resolve a Notice to Comply by the date specified on the Notice to Comply or submits a false statement that compliance has been achieved shall be issued a Notice of Violation which may be subject to further legal action pursuant to the California Health and Safety Code, Section 42400, et seq.

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