

BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT

**RULE 701 - PROCEDURES FOR ENFORCING MINOR VIOLATIONS OF
DISTRICT RULES AND REGULATIONS**

(Adopted April 17, 1997; Recodified August 22, 2002)

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RULE 701

1 PURPOSE

1.1 General Purpose: This Rule establishes requirements for distinguishing minor and nonminor violations and issuing a Notice To Comply for minor violations and allowing a minor violation to be resolved without monetary penalty(s) to the responsible party. Notices of Noncompliance (i.e., Notices of Violations) are continued to be issued for all nonminor violations and are directly subject to the Butte County Air Quality Management District's (DISTRICT's) civil penalty program or prosecution. Failure to respond to the *Notice To Comply* and failure to take corrective action within five (5) days subjects minor violations to other enforcement action including civil penalty assessments. In addition, any person disagreeing with violations cited may give written notice of appeal to the DISTRICT, however, the written notice of appeal must be given within five days (5) of receiving the notice.

1.2 Requirements for *Notice(s) To Comply*: The Purpose of this Rule is to establish requirements for the issuance of *Notice(s) To Comply*, when, during the course of conducting an inspection, DISTRICT staff detects a minor violation of DISTRICT Rules and Regulations or State law.

2 APPLICABILITY: This Rule applies to any person, owner, operator, employee, or representative of a facility with equipment subject to State of federal, or DISTRICT Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the DISTRICT.

3 DEFINITIONS

3.1 Administrative Requirement: means a requirement of a rule, regulation, plan, permit or condition which requires specified action but does not involve direct air contaminants emissions to the atmosphere.

3.2 Chronic Violation: means a violation of the DISTRICT's Rules and Regulations by a person or facility where there is evidence indicating that the violation is the same or similar to previous violations and that such violations have reoccurred over a period of time. A chronic violation shall include, but not be limited to, any violation for which the same or similar violation has been issued on two (2) prior occasions during the past twelve (12) consecutive months where the source of the violation is involved with the use of innovative control technology as determined by the Air Pollution Control Officer (APCO).

3.3 Information: means data, records, photographs, analysis 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 for, 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 the DISTRICT.

3.4 Minor Violation: means 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 APCO which meet the following criteria:

3.4.1 Does not result in an emission of air contaminants; and

3.4.2 Does not endanger the environment; and

3.4.3 Does not endanger the health, safety or welfare of any person or persons; and

3.4.4 Does not cause or contribute to the violation of any primary State or federal Ambient Air Quality Standard; and

3.4.5 Does not preclude, hinder or interfere with 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.

3.4.6 Notwithstanding Section 3.4.1 above, a minor violation includes breakdown(s) or malfunction(s) of equipment/operations with valid DISTRICT permit(s) which cause the release of air contaminants provided the APCO determines that breakdown(s) or malfunction(s) conditions are *not* caused by poor or inappropriate maintenance of the subject equipment/operations, or by personnel actions, and that the responsible party can demonstrate to the satisfaction of the APCO that the breakdown(s) or malfunction(s) condition causing the violation was beyond the reasonable control of the person/business, and, provided that the person/business reported to the DISTRICT pursuant to Rule 266 of these Rules and Regulations, *Reporting Procedures For Excess Emissions*, the breakdown(s) or malfunction(s) status change of the subject equipment/operations.

3.5 Nonminor Violations:

3.5.1 means all violations which are not minor violations as defined in Section 3.4 above.

3.5.2 Any violation of applicable State or federal requirements, DISTRICT Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records where any of the following exist:

3.5.2.1 The violation is knowing, willful or intentional; or

3.5.2.2 The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage over similar complying persons or operations;

3.5.2.3 The violation is a chronic violation as defined in Section 3.2 of this Rule; or

3.5.2.4 The violation involves failure to comply with emission standards in any applicable rule a regulation, including requirements for control equipment, emission rates, concentration limits, product material limitations, and other provisions directly associated with emissions; or

3.5.2.5 The violation involves failure to obtain Authorities to Construct/Permits to Operate for the sources subject to the following:

- A. New Source Review; or
- B. Prevention Of Significant Deterioration; or
- C. New Source Performance Standards; or
- D. National Emission Standards For Hazardous Air Pollutants; or
- E. Sources emitting toxic air contaminant(s).

3.5.3 Where the APCO has made a determination that a person or responsible facility representative has made a *false* statement that compliance has been achieved submitted in response to Section 4.2 of this Rule (Certified Compliance) of this Rule, any violation notwithstanding Section 3.4 of this Rule (Minor Violation) by the person or respective facility having made the false statement and occurring during a period of twelve (12) consecutive months following the APCO's receipt of the false statement shall be a Nonminor violation for the purpose of this Rule.

3.6 ***Notice To Comply:*** means a written method of alleging a violation that:

3.6.1 Is written in the course of conducting an inspection by the DISTRICT; and

3.6.2 A means by which compliance with the requirement cited may be achieved; and

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

3.6.4 A statement that the inspected site or facility may be subject to reinspection at any time.

3.7 **Procedural Requirement(s):** 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.

