

RULE 6. MINOR VIOLATIONS (Adopted & Effective 12/15/99)

(a) **APPLICABILITY**

This rule applies to any person or facility subject to San Diego County Air Pollution Control District (District) Rules and Regulations, permit conditions, and/or state requirements.

(b) **EXCLUSIONS**

This rule shall not be applied to:

- (1) Any knowing, willful or intentional violation,
- (2) Any violation of the same or similar nature as a prior violation by the same person or facility within the previous 36 months or the last three inspection cycles, whichever time period occurs first,
- (3) Any violation which enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage,
- (4) Any violation that is a chronic violation or is committed by a recalcitrant violator,
- (5) Any violation which results in an increase in the emission of any air contaminant by more than a de minimis amount,
- (6) Any violation which causes a public nuisance, or endangers people, public health, or the environment, or significantly contributes to the violation of any state or National Ambient Air Quality Standard,
- (7) Any violation which precludes or hinders the District's ability to determine compliance with other applicable state or federal requirements, District Rules and Regulations, or permit conditions, or
- (8) Any violation which causes an increase in emissions of any toxic air contaminant in excess of any emission standard limitation, rule, permit condition, or other state or federal requirement that is applicable to that pollutant as a toxic air contaminant, or as a hazardous air pollutant as defined by the U.S. Environmental Protection Agency pursuant to Section 112 of the federal Clean Air Act.

(c) **DEFINITIONS**

For the purposes of this rule, the following definitions shall apply:

(1) **"Chronic Violation"** means a violation evidencing a pattern of neglect or disregard that results in the same or similar violation as previous violations by the same person or facility.

(2) **"De Minimis Emissions"** means a trivial, or very small amount of air contaminants as determined by the Air Pollution Control Officer on a case-by-case basis.

(3) **"High-Volume Low-Pressure (HVLP) Spray"** means a coating application method using a spray applicator and pressurized air which is designed to be operated and which is operated at a permanent atomizing pressure between 0.1 and 10.0 psig, measured dynamically at the center of the applicator's air cap.

(4) **"Information"** means 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 a source for which a permit was issued or applied for, or which is subject to state or federal requirements, District Rules and Regulations, permit conditions, procedural or administrative requirements, or requests for information or records by the District.

(5) **"Inspection Cycle"** means a completed routine compliance evaluation and/or inspection of a facility by the District; excluding complaint, breakdown, variance, violation, or follow-up investigations.

(6) **"Notice to Comply"** means a written method of alleging a minor violation in accordance with this rule.

(7) **"Recalcitrant Violator"** means a person or facility which refuses to comply or has engaged in a pattern of neglect, disregard, or circumvention of District Rules and Regulations, permit conditions, or any other state or federal requirements.

(8) **"Toxic Air Contaminant"** means the same as in Rule 1200.

(9) **"Volatile Organic Compound (VOC)"** means the same as in Rule 2.

(d) **MINOR VIOLATIONS**

Any violation of the following shall be classified as a minor violation for the purposes of this rule:

(1) Rule 10 and/or permit conditions applying to any of the following:

(i) Failure to have an Authority to Construct and/or Permit to Operate when there has been no prior experience with permitting requirements. If the violator knew or should have known a permit was required then the violation is not classified as a minor violation for the purposes of this rule.

- (ii) Failure to post the current Permit to Operate.
 - (iii) Failure to renew the Permit to Operate.
 - (iv) Failure to apply for a change of location for the Permit to Operate.
 - (v) Failure to apply for a transfer of ownership for the Permit to Operate.
- (2) Rule 67.17 and/or permit conditions applying to any of the following:

Open containers used to store VOC containing materials not greater than five gallons, containers over five gallons with an access opening not greater than three inches in diameter, and/or containers used to store organic solvent containing cloths (paper or fabric) left uncovered.

- (3) Rule 67.6 and/or permit conditions applying to any of the following:

- (i) Failure to permanently mark or have a line indicating the maximum allowable solvent level for dip tanks provided they meet the freeboard requirements.
- (ii) Failure to label solvent cleaners with operating instructions.
- (iii) Cold solvent cleaners left uncovered when not in use.
- (iv) Cold solvent cleaners with solvent level less than two inches above the maximum fill line.

- (4) Recordkeeping requirements provided the violation does not prevent a compliance determination of other applicable state or federal requirements, District Rules and Regulations, or permit conditions.

- (5) The following operational, administrative or procedural requirements:

- (i) Failure to register and/or test circulating water for cooling towers.
- (ii) Failure to notify the District of an intent to relocate portable equipment (e.g., engines, sand screens, batch plants, etc.) provided no New Source Review (NSR) thresholds have been exceeded.
- (iii) Failure to have an air cap pressure gauge or other measuring requirements for HVLP application equipment on site.
- (iv) HVLP equipment operating at a pressure greater than 10 psig but less than 30% above the HVLP equipment's operating limits except when applying materials containing hexavalent chromium, nickel or nickel compounds, or copper or copper compounds.

(v) Breakdown notifications made after two hours but less than four hours after detection of the breakdown, provided all other requirements of Rule 98 are satisfied.

(vi) Roofing kettle temperature not greater than 10° F above the allowable operating temperature specified on the permit to operate.

(vii) Inoperative temperature, pressure, and/or flow gauges provided the violation does not prevent a compliance determination of other applicable state or federal requirements, District Rules and Regulations, or permit conditions.

