

**MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
REGULATION I
GENERAL PROVISIONS**

RULE 107 MINOR VIOLATIONS

(Proposed for Adoption September 16, 1998)

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PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to establish a nonpunitive enforcement policy for a class of violations determined to be of minor significance with respect to their ability to endanger human health, safety, or welfare or the environment, in conformance with the provisions of Health and Safety Code (HSC) Sections 39150 - 39153.

1.2 Applicability

The provisions of this Rule are applicable to any person who commits a violation of any requirement within the jurisdiction of the Monterey Bay Unified Air Pollution Control District.

1.3 Exemptions

Reserved.

1.4 Effective Date

The provisions of this Rule shall become effective on September 16, 1998.

1.5 References

The provisions of this Rule arise from Health and Safety Code Sections 39150 through 39153, enacted in 1996.

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PART 2 DEFINITIONS

2.1 Chronic Violation

A violation that reflects a pattern of neglect or disregard with respect to applicable requirements, indicating the violation is not merely inadvertent. A violation is presumed to be chronic if one or more violations of similar requirements occurred within the prior three years. The presumption may be rebutted where the Air Pollution Control Officer (APCO) finds mitigating circumstances in the violation, indicating it was not caused by willful or recalcitrant misconduct.

2.2 Minor Violation

A violation which:

- 2.2.1 Is not a knowing, willful, or intentional violation.
- 2.2.2 Does not result in an economic benefit from the noncompliance, either through reduced costs or gaining a competitive advantage.
- 2.2.3 Is not a chronic violation or one committed by a recalcitrant violator.
- 2.2.4 Does not result in a discharge of air contaminants to an extent which:
 - 2.2.4.1 causes injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or
 - 2.2.4.2 endangers the comfort, repose, health, or safety of any such persons or the public, or
 - 2.2.4.3 causes, or has a natural tendency to cause, injury or damage to business or property of any such persons, or
 - 2.2.4.4 exceeds any applicable emission limit or fails to comply with a requirement related to limiting emissions, where the excess emission is insignificant with respect to its impact on air quality or human health or welfare.
 - 2.2.4.4.1 An excess emission is presumed to be insignificant if its magnitude is less than 10% over an express limit and less than 15% of the federal BACT thresholds specified at Table 4.1.1 in Rule 207. This presumption may be rebutted if the APCO determines that the circumstances of any violation

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indicate either that it had no adverse effect upon air quality or human health or welfare, or that its impacts did have adverse consequences.

2.2.4.4.2 An excess emission of a toxic air contaminant, including any VOC defined as a TAC by section 2.11 of Rule 1000, is presumed to be significant. This presumption may be rebutted if the APCO determines that the circumstances of any violation indicate it had no adverse effect upon air quality or human health or welfare.

2.2.5 Does not prevent the determination by any means of whether the person or source is or has been in compliance with applicable requirements.

2.3 Notice to Comply

A written notice alleging a minor violation which:

2.3.1 Is written in the course of conducting an inspection by an authorized District representative, unless testing, analysis, or research necessary to determine compliance cannot be completed during the inspection. In such case, the District shall conclude its required testing or analysis in a reasonable period of time, and immediately issue an appropriate notice to comply if warranted by the findings.

2.3.2 Is presented at the time of inspection to an owner, operator, employee, or other authorized representative of the subject site or facility. If testing, analysis, or research is necessary to determine compliance, the notice to comply shall be mailed or delivered to the owner or operator.

2.3.3 Clearly states the nature of the alleged minor violation, a means by which compliance with the cited requirement may be achieved, and a time limit in which to comply, not to exceed 30 days.

2.3.4 Contains a statement that the facility may be reinspected at any time to determine compliance or correction of violations cited in the notice to comply.

2.3.5 Does not interfere with the District's ability to enforce all applicable federal laws or regulations.

2.4 Recalcitrant Violator

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A person who has engaged in a pattern of neglect or disregard with respect to applicable requirements. A chronic violation is committed by a recalcitrant violator.

2.5 Violation

An act or omission which fails to comply with an applicable requirement of Division 26 of the California Health and Safety Code, Title 17 of the California Code of Regulations, or any rule, regulation, standard, order, permit term or condition, or other requirement adopted pursuant to Division 26 or which is an applicable requirement of federal law under the Clean Air Act.

PART 3 PROVISIONS FOR NOTICES TO COMPLY

3.1 Notice to Comply Issued for Minor Violations

An authorized representative of the District, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site, or as soon thereafter as a compliance determination has been made after further testing, analysis, or research.

