

**Air Pollution Control Board**

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| Greg Cox     | District 1 |
| Dianne Jacob | District 2 |
| Pam Slater   | District 3 |
| Ron Roberts  | District 4 |
| Bill Horn    | District 5 |

**Air Pollution Control District**

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| R. J. Sommerville | Director |
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## **NOTICE OF WORKSHOP**

### **FOR DISCUSSION OF PROPOSED NEW RULE 6 - MINOR VIOLATIONS**

The San Diego County Air Pollution Control District (District) will hold a public meeting to consider comments concerning new Rule 6 - Minor Violations. Comments concerning the proposed rule may be submitted in writing before or at the workshop, which is scheduled as follows:

**DATE:** August 12, 1998 - Wednesday

**TIME:** 9:00 A.M.

**PLACE:** Air Pollution Control District  
Conference Room 139  
9150 Chesapeake Drive  
San Diego, CA 92123 - 1096

Proposed new Rule 6 will implement California Health & Safety Code §39150 which requires each air district to develop a rule classifying certain violations of air quality requirements as minor violations and establishing procedures for issuing a Notice to Comply for minor violations. The main difference between a Notice to Comply and a Notice of Violation is there are no civil, criminal, or administrative penalties associated with a Notice to Comply if the violation is corrected within the required time period.

The proposed rule classifies certain specified administrative, procedural, and de minimis emission violations as minor violations. A subsequent or recurring violation of the same or similar nature would not be considered a minor violation and would receive a Notice of Violation unless the source had no prior violations of the same or similar nature within the last three inspection cycles or previous 36 months, whichever occurs first. For sources maintaining a clean record for this time period, the District will issue a Notice to Comply rather than a Notice of Violation for violations qualifying as minor violations.

The following violations are not eligible to be considered minor violations:

Any knowing, willful or intentional violation (as defined),

Any violation which enables the violator to benefit economically (as defined),

Any chronic violation,

Any violation committed by a recalcitrant violator,

Any emission violation resulting in more than a de minimis amount of emissions as determined by the District,

Any violation causing a public nuisance, endangering people or the environment or significantly contributing to a violation of any state or National Ambient Air Quality Standard,

Any violation precluding or hindering the District's ability to determine compliance with any air quality requirement, or

Any violation causing an increase in emissions of any toxic air contaminant in excess of any emission standard or other state or federal toxic air contaminant requirement.

Violation of any of the following shall be classified as a minor violation:

Rule 10 and/or permit conditions applying to - failure to have an Authority to Construct or Permit to Operate when there has been no prior permitting experience; failure to post a permit; failure to renew a permit; or failure to apply for a change of location or ownership.

Rule 67.17 and/or permit conditions applying to - open VOC containers not greater than five gallons or greater than five gallons with an opening not more than three inches in diameter; or containers used to store cloths (paper or fabric) containing organic solvent left uncovered.

Rule 67.6 and/or permit conditions applying to - failure to properly mark the maximum allowable solvent level for dip tanks provided they meet the freeboard requirements; failure to label solvent cleaners with operating instructions; cold solvent cleaners left uncovered when not in use; or cold solvent cleaners with solvent levels less than two inches above the maximum fill line.

Recordkeeping requirements provided the violation does not prevent a compliance determination of other applicable requirements.

Failure to register and/or test circulating water for cooling towers; or failure to notify the District of an intent to relocate portable equipment provided New Source Review thresholds are not exceeded; failure to have an air cap pressure gauge or other measuring requirements for high volume-low pressure (HVLP) application equipment on site; or HVLP equipment operating at a pressure greater than 10 psig but less than 30% above HVLP operating limits.

Breakdown notifications made after two hours but less than four hours after breakdown detection; roofing kettle temperature not greater than 10° F above the allowable operating temperature specified on the permit; or inoperative temperature, pressure, and/or flow gauges provided compliance can still be determined.

