

RULE 112. DEFINITION OF MINOR VIOLATION AND GUIDELINES FOR ISSUANCE OF NOTICE TO COMPLY

(a) Purpose

The purpose of this rule is to implement the provisions of Chapter 3 of Part 1 of Division 26 of the California Health and Safety Code (commencing with section 39150) which define a minor violation and establish guidelines for issuing a Notice to Comply. Nothing herein shall be deemed or construed to limit or preclude the District from the issuance or enforcement of Notices of Violations for those violations which are determined not to be minor as defined by Rule 112 or for failures to comply with Notices to Comply, or as otherwise required by law.

(b) Applicability

This rule applies to any person subject to District enforcement of state requirements, District rules or regulations, requirements of any District plan or permit, or requests for information or records by the District.

(c) Definitions

(1) **CHRONIC VIOLATION:** A violation which has been preceded by at least one (1) Notice to Comply or Notice of Violation, of the same or similar nature at the same facility, within the prior three (3) years, unless a higher number is specified in the District's Protocols for Issuance of Notices of Violation and Notices to Comply with regard to specifically identified operations which are inherently complex or problematical. Notices of Violation which have previously been cancelled or rejected by the Executive Officer shall not be counted in determining whether a violation is chronic, nor shall Notices to Comply which have previously been successfully appealed.

(2) **INFORMATION:** Data, records, photographs, maintenance records, analyses, plans, supplier or manufacturer records and product specifications which may disclose compliance or non-compliance, or the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by a source subject to state or federal requirements, District rules or regulations or any District plan or permit conditions.

(3) **MINOR VIOLATION:**

- (A) The failure of any person to comply with state requirements, District rules or regulations, requirements of any District plan or permit, or requests for information or records by the District, which meets all of the following criteria:
 - (i) Does not result in exceedance of de minimis levels of emissions as specified in the District's Protocols for Issuance of Notices of Violation and Notices to Comply which is published and updated periodically by the Executive Officer;
 - (ii) Does not endanger the health, safety, or welfare of any person or persons;
 - (iii) Does not endanger the environment;
 - (iv) Does not preclude or hinder the District's ability to determine compliance with applicable state or federal requirements, District rules or regulations, requirements of any District plan or permit, or requests for information or records; and
 - (v) Except as provided in subparagraph (3)(A)(i) above, does not result in a failure to comply with any emission standard in the applicable District rule or regulation, District plan or permit, including requirements for control equipment, emissions rates, concentration limits, product material limitations, or other rule provisions directly associated with emissions.
- (B) Notwithstanding subparagraph (c)(3)(A) above, no violation of an applicable state or federal requirement, District rule or regulation, requirement of any District plan or permit, or requests for information or records, shall be considered a minor violation if:
 - (i) The violation is knowing, willful, intentional or grossly negligent; or
 - (ii) The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
 - (iii) The violation is chronic; or
 - (iv) The violation is committed by a recalcitrant violator; or

- (v) The violation results in a public nuisance pursuant to District Rule 402.
 - (4) NOTICE TO COMPLY: A written method of alleging a minor violation that meets the requirements of California Health and Safety Code section 39151.
 - (5) NOTICE OF VIOLATION: A written method of alleging: 1) a violation which does not qualify as a minor violation for which a Notice to Comply is the only allowable means of citation, or 2) a minor violation which is not corrected within the time required.
 - (6) PROTOCOLS FOR ISSUANCE OF NOTICES OF VIOLATIONS AND NOTICES TO COMPLY: A policy document which is published and periodically updated by the Executive Officer which delineates circumstances under which the District will issue Notices of Violations or Notices to Comply.
 - (7) RECALCITRANT VIOLATOR: A person which has been cited for chronic violations or has otherwise engaged in a pattern of neglect or disregard evidenced, within the prior three (3) years, by at least two (2) previous Notices to Comply and/or Notices of Violation with respect to the same or different state or federal requirements, District rules, regulations, or requirements of any District plan or permit, or three (3) recorded minor violations immediately corrected in the presence of the inspector, at the facility in question. If however, based on the inherent complexity or problems with regard to specifically identified operations, the District's Protocols for Issuance of Notices of Violation and Notices to Comply specifically provide for a higher number of Notices to Comply or Notices of Violation or immediately corrected minor violations, that higher number shall govern as to the determination of a recalcitrant violator.
- (d) Requirements
- (1) Except as otherwise provided in subdivisions (d) and (f), a Notice to Comply shall be the only means by which the Executive Officer shall cite a minor violation.
 - (2) Any person who receives a Notice to Comply pursuant to this subparagraph shall have the period specified in the Notice to Comply from the date of receipt of the Notice to Comply in which to achieve

compliance with a requirement cited. A Notice to Comply may require different compliance dates for each respective minor violation cited.

