Appendix I
ARB Regulation

Adopt new sections 60090 through 60094 of Article 6 of Subchapter 1 of Chapter 1 of Division 3 of Title 17, California Code of Regulations, to read as follows:

17 CCR, Section 60090. Definition of minor violation and guidelines for issuance of Notice to Comply.

Purpose. The purpose of this regulation 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 define a "minor violation" and establish guidelines for issuing a Notice to Comply.

Authority cited: Sections 39600, 39601 and 39150 (c) of the Health and Safety Code

Reference: Sections 39150 through 39153 of the Health and Safety Code

17 CCR, Section 60091

Definitions. For the purposes of sections 60090 through 60094, the following definitions shall apply:

(a) "Chronic violation" means a violation where there is evidence indicating a pattern of neglect or disregard in complying with air pollution control requirements. A pattern of neglect or disregard can be established by more than one reasonably contemporaneous violation of the same or similar nature at the same facility or by the same operator.

(b) "Executive Officer" means the Executive Officer of the California Air Resources Board or his or her delegate pursuant to section 39516 of the Health and Safety Code.

(c) "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.

(d)(1) "Minor Violation" means:

(1) The failure of a person to comply with any requirement or condition of any applicable rule, regulation, information request, order, variance, or other requirement, whether procedural or substantive, adopted by the Air Resources Board pursuant to Division 26 of the Health and Safety Code, sections 43830 et seq., 41962, and 41712, where the noncompliance meets all of the following criteria:

A. does not result in or contribute to, or have the effect of covering or concealing, an increase in emissions of any air contaminant by more than a de minimis amount; and,

B. does not endanger the health, safety, or welfare of any person(s); and

C. does not endanger the environment; and

D. does not cause 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; and

E. does not cause or contribute to the violation of any state or national ambient air quality standard; and

F. does not hinder the ability of the Executive Officer to determine compliance with any other applicable local, state or federal rule, regulation, information request, order, variance, permit, or other requirement.

(2) Notwithstanding the above, no violation shall be considered a minor violation if:

A. the violation is knowing, willful, or intentional; or

B. the violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or

C. the violation is chronic; or

D. the violation is committed by a recalcitrant violator.

(e) "Notice to Comply" means a written method of alleging a minor violation that:

(1) is written in the course of conducting an inspection by the Executive Officer.

(2) is presented to a person who is owner, operator, employee, or representative of the facility being inspected at the time the Notice to Comply is issued.

(3) clearly states the following:

A. the nature of the alleged minor violation; and

B. a means by which compliance with the requirement cited may be achieved; and

C. a time limit, not to exceed thirty (30) days, by which date compliance must be achieved; and

D. that the inspected facility may be subject to reinspection at any time.

(f) "Procedural Requirement" means a requirement 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.

(g) "Recalcitrant violator" means a person who, based upon the evidence, has engaged in a pattern of neglect or disregard with respect to the violation of applicable rules, regulations, information requests, orders, permits, or other requirements.

Authority cited: Sections 39600, 39601 and 39150 (c) of the Health and Safety Code

Reference: Sections 39150 through 39153 of the Health and Safety Code

17 CCR, Section 60092

Applicability. Any person who is an owner, operator, employee, or representative of a facility subject to rules, regulations, or other requirements adopted pursuant to Division 26 of the Health and Safety Code, sections 43830 et seq., 41962, and 41712 and commits a minor violation shall be subject to this regulation.

Authority cited: Sections 39600, 39601 and 39150 (c) of the Health and Safety Code

Reference: Sections 39150 through 39153 of the Health and Safety Code

17 CCR, Section 60093

Requirements. For the purposes of sections 60090 through 60094 the following requirements shall apply to the issuance of, and response to, a Notice to Comply for a minor violation:

(a) Except as otherwise provided in this regulation, a Notice to Comply shall be the only means by which the Executive Officer shall cite a minor violation.

(b) A person who receives a Notice to Comply pursuant to this paragraph shall have the period specified from the date of the receipt of the Notice to Comply in which to achieve compliance. Within five (5) working days of achieving compliance, the person who received the Notice to Comply shall sign the Notice to Comply, stating that the person has complied with the Notice to Comply, and return it to the Executive Officer. A false statement that compliance has been achieved is a violation of this rule.

(1) If testing is required to determine compliance, and the testing cannot be conducted during the course of the inspection, the Executive Officer shall have a reasonable period of time to conduct the required testing.

(2) If, after the test results are available, the Executive Officer determines that the issuance of a Notice to Comply is warranted, the facility owner or operator shall be immediately notified in writing. If, after the test results are available, the Executive Officer determines that the issuance of a Notice of Violation is warranted, the facility owner or operator shall be notified in writing.

(c) If testing is not required, or if test results are received in a sufficiently timely manner, a single Notice to Comply shall be issued for all minor violations cited during the same inspection. The Notice to Comply shall separately list each cited minor violation and the manner in which it may be corrected.

(d) A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the Executive Officer. Immediate compliance may be noted in the inspection report, but the person shall not be subject to any further enforcement action due to the corrected minor violation. Corrected minor violations may be used as evidence to show a pattern of neglect or disregard by a recalcitrant violator.

(e) The Executive Officer may require a person subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance.

(f) Nothing in this regulation shall be construed as preventing the reinspection of a facility to ensure that the minor violation(s) cited in a Notice to Comply has been corrected.

(g) Notwithstanding any other provision of this regulation, if a person fails to comply with a Notice to Comply within the prescribed period, or if the Executive Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to any person(s) or to the environment, the Executive Officer may take any enforcement action authorized by law.

(h) Notwithstanding any other provision of this regulation, if the Executive Officer determines that the circumstances surrounding an otherwise minor violation are such that the assessment of a civil penalty is warranted or required by federal law, the Executive Officer shall make written findings that set forth the basis for this determination prior to, or concurrently with, issuance of a Notice of Violation.

(i) Nothing in this regulation restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring any criminal proceeding otherwise authorized by law. Furthermore, nothing in this regulation prevents the Executive Officer from cooperating with, or participating in, such a proceeding.

(j) If a person disagrees with the alleged minor violation(s) cited in the Notice to Comply issued pursuant to this section, the person shall give written notice of appeal, including the

reasons why the applicant believes a Notice to Comply is inappropriate, pursuant to the criteria set forth in this regulation, within 5 days of the citation. The written notice of appeal shall be sent to the Executive Officer of the Air Resources Board, P. O. Box 2815, Sacramento, CA 95812 , who shall develop a process for reviewing and determining the disposition of the appeal.

Authority cited: Sections 39600, 39601 and 39150 (c) of the Health and Safety Code

Reference: Sections 39150 through 39153 of the Health and Safety Code

17 CCR, Section 60094

Penalty for failure to comply. Any person who fails to comply by the date specified on the Notice to Comply shall be issued a Notice of Violation of this regulation in addition to any other penalties which may be assessed for the underlying violation.

Authority cited: Sections 39600, 39601 and 39150 (c) of the Health and Safety Code

Reference: Sections 39150 through 39153 of the Health and Safety Code