

Rule 105 Enforcement & Penalty Actions

(Adopted November 3, 1982; Revised September 25, 1998; Proposed for Revision December 16, 2004, Revised May 19, 2005).

RULE 105 CONTENTS

- 1.0 ENFORCEMENT
- 2.0 ORDERS OF ABATEMENT
- 3.0 CIVIL PENALTIES
- 4.0 NOTICE TO COMPLY
 - 4.1 Purpose
 - 4.2 Applicability
 - 4.3 Definitions
 - 4.4 Requirements
 - 4.5 Appeals
 - 4.6 Penalty for Failure to Comply
 - 4.7 Expiration
- 5.0 EQUIPMENT BREAKDOWN
 - 5.1 Breakdown Conditions
 - 5.2 Breakdown Procedures
 - 5.3 Reporting Requirements
 - 5.4 Burden of Proof
 - 5.5 Failure to Comply with Reporting Requirements
 - 5.6 False Claiming of Breakdown Occurrence
 - 5.7 Extended Breakdown Provisions

RULE 105 ENFORCEMENT & PENALTY ACTIONS

- 1.0 ENFORCEMENT:** No person shall violate any condition of an Authority to Construct, any condition of a Permit to Operate, any provision of these Rules and Regulations; or any order, rule, or regulation of the California Health and Safety Code. Any person violating any such Rule or statute is guilty of a misdemeanor and/or is liable for a civil penalty and shall be subject to a fine or imprisonment in the county jail, or both as allowed by the California Health and Safety Code or other such criminal and civil penalties as may be lawful. Every day during any portion of which the violation occurs constitutes a separate offense.
- 2.0 ORDERS OF ABATEMENT:**
 - 2.1** The AQMD Hearing Board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is in violation of Section 41700 or 41701 of the California Health and Safety Code, or of any order, rule or regulation prohibiting or limiting the discharge of air contaminants into the air.
 - 2.2** The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met. (H&S 42452)

3.0 CIVIL PENALTIES:

- 3.1** Except as otherwise provided in Rule 105(3.2)(3.3), any person who violates Section 41700 or 41701 of the California Health and Safety Code, or any Rule or Regulation of the AQMD, shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which such violation occurs. (H&S 42402)
- 3.2** Any person who negligently emits an air contaminant in violation of any rule, regulation or order CARB or of the AQMD pertaining to emission regulations or limitations shall be liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each day in which such violation occurs. (H&S 42402.1)
- 3.3** Any person who emits an air contaminant in violation of any order, rule, or regulation of CARB or of the AQMD pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time, or which causes actual injury to the health or safety of a considerable number of persons or the public, shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs. (H&S 42402.2)
- 3.4** Any person who intentionally or negligently violates any order for abatement issued by the AQMD Hearing Board pursuant to Rule 105(2.1) (2.2) (2.3), shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs. (H&S 42401)
- 3.5** The civil penalties prescribed in Rule 104(3.1) & (3.2)(3.3)(3.4) shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any District Attorney in whose jurisdiction the violation occurs, or by the attorney for the AQMD in any court of competent jurisdiction. In determining such amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and corrective action, if any, taken by the defendant.

4.0 NOTICE TO COMPLY:

- 4.1 Purpose:** The purpose of this Rule 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.
- 4.2 Applicability:** This rule applies to any person, owner, operator, employee or representative of a facility subject to state requirements, AQMD Rules or Regulations, administrative or procedural plan/policy or permit conditions, or requests for information or records by the APCO.
- 4.3 Definitions:**
- 4.3.1 Chronic Violation:** A violation that reflects a pattern of neglect or disregard that results in the same or similar violation at the same source or facility or same piece of equipment.
- 4.3.2 Information:** Data, records, photographs, maintenance records, analyses, 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 or which is subject to state or federal requirements, AQMD Rules or Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the APCO.

4.3.3 Minor Violation:

4.3.3.1 The failure of any person to comply with administrative or procedural requirements of applicable state requirement(s), AQMD Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records by the APCO which meets the following criteria:

- 4.3.3.1.1** Does not result in an increase of emissions that exceeds regulatory limits or permit conditions;
- 4.3.3.1.2** Does not endanger the health, safety, or welfare of any person or persons;
- 4.3.3.1.3** Does not endanger the environment;
- 4.3.3.1.4** Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;
- 4.3.3.1.5** Does not preclude or hinder the APCO's ability to determine compliance with other applicable State or Federal requirements, AQMD Rules and Regulations, administrative or procedural plan or permit conditions, or requests for information or records.

4.3.3.2 Notwithstanding subparagraph (4.3.3.1) above, no violation of an applicable State or Federal requirement, AQMD Rule or Regulation, administrative or procedural plan or permit condition, or request for information or records shall be considered a minor violation if:

- 4.3.3.2.1** The violation involves failure to comply with the emission standard(s) in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material limitations, and other rule provisions directly associated with emissions; or
- 4.3.3.2.2** The violation is knowing, willful, or intentional; or
- 4.3.3.2.3** The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
- 4.3.3.2.4** The violation is chronic; or
- 4.3.3.2.5** The violation is committed by a recalcitrant violator; or
- 4.3.3.2.6** The violation results in a public nuisance.

4.3.4 Notice to Comply: A written method of alleging a minor violation that meets the requirements of Health and Safety Code section 39151.

4.3.5 Procedural Requirements: A provision of a rule, regulation or permit condition that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.

