

RULE 3.12 NOTICE TO COMPLY RULE

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100 GENERAL

- 101 **PURPOSE:** 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 explain a minor violation and establish guidelines for issuing a Notice to Comply.
- 102 **APPLICABILITY:** This Rule applies to any person or 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 a district.

200 DEFINITIONS

- 201 **ADMINISTRATIVE REQUIREMENT:** A provision 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.
- 202 **AIR CONTAMINANT:** Any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids or any combination thereof.
- 203 **AIR POLLUTION CONTROL OFFICER (APCO):** The person appointed to the position of Air Pollution Control Officer of the District, pursuant to the provisions of California Health and Safety Code, section 40750, or designee.
- 204 **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 39606.
- 205 **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 violation at the same facility, process, or piece of equipment.
- 206 **DISTRICT:** The Yolo-Solano Air Quality Management District.
- 207 **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 a district.

208 MINOR VIOLATION:

208.1 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 the following criteria:

- a. Does not result in an emission of air contaminants; and
- b. Does not endanger the health, safety, or welfare of any person or persons; and
- c. Does not endanger the environment; and
- d. Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard; and
- e. 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.

208.2 Notwithstanding subparagraph (208.1) 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:

- a. 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
- b. The violation is knowing, willful, or intentional; or
- c. The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
- d. The violation is chronic; or
- e. The violation is committed by a recalcitrant violator.

209 **NOTICE TO COMPLY:** A written method of alleging a minor violation that:

209.1 Is written in the course of conducting an inspection by the District.

209.2 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.

209.3 Clearly states the following:

- a. The nature of the alleged minor violation; and
- b. A means by which compliance with the requirement cited by the district may be achieved; and

- c. A time limit, not to exceed thirty (30) days, by which date compliance must be achieved; and
- d. A statement that the inspected site or facility may be subject to reinspection at any time.

210 **PROCEDURAL REQUIREMENTS:** 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.

211 **RECALCITRANT VIOLATOR:** A person or facility where there is evidence of a pattern of neglect or disregard with respect to the requirements of district rules and regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

300 STANDARDS

301 REQUIREMENTS

301.1 A person or facility 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 the requirement 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 it to the Air Pollution Control Officer, stating that the person or facility has complied with the Notice to Comply. A false statement that compliance has been achieved is a violation subject to further legal action pursuant to the California Health and Safety Code, Section 42400, et seq.

- a. 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 Air Pollution Control Officer shall have a reasonable period of time to conduct the required testing.
- b. If, after the test results are available, the Air Pollution Control Officer determines that the issuance of a Notice to Comply is warranted, the Air Pollution Control Officer shall immediately notify the person or facility owner or operator in writing. If off site testing is required pursuant to Subdivision (208.1)(e), a copy of the Notice to Comply may be mailed to the person or owner or operator of the facility.

301.2 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 minor violation may be brought into compliance.

- 301.3 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, 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.
- 301.4 Except as otherwise provided in Section 300, 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 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.
- 301.5 If a person who receives a Notice to Comply pursuant to Section 300 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 10 calendar days of the issuance of the Notice to Comply. The Air Pollution Control Officer will consider and issue a disposition within 10 calendar days of receipt. In the event that the Air Pollution Control Officer determines that the Notice to Comply was correctly issued, thus rejecting an appeal, the person or facility must comply within the time period originally prescribed in the Notice to Comply. 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.
- 301.6 Notwithstanding any other provision of Section 300, if a person or facility 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.
- 301.7 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.
- 301.8 Nothing in this Rule shall be construed as preventing the Air Pollution 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.

301.9 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 criminal proceeding otherwise authorized by law. Furthermore, nothing in this Rule prevents the Air Pollution Control Officer from cooperating with, or participating in, such a proceeding.

301.10 Notwithstanding any other provision of Section 300, 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 California 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.

301.11 Nothing in this Rule shall be construed as preventing the Air Pollution Control Officer from issuing a Notice of Violation under District Rule 1.1 for a violation that is not a "minor violation" as defined in Section 209.

400 ADMINISTRATIVE REQUIREMENTS

401 **PENALTY FOR FAILURE TO COMPLY:** Any person or facility who fails to comply by the date specified on the Notice to Comply may be issued a Notice of Violation which is subject to further legal action pursuant to the California Health and Safety Code, Section 42400, et. seq.