VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

RULE 230 - NOTICE TO COMPLY
(Adopted 11/9/99, xx/xx/08)

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 air pollution violation and establish guidelines for issuing a Notice to Comply.~~

~~B.~~ Applicability

This Rule applies to any person subject to state requirements, District Rules or Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District.

B~~C~~. Requirements

1. Except as otherwise provided in this Section, a Notice to Comply shall be the only means by which the Air Pollution Control Officer (APCO) shall cite a minor violation.

2. Any person who receives a Notice to Comply pursuant to this Section 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 the requirement(s) cited on the Notice to Comply. Within five working days of achieving compliance, the person who received the Notice to Comply shall sign and return it to the APCO, stating that the minor violation(s) cited in the Notice to Comply has been complied with. 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 the Health and Safety section 42400, et seq.

3. 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 30 days.

4. A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the District inspector. Immediate compliance in that manner may be noted in the inspection report or other District documents, but the person or facility shall not be subject to any further action by the District's representative or an authorized or designated officer.

5. If testing is required by the U.S. EPA, California Air Resources Board (CARB), or District or an authorized or designated officer to determine compliance, and the testing cannot be conducted during the course of the inspection, the APCO shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the APCO determines that the issuance of a Notice to Comply is warranted, the APCO shall immediately notify the person or facility owner or operator in writing. If off-site testing is required, a copy of the Notice to Comply may be mailed to the person or owner of operator of the facility.

6. Notwithstanding any other provision of Section B~~C~~ of this Rule, if a person or facility fails to comply with a Notice to Comply within the prescribed period, or if the APCO 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 APCO may take any needed enforcement action authorized by law.

7. Nothing in this Rule shall be construed as preventing the re-inspection of a site or facility to ensure compliance or to ensure that minor violations cited in a Notice to Comply have been corrected.

8. Nothing in this Rule shall be construed as preventing the APCO, on a case-by-case basis, from requiring a person or facility subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance by the person or facility.

9. The issuance of a Notice to Comply for a violation of state law shall not interfere with:

   a. The District's ability to enforce all federal requirements or laws, and

   b. The authority or jurisdiction of any other enforcement agency.

10. Notwithstanding any other provision of Section B~~C~~ of this Rule, if the APCO determines that the circumstances surrounding a particular minor violation are such that the assessment of a penalty 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 APCO makes written findings that set forth the basis for such determination.

C~~D~~. Definitions

1. "Chronic Violation:" A violation that reflects a pattern of neglect or disregard that results in the same or similar violations at the same source or facility or same piece of equipment.

2. "Information:" Data, records, photographs, maintenance records, analyses, plans, or specifications which may disclose compliance or noncompliance, 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, administrative or procedural plan or permit conditions or requests for information or records by the District.

3. "Minor Violation:"

   a. The failure of any person to ~~C~~comply with administrative or procedural requirements of applicable state requirements, District Rules or Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District which meets the following criteria:

      (i) Does not endanger the health, safety, or welfare of any person or persons;

      (ii) Does not endanger the environment;

      (iii) Does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirements, District Rules and Regulations, administrative or procedural plan or ~~P~~ppermit conditions, or requests for information or records.

   b. Notwithstanding Subsection ~~D~~C.3.a above, no violation of an applicable state or federal requirement, District Rule or Regulation, administrative or procedural plan or permit condition, or request for information or records shall be considered a minor violation if:

      (i) The violation involves failure to comply with an emission standard in any applicable Rule or Regulation or permit condition including, but not limited to, requirements directly or indirectly related to air pollution control equipment, emission rates, concentration limits, product material limitations, and other ~~R~~rule provisions or permit conditions 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 is committed by a recalcitrant violator; or

(v) The violation results in a public nuisance.

(vi) The violation involves the failure to conduct a source test required by an applicable District Rule, Regulation, or permit condition.

4. "Notice to Comply:" A written method of alleging a minor violation ~~that meets the requirements of Health and Safety Code Section 39151~~ , prepared by an authorized representative of the District, that complies with the requirements set forth in this rule.

5. "Procedural Requirement:" A provision of a District Rule or Regulation that establishes a manner, method or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.

6. "Recalcitrant Violator:" A person or facility for which there is evidence indicating that the person or facility has engaged in a pattern of neglect or disregard with respect to the requirements of air pollution rules, regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

D~~E~~. Appeals

Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the APCO within ten 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 APCO if a request is included in the written appeal. The APCO shall grant or deny the appeal within 21 calendar days of its receipt. The APCO's decision shall be final.

E~~F~~. Penalty for Failure to Comply

Any person or facility who fails to comply by the date specified on the Notice to Comply shall be subject to further enforcement action pursuant to the Health and Safety Code, Section 42400, et seq., or any other applicable law.