4 REQUIREMENTS

- 4.1 Issuing of *Notice(s) To Comply*:** The DISTRICT shall issue *Notices To Comply* for all minor violations of DISTRICT Rules and Regulations and applicable State statutes and shall enforce the requirements of this Rule.
- 4.2 Certified Compliance:** A person or facility who receives a *Notice To Comply* issued pursuant to this Rule shall have the period specified on the *Notice To Comply* from the date of receipt of the *Notice To Comply* to achieve compliance with the requirement(s) cited on the *Notice To Comply*. Within five (5) working days of achieving compliance the person or an authorized representative of the facility who has received the *Notice To Comply* shall sign and return the *Notice To Comply* to the APCO stating, under penalty of perjury, that the person or facility has complied with the *Notice To Comply*.
- 4.3 False Statement(s):** A false statement submitted that compliance has been achieved is a violation subject to further legal action pursuant to California Health and Safety Code (HSC) Section 42404, et seq., and, shall remove from application of this Rule the subject person and facility for a period of twelve (12) consecutive months following submittal of the false statement. Such removal shall cause the person and subject facility to be issued Notices of Noncompliance or Violation for all subsequent violations and noncompliance issues of DISTRICT Rules and Regulations determined or observed by the DISTRICT during the subsequent twelve (12) consecutive month nonapplicability period. The subject person and facility shall immediately be subject to the DISTRICT's Civil Penalty Program or other available enforcement action.
- 4.4 Compliance Determined By Testing:**
- 4.4.1** If emission testing is required by the DISTRICT or an authorized or designated representative of the DISTRICT to determine compliance, the DISTRICT or authorized or designated representative of the DISTRICT shall have a reasonable period of time to conduct the required testing.
- 4.4.2** If, after the test results are available, the APCO determines that the issuance of a *Notice To Comply* is warranted, the APCO shall immediately notify the person or facility owner in writing. If off site testing is required, a copy of the *Notice To Comply* may be mailed to the person, facility representative or operator of the subject facility.
- 4.5 Single *Notice To Comply*:** A single *Notice To Comply* shall be issued for all minor violations observed or detected at a facility or of a person, and the APCO shall separately list each minor violation and the manner in which the violation may be brought into compliance.

- 4.6 Violation(s) Corrected in Presence of DISTRICT:** No *Notice To Comply* shall be issued for any minor violation corrected immediately in the presence of DISTRICT representative(s). Immediate compliance in this manner is not subject to further DISTRICT enforcement action.
- 4.7 Limitation of Enforcement:** Except as otherwise provided for in this Rule, a *Notice To Comply* shall be the only means by which the APCO shall cite a minor violation against the person or facility who has received a *Notice To Comply* if the person or facility is in compliance with DISTRICT Rules and Regulations and applicable State statutes.
- 4.8 Disagreement And Appeal of Notice To Comply:** Any person or representative of a business receiving a *Notice To Comply* and who disagrees with the *Notice To Comply* shall submit in writing and within five (5) days of receiving the *Notice To Comply*, a written request to the APCO to appeal the *Notice To Comply*. The written request shall include an explanation and all supporting information/data which explains and justifies appeal of the violations cited in the *Notice To Comply*. The APCO shall review the *Notice To Comply* and issue a determination concerning the violation issue. If the APCO's determination is to uphold the *Notice To Comply* and the person or business representative continues to appeal the APCO's determination, the APCO shall cause to be filed on behalf of the person or represented business (hereinafter referred to as the Appellant), the Appellant's appeal with the DISTRICT Hearing Board for review and consideration. The APCO shall cause to be scheduled within ten (10) days of receipt of the appeal a meeting of the Hearing Board to consider the appeal. The Hearing Board meeting to consider the appeal shall provide first that the APCO present the basis for the *Notice To Comply* and the minor violations cited followed by the appellant's presentation and explanation of reasons for the basis of the appeal of the *Notice To Comply*. The Hearing Board shall make a determination as to whether the *Notice To Comply* shall stand or be repealed. The Hearing Board's decision shall be binding and shall serve as the final administrative review step. The Appellant shall have five (5) days from the Hearing Board's decision to complete any and all corrective action specified in any *Notice To Comply* appealed which the Hearing Board upholds. Any appeal found for the Appellant by the Hearing Board shall not be counted as "prior violations" with respect to future violations and implementation of the DISTRICT's Civil Penalty Fee Program.
- 4.9 Failure To Comply with Notice To Comply:** Notwithstanding any other provision of this Rule, if a person or facility fails to comply with the *Notice To Comply* within the prescribed time period, or, if the APCO 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 APCO may take any other enforcement action authorized by law.

- 4.10 Reinspection:** Nothing in this Rule shall be construed to prevent the reinspection of a site, facility, data, documents or any other information or object or operation to ensure compliance or to ensure that minor violations cited in a *Notice To Comply* have been corrected.
- 4.11 Information Required to Support A Claim(s) Of Compliance:** Nothing in this Rule shall prevent or inhibit the APCO from requiring a person or facility to a *Notice To Comply* to submit information to support a claim of compliance by the person or facility.
- 4.12 Other Criminal Proceeding(s):** Nothing in this Rule shall prevent or inhibit a city attorney, district attorney, county counsel or Attorney General from bringing, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this Rule prevents the APCO from cooperating with, or participating in, such proceeding(s).
- 4.13 Federal Law:** Notwithstanding any other provision of this Rule, if the APCO determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this Rule is warranted or required by federal law, in addition to issuance of a *Notice To Comply*, the APCO shall assess a civil penalty in accord with the DISTRICT's Civil Penalty Fee Program, if the APCO makes written findings that set forth the basis for the determination. Any action taken by this Section may be appealed in accord with Section 4.8 of this Rule.
- 4.14 Penalty for Failure To Comply:** Any person or facility who fails to comply by the date specified on the *Notice To Comply* shall be issued a Notice of Noncompliance or Violation which is subject to further legal action specified in HSC Section 42404, et seq.