Rules and/or permit conditions applying to dry cleaning facilities - failure to order a part within two days after detection of a leak or install a part within five days after receipt of the part; failure to have manufacturer's operating manuals or training certificates of the currently trained (or previously employed) operators; failure to perform and/or record operation and maintenance, leak check and/or inspection checklist requirements; or failure to meet annual reporting and/or trained operator replacement notification requirements.

Rules and/or permit conditions applying to gasoline dispensing facilities - failure to adequately post instructions or Air Resources Board (ARB) phone numbers, submerged fill pipes on storage tanks greater than six inches but less than seven inches from the tank bottom, inability to provide access to the dispenser, missing identification and/or certification tags on nozzles; or failure to empty gasoline greater than 1/16 inch in depth in spill boxes.

Fugitive leaks of particulate matter falling immediately to the ground from cuts, slits, or cracks in processing equipment or ducting which are less than two inches in length provided such leaks are contained within an enclosed building and Rule 50 is not violated.


Failure to comply with any applicable requirements which results in administrative, procedural, or de minimis emissions as determined by the District.

"De Minimis Emissions" are defined as a trivial, or very small amount of air contaminants as determined by the Air Pollution Control Officer on a case-by-case basis. There is no satisfactory way to establish de minimis levels for all types of violations. Therefore, it is more appropriate to allow these de minimis emission violations to be determined on a case-by-case basis. The rule excludes toxic emissions from consideration as a de minimis emission violation. The District believes few emission violations would be considered de minimis violations.

The rule also specifies that a Notice to Comply must contain a reasonable time limit to comply, not to exceed 30 days. A Notice to Comply shall not be issued for any minor violation corrected immediately in the presence of the inspector during the normal course of an inspection. A Notice to Comply shall be the only means by which the District shall cite a minor violation; no other enforcement action shall be taken by the District. If a person fails to comply with a Notice to Comply within the prescribed time period or if the District determines the circumstances surrounding a minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety or the environment, the District shall take any necessary enforcement action authorized by law.

The rule also specifies an appeal process for a Notice to Comply that is issued.

If you would like a copy of the proposed new rule, please call Juanita Ogata at (619) 694-8851. If you have any questions concerning this proposal, please call Edward Weirather at (619) 694-8958 or Teresa Morris, Chief of Compliance, at (619) 694-3342.

*for*   
RICHARD J. SMITH  
Deputy Director

RJSm:EW:jo  
6/22/98

**AIR POLLUTION CONTROL DISTRICT  
COUNTY OF SAN DIEGO**

**PROPOSED NEW RULE 6 - MINOR VIOLATIONS**

Proposed new Rule 6 is to read as follows:

**RULE 6. MINOR VIOLATIONS**

**(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 or federal 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 Notice to Comply or Notice of Violation by the same person or facility within the previous 36 months or the last three inspection cycles, whichever time period occurs first, *24 months*
- (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 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, or other state or federal requirement that is applicable to that toxic air contaminant.

**(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 and at the applicator's air horns.

(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) **"Volatile Organic Compound (VOC)"** means any volatile compound containing at least one atom of carbon excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonates, and exempt compounds.

(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 high volume low pressure (HVLP) application equipment on site.

(iv) HVLP equipment operating at a pressure greater than 10 psig but less than 30% above HVLP operating limits.

(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 order a part within two days after detection of a leak, or to install a part within five days after receipt of the part.

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

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

(iv) 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) Submerged fill pipes, on underground and aboveground storage tanks, which are greater than six inches and not greater than seven inches from the tank bottom.

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

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

(v) Failure to empty gasoline liquid greater than 1/16 inch in depth in spill boxes.

(8) Fugitive leaks of particulate matter falling immediately to the ground from cuts, slits, or cracks in process equipment or ducting which are less than two inches in length. 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 administrative, procedural, or de minimis emissions violation and is not excluded by Section (b) of this rule may be treated as a minor violation by the Air Pollution Control Officer on a case by case basis.

#### **(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 violator in writing and a copy of 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 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 re-inspection at any time. Nothing in this rule shall be construed as preventing the re-inspection 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 pursuant to this rule 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 working 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 working 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 by above Section (f), 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.