3.2 Single Notice to Comply

A single notice to comply shall be issued for all minor violations found during an inspection, and it shall list each minor violation being cited and the manner in which each may be brought into compliance.

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3.3 No Notice to Comply if Immediate Correction

- 3.3.1 A notice to comply shall not be issued for any minor violation that is corrected immediately in the presence of the District representative.
- 3.3.2 Such minor violation and its immediate correction shall be noted in the inspection report, and shall be entered in the enforcement database and treated as a prior violation in the event of any similar violation within three years.
- 3.3.3 Upon immediate correction, the person liable for the violation shall be subject to no further enforcement action by the District

3.4 Notice to Comply Only for Minor Violations

Except as otherwise provided below, a notice to comply is the only means by which the District may take enforcement action for a minor violation.

3.5 Period for Compliance; Certification; False Statement

A person receiving a notice to comply shall have the period specified in the notice, from the date of receipt, in which to comply. Within five (5) working days of achieving compliance, the person shall sign the notice and return it to the District representative who issued it, certifying compliance with the notice to comply. A false statement in this certification constitutes a violation of HSC Division 26 pursuant to HSC section 42400.2 or 42402.2.

3.6 Appeal Available

Any person who receives a notice to comply may appeal any of the allegations contained therein by submitting written notice to the District within 10 working days of receipt, as further described at Part 4 below.

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3.7 Violation of Notice to Comply; Variance

3.7.1 Failure to comply with a notice to comply within the prescribed time period terminates the notice to comply process, and the District may thereafter initiate any action authorized by law to enforce the minor violation(s) cited.

3.7.2 Any person who cannot correct the minor violation(s) cited in a notice to comply within the prescribed time period may apply for a variance from the District Hearing Board. A variance application must be submitted prior to expiration of the period allowed by the notice to comply in order to preserve the opportunity to avoid enforcement action.

3.8 Exceptions

3.8.1 If the APCO determines that the circumstances of a particular minor violation indicate that immediate enforcement action is warranted to prevent harm to the public health or safety or to the environment, the District may initiate any enforcement action that is appropriate.

3.8.2 This Rule does not restrict the District from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance with the notice to comply.

3.8.3 This Rule does not restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to initiate any criminal proceeding in the name of the people of California otherwise authorized by law, nor does it prevent the District or any of its representatives from cooperating with, or participating in, such a proceeding.

3.8.4 If the APCO determines that the circumstances of a particular minor violation indicate that the imposition of a civil penalty is warranted or required by federal law, in addition to issuance of a notice to comply, the District shall assess a civil penalty accompanied by written findings that set forth the basis for the determination.

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PART 4 APPEALS

4.1 Availability

Any person who receives a notice to comply from the District, and who disagrees with any allegation made therein, may file an appeal with the APCO for review of the allegations.

4.2 Time for Filing Appeal

To preserve the opportunity to appeal a notice to comply, a person (hereafter, the appellant) must file a written notice of appeal with the APCO within 10 working days of receiving the notice to comply.

4.3 Procedure

4.3.1 A notice of appeal shall be written in the form of a letter to the APCO, specifying in detail the grounds upon which the appellant believes the allegation(s) of a notice to comply are incorrect and indicating whether a hearing is requested. A copy of the notice to comply shall be attached to the notice of appeal, along with any other document(s) relied on to indicate the notice to comply is incorrect.

4.3.2 Within 10 working days of receiving a notice of appeal, the APCO shall schedule a hearing if requested by the notice of appeal, or if the APCO determines a hearing is necessary to adequately address the issues on appeal.

4.3.2.1 At an appeal hearing, both the appellant and the District may be represented by an attorney or other person of their choice, and may offer any relevant documentary evidence or testimony by any witness having knowledge of the matters at issue.

4.3.2.2 Within 10 working days after an appeal hearing is concluded, the APCO shall issue a written decision to the appellant and the Enforcement Division manager, setting forth the decision and the conclusions that are its basis.

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- 4.3.3 If a hearing is not scheduled, the APCO shall issue a written decision to the appellant and the Enforcement Division manager within 15 working days after receipt of the notice of appeal, setting forth the decision and the conclusions that are its basis.
- 4.3.4 During the pendency of an appeal, the time period specified in the notice to comply is suspended. The APCO's decision shall specify the time period within which the corrections noted in the notice to comply must be completed. The appellant's certification of compliance pursuant to Section 3.5 above shall be submitted within five (5) working days after achieving compliance.

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