(6) Rules and/or permit conditions applying to dry cleaning facilities:

(i) Failure to have the training certificate of currently trained operator, copy of certificate for previously employed operators, or manufacturer's operating manuals.

(ii) Failure to perform and/or record operation and maintenance, leak check, and/or inspection checklist requirements.

(iii) Failure to meet annual reporting and/or trained operator replacement notification requirements.

(7) Rules and/or permit conditions applying to gasoline dispensing facilities:

(i) Vapor recovery instructions and/or Air Resources Board (ARB) phone numbers not adequately posted.

(ii) Inability to provide access to the interior of the dispenser cabinets at gasoline dispensing facilities.

(iii) Missing identification and/or certification tags on vapor recovery nozzles.

(iv) The following failures of a Healy monitor: light burned out; out of paper for no more than 24 hours; light indicates a vacuum failure only when the District verifies the magnehelic gauge shows the proper vacuum level.

(v) Failure to install the Healy monitor in view of the cashier.

(8) Fugitive leaks of particulate matter falling immediately to the ground from cuts, slits, or cracks which are less than two inches in length in process equipment or ducting. Such fugitive leaks must be contained within an enclosed building and shall not result in a Rule 50 emissions violation.

(9) Failure to comply with any applicable state requirements or District Rules and Regulations which results in an administrative, procedural, or de minimis emissions

violation and is not excluded by Section (b) or (d) of this rule may be treated as a minor violation by the Air Pollution Control Officer on a case-by-case basis, provided it is demonstrated to the satisfaction of the Air Pollution Control Officer that the toxic screening values developed pursuant to Rule 1200 are not exceeded. All District costs of reviewing and considering such demonstration shall be reimbursed by the person in violation. Costs shall be determined based on the time expended by the District and the labor rates specified in Rule 40.

(e) **ADMINISTRATIVE REQUIREMENTS**

(1) When the District detects a minor violation in the normal course of an inspection, a Notice to Comply shall be issued before leaving the site to a person who is an owner, operator, employee, or representative of the facility being inspected. However, if testing is required to determine compliance and testing cannot be conducted during the course of the inspection, the District shall have a reasonable period of time to conduct the required testing. If after the test results are available, the District determines a Notice to Comply is warranted, the District shall immediately notify the owner or operator in writing. The Notice to Comply may be mailed to the owner or operator of the facility.

(2) A Notice to Comply shall clearly state the nature of the alleged minor violation, a means by which compliance with the requirement(s) cited may be achieved, and a reasonable time limit in which to comply, which shall not exceed 30 calendar days.

(3) A single Notice to Comply shall be issued for all minor violations cited during the same inspection and shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.

(4) A Notice to Comply shall not be issued for any minor violation which is corrected immediately in the presence of the inspector during the normal course of an inspection. A copy of inspection results documenting corrective action will be provided to the person who corrects a minor violation immediately in the presence of the inspector. However, if a minor violation cannot be corrected during the normal course of the inspection without delaying the inspector, a Notice to Comply will be issued. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator or a chronic violation.

(5) A Notice to Comply shall contain a statement that the inspected facility may be subject to reinspection at any time. Nothing in this rule shall be construed as preventing the reinspection of a facility at any time to ensure compliance or to ensure that cited minor violations have been corrected. Any false statement that compliance has been achieved is a violation subject to further legal action pursuant to Division 26 of the California Health and Safety Code, section 42400, et seq.

(6) Except as otherwise provided herein, a Notice to Comply shall be the only means by which the District shall cite a minor violation. The District shall not take any

other enforcement action 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 rule.

(7) A person who receives a Notice to Comply shall, within five working days of achieving compliance, sign the Notice to Comply form stating the person has complied with all the items cited, and return the form to the District.

(8) Nothing in this rule shall be construed as preventing the District from requiring a person receiving a Notice to Comply to submit reasonable and necessary documentation to support a claim of compliance.

(9) Nothing in this rule shall restrict the power of any city attorney, the District Attorney, 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 any representative of the District, from cooperating with, or participating in, such a proceeding.

(10) Notwithstanding any other provisions of this rule, if the District 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 the 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 District makes written findings that set forth the basis for the determination by the District.

(11) Notwithstanding any other provisions of this rule, if a person fails to comply with a Notice to Comply within the prescribed period, or if the District determines 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 District shall take any necessary enforcement action authorized by law.

(f) **APPEALS**

(1) If a person disagrees with one or more of the alleged violations cited in a Notice to Comply, the person may appeal the Notice to Comply by giving written notice to the Air Pollution Control Officer. The notice of 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 notice of appeal must be postmarked by the date specified for achieving compliance on the Notice to Comply.

(2) The Air Pollution Control Officer shall review the notice of appeal and appropriate records relating to the alleged violation(s). Within 30 calendar days of the District's receipt of the notice of appeal, the Air Pollution Control Officer shall grant or deny the appeal with written findings.

(i) If the Air Pollution Control Officer finds in favor of the appellant, the findings will reflect that no further action is necessary by the appellant.

(ii) If the Air Pollution Control Officer finds in favor of the District and notifies the appellant of the written findings as above, the appellant must correct all the items cited in the Notice to Comply within 15 calendar days of the date of the findings, unless the Air Pollution Control Officer directs otherwise. Failure to comply within the specified time period may result in a Notice of Violation or any other authorized enforcement action.

(g) PENALTY FOR FAILURE TO COMPLY

Except as provided in Section (f) above, 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 Division 26 of the California Health and Safety Code, section 42400, et seq., or any other applicable law.