

RULE 110.1 Notice to Comply - Adopted 1/8/98

I. Purpose

The purpose of this Rule is to provide a non-punitive, but compelling means by which the District can cite non-recurring minor violations of applicable Federal, State, and local air pollution regulations.

II. Applicability

Provisions of this Rule are applicable to any person, owner, operator, employee, or representative of a facility subject to state requirements, District Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District.

III. Definitions

- A. Administrative Requirement - A provision of a rule, regulation, plan or permit condition which requires a specified action, but does not specify, limit, or otherwise address direct air contaminant emissions.
- B. Chronic Violation - A violation of the District's Rules and Regulations by a person or facility that reflects a pattern of recurrence of the same or similar violations at the same facility, process, or piece of equipment.
- C. 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 state or federal requirements, District Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District.
- D. 1. Minor Violation - The failure of a person or facility to comply with administrative or procedural requirements of applicable state or federal requirements, District Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District which meets all of the following criteria:
 - a. Does not result in the emission of an air contaminant in excess of applicable limits;
 - b. Does not endanger the health, safety, or welfare of any person or persons;
 - c. Does not cause or contribute to an exceedance of any State or National Ambient Air Quality Standard; and
 - d. 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 permit conditions, or requests for information or records.

2. Non-Minor Violation - Notwithstanding the 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 any of the following:
 - a. The violation involves failure to comply with emission limits or standards in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material or weight limitations, and other rule provisions directly associated with or affecting emissions;
 - b. The violation is knowing, willful, or intentional;
 - c. The violation enables the violator to benefit economically from non compliance, either by realizing reduced costs or by gaining a competitive advantage; or
 - d. The violation constitutes a chronic violation.

- E. Notice to Comply - A written method of alleging a minor violation that:
 1. Is written in the course or as a result of conducting an inspection by the District;
 2. Is presented to a person or owner, operator, employee, or representative of a facility being inspected at the time a Notice to Comply must be issued ; and
 3. Clearly states all of the following:
 - a. The nature of the alleged minor violation;
 - b. A means by which compliance with the requirement cited by the District may be achieved;
 - c. A reasonable time limit, not less than five calendar days, but not more than thirty days, by which date compliance must be achieved; and
 - d. A statement the inspected site or facility may be subject to reinspection at any time.

- F. Procedural Requirement - A provision of a rule or regulation that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.

IV. Requirements

- A. A person or facility who receives a Notice to Comply (NTC) pursuant to this Section shall have the period specified in the NTC from the date of receipt of the NTC in which to achieve compliance with the requirement cited in the NTC. Unless an appeal is to be filed pursuant to Subsection IV.E., within five working days after achieving compliance, the person who received the NTC shall sign and return it to the Control Officer, stating the person or facility has complied with the NTC. A false statement

that compliance has been achieved is a violation subject to further legal action pursuant to California Health and Safety Code (CH&SC), Section 42400, et seq.

1. In fixing the deadline for compliance, if testing by an independent laboratory, the source, the CARB, the District, or an authorized or designated officer is required to determine compliance, and testing cannot be conducted during the course of the inspection, a reasonable period of time shall be provided to arrange, and conduct such testing.
 2. If, after test results are available, the Control Officer determines the issuance of a Notice to Comply is warranted, the Control Officer shall immediately notify the person or facility owner or operator in writing. If off site testing is required pursuant to Subsection IV.A.1., a Notice to Comply may be mailed to the person or owner or operator of the facility if a violation has been documented.
- B. A single Notice to Comply shall be issued for all minor violations documented during the same inspection and the Notice to Comply shall separately cite each minor violation and the manner in which each minor violation can be brought into compliance.
- C. A Notice to Comply shall not be issued for any minor violation corrected immediately in the presence of the 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. However, such corrected minor violations may be used to document a chronic violation.
- D. Except as otherwise provided in Section IV., a Notice to Comply shall be the only means by which the Control Officer shall cite a minor violation. The Control Officer shall not take any other enforcement action against a person or facility who has received an NTC if such person or facility is in compliance with Section IV.
- E. If a person who receives a Notice to Comply pursuant to Section IV. disagrees with one or more of the alleged violations cited in the Notice to Comply, the person shall give written notice of appeal to the District within five days of issuance of the Notice to Comply. If pending test results are needed to determine if the source was in compliance, the Control Officer shall provide reasonable time for submission of such results before rendering a decision.
- F. Notwithstanding any other provision of Section IV., if a person or facility fails to comply with a Notice to Comply within the prescribed period, or if the Control Officer determines the circumstances surrounding a particular minor violation have made it a non-minor violation and are such that immediate enforcement is now warranted to prevent harm to the public health or safety, or to air quality, the Control Officer may take any needed enforcement action authorized by law.
- G. Nothing in this Rule shall be construed as preventing the reinspection of a site or facility to ensure compliance or to ensure minor violations cited in a Notice to Comply have been corrected.

- H. Nothing in this Rule shall be construed as preventing the Control Officer, 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.
- I. Nothing in this Rule restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any legal proceeding otherwise authorized by law. Furthermore, nothing in this Rule prevents the Control Officer from cooperating with, or participating in, such a proceeding.
- J. The issuance of a Notice to Comply for a violation of state law will not interfere with an agency's ability to enforce all federal requirements or laws.
- K. Notwithstanding any other provision of Section IV., if the Control Officer determines circumstances surrounding a particular minor violation are such that assessment of a penalty is required by federal law, in addition to issuance of a Notice to Comply, the District shall assess a penalty in accordance with CH & SC, Section 42400, et seq. If such action is taken, the Control Officer shall make written findings setting forth the basis for such penalty.

V. Penalty for Failure to Comply

Any person or facility who fails to comply by the date specified on the Notice to Comply shall be issued a Notice of Violation and will be subject to further legal action pursuant to CH & SC, Section 42400, et seq.