

RULE 701 Procedures for Enforcing Minor Violations of District  
Rules and Regulations

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**RULE 701**

- 1 **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 defines a minor violation and establishes guidelines for issuing a Notice to Comply.
- 2 **APPLICABILITY:** This Rule applies to any person, owner, operator, employee, or representative of a facility with equipment subject to State requirements, or DISTRICT Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by a DISTRICT.
- 3 **DEFINITIONS**
  - 3.1 **Administrative:** means of a rule, regulation, plan, or permit condition which requires a specified action but does not directly result in air contaminant emissions to the atmosphere.
  - 3.2 **Air Contaminant:** Any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, grime, carbon, fumes, gases, odors, particulate matter, acids or any combination thereof.
  - 3.3 **Air Pollution Control Officer (APCO):** The person appointed to the position of Air Pollution Control Officer, or Director of Air Quality Standards, of the District, pursuant to the provisions of the California Health and Safety Code, Section 40750, or his or her designee.
  - 3.4 **Ambient Air Quality Standard:** Any National Ambient Air Quality Standard promulgated pursuant to the provisions of 42 U.S.C. Section 7409 (Federal Clean Air Act Section 109) or any State Ambient Air Quality Standard promulgated pursuant to the provisions of California Health and Safety Code, Section 39600.
  - 3.5 **Chronic Violation:** means a violation of the DISTRICT's Rules and Regulations by a person that reflects a pattern of recurrence of the same or similar violation at the same facility, process or piece of equipment.
  - 3.6 **District:** Refer to Rule 101 *Definitions*
  - 3.7 **Information:** data, records, photographs, analysis 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.

- 3.8 Minor Violation:** means the failure of a person or facility to comply with administrative or procedural requirements of applicable State requirements, DISTRICT Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District which meet the following criteria:
- 3.8.1** Does not endanger the environment; and
  - 3.8.2** Does not endanger the health, safety or welfare of any person or persons; and
  - 3.8.3** Does not cause or contribute to the violation of any primary State or federal Ambient Air Quality Standard; and
  - 3.8.4** 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.
  - 3.8.5** Notwithstanding Section 3.4.1 above, a minor violation includes breakdown(s) or malfunction(s) of equipment/operations with valid DISTRICT permit(s) which cause the release of air contaminants provided the APCO determines that breakdown(s) or malfunction(s) conditions are *not* caused by poor or inappropriate maintenance of the subject equipment/operations, or by personnel actions, and that the responsible party can demonstrate to the satisfaction of the APCO that the breakdown(s) or malfunction(s) condition causing the violation was beyond the reasonable control of the person/business, and, provided that the person/business reported to the DISTRICT pursuant to Rule 266 of these Rules and Regulations, *Reporting Procedures For Excess Emissions*, the breakdown(s) or malfunction(s) status change of the subject equipment/operations.
- 3.9 Non-minor Violations:** Notwithstanding Section 3.8 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:
- 3.8.1** The violation involves failure to comply with the emission standards in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material limitations, and other rule provisions directly associated with emissions; or
  - 3.8.2** The violation is knowing, willful or intentional; or
  - 3.8.3** The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
  - 3.8.4** The violation is chronic; or
  - 3.8.5** The violations is committed by a recalcitrant violator.

- 3.9 Notice To Comply:** means a written method of alleging a violation that:
- 3.9.1** Is written in the course of conducting an inspection by the DISTRICT; and
  - 3.9.2** Is presented to a person or owner, operator, employee or representative of the facility being inspected at the time that the Notice to Comply is written;
  - 3.9.3** Clearly States the following:
    - 3.9.3.1** The Nature of the alleged minor violation; and
    - 3.9.3.2** A means by which compliance with the requirement cited may be achieved; and
    - 3.9.3.3** A time limit, not to exceed thirty (30) days by which date compliance must be achieved; and
    - 3.9.3.4** A statement that the inspected site or facility may be subject to reinspection at any time.
- 3.11 Procedural Requirement(s):** means 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.
- 3.12 Recalcitrant Violator:** A person or facility where there is evidence to indicate that the person or facility has engaged in a pattern of neglect or disregard with the respect to the requirements of the District Rules and Regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

#### 4 REQUIREMENTS

- 4.1 Certified Compliance:** A person or facility who receives a *Notice To Comply* issued pursuant to this Rule shall have the period specified on the *Notice To Comply* from the date of receipt of the *Notice To Comply* to achieve compliance with the requirement(s) cited on the *Notice To Comply*. Within five (5) working days of achieving compliance the person who received the *Notice To Comply* shall sign and return the *Notice To Comply* to the APCO stating, that the person or facility has complied with the *Notice To Comply*.
- 4.2 False Statement(s):** A false statement submitted that compliance has been achieved is a violation subject to further legal action pursuant to California Health and Safety Code (HSC) Section 42404, et seq.,
- 4.3 Compliance Determined By Testing:**
- 4.3.1** If testing is required by the State Board 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.