- (3) Within five (5) working days of achieving compliance, the person cited in the Notice to Comply shall sign and return it to the Executive Officer, stating that the person has complied with the Notice to Comply. The returned Notice to Comply shall also include a written statement describing when and how compliance was achieved. Failure to respond or a false statement that compliance has been achieved is a violation subject to further legal action pursuant to Division 26 of the California Health and Safety Code.
- (4) A single Notice to Comply shall be issued for all minor violations cited during the same inspection. The Notice to Comply shall separately list each cited minor violation, a means in which each minor violation may be brought into compliance, and a time limit in which to comply, which shall not exceed thirty (30) days. Further extensions may be granted by the Executive Officer or designee.
- (5) A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report or other District documents and be used to establish a recalcitrant violator, but the immediately corrected violations shall not be subject to any further enforcement action by the District.
- (6) A person served a Notice to Comply shall achieve compliance for each cited minor violation within the specified time limit(s). Notwithstanding the timely correction of the minor violation cited, the Notice to Comply may be used to establish a chronic violation or show a pattern of disregard or neglect by a recalcitrant violator.
- (7) A person who timely complies with a Notice to Comply requiring the furnishing of information or records, which are not specifically required by a District rule or state or federal requirement to be maintained or furnished upon request, shall not have that count or aspect of the Notice to Comply used to establish a chronic violation or that person as a recalcitrant violator.

- (8) Testing
 - (A) If testing of a source or sample analysis is required by U.S. EPA, the state board or District to determine compliance, and the testing cannot be conducted during the course of the inspection, the Executive Officer shall have a reasonable period of time to conduct the required testing.
 - (B) If, after the test results are available, the Executive Officer determines that the issuance of a Notice to Comply or other enforcement action is warranted, the Executive Officer shall promptly notify the person or facility owner or operator in writing. If off-site testing is required pursuant to subparagraph (d)(6)(A), a copy of the Notice to Comply may be mailed to the person or owner or operator of the facility.
- (9) Notwithstanding any other provision of subdivision (d), if a person fails to comply with a Notice to Comply within the specified time, the Executive Officer may take any needed enforcement action authorized by law including but not limited to issuance of a Notice of Violation.
- (10) Nothing in this rule shall be construed as preventing the reinspection of a site or facility to ensure compliance or to ensure that minor violations cited in a Notice to Comply have been corrected.
- (11) Nothing in this rule shall be construed as preventing the Executive Officer or designee, on a case-by-case basis, from requiring a person subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance by the person.
- (12) The issuance of a Notice to Comply for a minor violation of state law shall not interfere with the authority or jurisdiction of any other enforcement agency.
- (13) Nothing in this section restricts the power of a city attorney, district attorney, county counsel, the Attorney General, or United States Attorney to bring, in the name of the people of the state of California or other appropriate form, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this section prevents the state board or District, or any representative of the state board or District, from cooperating with, or participating in, such a proceeding.
- (14) Notwithstanding any other provision of subdivision (d), if the Executive 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 state or federal law, in addition to issuance of a Notice to Comply, the District shall assess a penalty in accordance with Division 26 of the California Health and Safety Code, section 42400, et seq., if the Executive Officer makes written findings that set forth the basis for the determination of the District.

- (15) Nothing herein shall be deemed or construed to require the District to issue a Notice to Comply to any permit or plan applicant to require the furnishing of information or fees required by the District to process such application, nor to require the payment of any fees, costs or charges payable by any person to the District.

(e) Appeals

Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the Executive Officer or designee within seven (7) days of receipt of the Notice. The appeal shall state the grounds and basis for the appeal and include any evidence as to why the Notice to Comply should not have been issued. The person appealing shall have the right to meet with and present testimony and evidence to the Executive Officer or designee if a request is included in the written appeal. The Executive Officer or designee shall grant or deny the appeal within fourteen (14) days of receipt of the appeal. The Executive Officer's or designee's decision shall be final.

(f) Penalty for Failure to Comply

Any person or facility failing to correct a minor violation by the date specified in the Notice to Comply including modified compliance dates resulting from granted extensions of time, shall be subject to a Notice of Violation and further enforcement action pursuant to Division 26 of the California Health and Safety Code.

(g) Expiration

This rule shall remain in effect only until January 1, 2001 unless the California Health and Safety Code sections 39150 - 39153 are extended beyond that date by an act of the Legislature which becomes effective before January 1, 2001.