- 4.3.2** 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 pursuant to Section 4.3.1, a copy of the *Notice To Comply* may be mailed to the person or owner or operator of the facility.
- 4.4** **Single Notice to Comply:** A single *Notice To Comply* shall be issued for all minor violations cited during the same inspection and the *Notice to Comply* shall separately list each cited minor violation and the manner in which each violation may be brought into compliance.
- 4.6** **Violation(s) Corrected in Presence of DISTRICT:** 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. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator.
- 4.7** **Limitation of Enforcement:** Except as otherwise provided for in this Section 4, a *Notice to Comply* shall be the only means by which the APCO shall cite a minor violation. The APCO shall not take any other enforcement action specified in this division to enforce the minor violation against a person or facility who has received a *Notice to Comply* if the person or facility is in compliance with this section.
- 4.8** **Disagreement and Appeal of Notice to Comply:** Any person or representative of a business receiving a *Notice To Comply* and who disagrees with the *Notice To Comply* shall submit in writing and within five (5) days of receiving the *Notice To Comply*, a written request to the APCO to appeal the *Notice To Comply*. The written request shall include an explanation and all supporting information/data which explains and justifies appeal of the violations cited in the *Notice To Comply*. The APCO shall review the *Notice To Comply* and issue a determination concerning the violation issue. If the APCO's determination is to uphold the *Notice To Comply* and the person or business representative continues to appeal the APCO's determination, the APCO shall cause to be filed on behalf of the person or represented business (hereinafter referred to as the Appellant), the Appellant's appeal with the DISTRICT Hearing Board for review and consideration. The APCO shall cause to be scheduled within ten (10) days of receipt of the appeal a meeting of the Hearing Board to consider the appeal. The Hearing Board meeting to consider the appeal shall provide first that the APCO present the basis for the *Notice To Comply* and the minor violations cited followed by the Appellant's presentation and

explanation of reasons for the basis of the appeal of the *Notice To Comply*. The Hearing Board shall make a determination as to whether the *Notice To Comply* shall stand or be repealed. The Hearing Board's decision shall be binding and shall serve as the final administrative review step. The Appellant shall have five (5) days from the Hearing Board's decision to complete any and all corrective action specified in any *Notice To Comply* appealed which the Hearing Board upholds. Any appeal found for the Appellant by the Hearing Board shall not be counted as "prior violations" with respect to future violations and implementation of the DISTRICT's Civil Penalty Fee Program.

- 4.9 Failure To Comply with Notice To Comply:** Notwithstanding any other provision of Section 4, if a person or facility fails to comply with the *Notice To Comply* within the prescribed time 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 other enforcement action authorized by law.
- 4.10 Reinspection:** 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.
- 4.11 Other Criminal Proceeding(s):** Nothing in this Rule restricts the power of a city attorney, district attorney, county counsel or Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this Rule prevents the APCO from cooperating with, or participating in, such proceeding(s).
- 4.12 Enforcement of Federal Requirements:** 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.
- 4.13 Federal Law:** Notwithstanding any other provision of Section 4, if the APCO determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil 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 28 of the California Health and Safety Code, Section 42400, *et seq.* If the APCO makes written findings that set forth the basis for the determination of the District.
- 4.14 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 which is subject to further legal action pursuant to California Health and Safety Code, Section 42400, *et seq.*

**4.15 Orders for Abatement:** In accordance with the California Health and Safety Code:

- 4.15.1** The district board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is in violation of Rules 200 and 201 of these Regulations or of any order, rule or regulation prohibiting or limiting the discharge of air contaminants into the air. In holding such a hearing, the district board shall be held pursuant to Chapter 8, (commencing with Section 40800) of Part 3, of Division 26, of the California Health and Safety Code.
- 4.15.2** On its own motion, or upon the motion of the district board or the Air Pollution Control Officer, the Hearing Board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is in violation of Rules 200 and 201 or of any order, rule or regulation prohibiting or limiting the discharge of air contaminants into the air.
- 4.15.3** The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a resident to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions of time are met.
- 4.15.4** A proceeding for mandatory or prohibitory injunction shall be brought by the District in the name of the people of the State of California in the Superior Court of Colusa County to enjoin any person to who an order for abatement pursuant to subsection 4.15.3, of this rule, has been directed and who violates such order.

**4.16 Arrest and Notice to Appear:**

The Air Pollution Control Officer and his duly authorized representatives are hereby authorized pursuant to Penal Code Section 836.5, to arrest a person without warrant whenever they have reasonable cause to believe that the person to be arrested has committed a misdemeanor in their presence, which is a violation of these regulations.

In any case in which a person is arrested pursuant to the above-mentioned paragraph of this rule and the person arrested does not demand to be taken before a magistrate, the Air Pollution Control Officer making the arrest shall prepare a written 'Notice to Appear' and release the person on his written promise to appear, as prescribed by Chapter 5C, Title 3, Part 2, of the Penal Code (commencing with Section 853.6). The provisions of such Chapter

shall thereafter apply with reference to any proceeding based upon the issuance of a written 'Notice to Appear' pursuant to this authority.