4.3.6 Recalcitrant Violation: A person or facility where there is evidence indicating that the person or facility has engaged in a pattern of neglect or disregard with respect to the requirements of AQMD Rules and Regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

4.4 Requirements:

4.4.1 Except as otherwise provided in paragraph (4.4), a Notice to Comply shall be the means by which the APCO shall cite a minor violation. The APCO shall not take any other enforcement action on a minor violation, if the person or facility has complied with the provisions of the Notice within the specified time.

4.4.2 Any person or facility who receives a Notice to Comply pursuant to this subparagraph shall have a date specific in which compliance is to be achieved. Within five (5) working days of achieving compliance, the person or facility representative who received the Notice to Comply shall sign and return it to the APCO, stating that the person or facility has complied with the Notice to Comply. The return shall also include a written statement describing when and how compliance was achieved. Failure to respond or giving a false statement describing when and how compliance was achieved is a violation subject to further legal action pursuant to the Health and Safety Code, section 42400, et seq.

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

4.4.4 A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the AQMD Representative. Immediate compliance in that manner may be noted in the inspection report or other AQMD documents, but the person or facility shall not be subject to any further action by the AQMD's Representative or an authorized or designated officer. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator.

4.4.5 Notwithstanding any other provision of paragraph (4.4), if a person or facility fails to comply with a Notice to Comply within the prescribed 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 needed enforcement action authorized by law.

4.4.6 Nothing in this rule shall be construed as preventing the reinspection of a site or facility to ensure compliance or to verify that minor violations cited in a Notice to Comply have been corrected.

4.4.7 Nothing in this rule shall be construed as preventing the APCO, on a case-by-case basis, from requiring a person or facility subject to a Notice to Comply to submit information to support a claim of compliance by the person or facility.

4.4.8 The issuance of a Notice to comply for a violation of state law will not interfere with an agency's ability to enforce all federal requirements or laws.

4.4.9 Notwithstanding any other provisions of paragraph (d), if the APCO 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 issuance of a Notice to Comply, the APCO shall assess a penalty

in accordance with Division 26 of the Health and Safety Code, section 42400, et seq., if the APCO makes written findings that set forth the basis for the determination of the APCO.

- 4.5 Appeals:** Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the APCO within 10 working days of receipt of the Notice. The 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 APCO shall grant or deny the appeal within 30 days of receiving the appeal. The APCO's decision shall be final.
- 4.6 Penalty for failure to comply:** 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 the Health and Safety Code section 42400, et seq., or any other applicable law.
- 4.7 Expiration:** This rule shall remain in effect only until January 1, 2006, and as of that date is repealed unless a later enacted rule, which is enacted on or before January 1, 2006, extends that date, or unless Health and Safety Code sections 39150 - 39153 are extended beyond that date by an act of the Legislature which is signed into law by the governor.

5.0 EQUIPMENT BREAKDOWN:

- 5.1 Breakdown Conditions:** For the purposes of this rule, a breakdown condition means an unforeseeable failure or malfunction of any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these Rules and Regulations, or by State law, or similar failure of any required in-stack continuous monitoring equipment where such failure or malfunction:

- 5.1.1** Is not the result of neglect or disregard of any air pollution control law or rule or regulation;
- 5.1.2** Is not intentional or the result of negligence;
- 5.1.3** Is not the result of improper maintenance;
- 5.1.4** Does not constitute a nuisance; or,
- 5.1.5** Is not an abnormally recurrent breakdown of the same equipment.

5.2 Breakdown Procedures:

- 5.2.1** Any breakdown condition meeting the qualifications of Rule 105(5.1) shall constitute a violation of any applicable emission limitation or restriction prescribed by these Rules and Regulations; however, the APCO may elect to take no enforcement action if the owner or operator demonstrates to his satisfaction that a breakdown condition exists and the following requirements are met:
- 5.2.1.1** The breakdown is reported to the AQMD as soon as reasonably possible, but no later than one (1) hour after its detection during normal office hours (9:00 a.m. to 4:00 p.m.), or one (1) hour after the start of the next regular business day, whichever is sooner.
 - 5.2.1.2** The owner or operator takes immediate steps to minimize the impact of the breakdown and come into compliance.
 - 5.2.1.3** The breakdown does not interfere with the attainment or maintenance of any National Ambient Air Quality Standard.
- 5.2.2** The breakdown shall be logged, investigated and handled to its final disposition in accordance with uniform AQMD procedures.

5.2.3 Upon receipt of notification of a breakdown condition, the APCO shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If it is not a breakdown condition, the APCO may take appropriate enforcement action including, but not limited to, seeking fines, an abatement order, or an injunction against further operation.

5.3 Reporting Requirements: Within ten (10) days after a breakdown occurrence has been corrected, the owner or operator shall submit a written report to the APCO including, but not limited to, the following details:

5.3.1 Duration of excessive emissions.

5.3.2 Estimate of quantity of emissions.

5.3.3 Statement of the cause of the occurrence.

5.3.4 Corrective measures to be taken to prevent recurrences.

Documentation of the breakdown condition may be required by the APCO.

5.4 Burden of Proof: The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the APCO shall take enforcement action.

5.5 Failure to Comply with Reporting Requirements: Any failure to comply, or comply in a timely manner, with the reporting requirements established in subparagraphs (5.2.1.1) and (5.3.1) through (5.3.4) of this Rule shall constitute a separate violation of this rule.

5.6 False Claiming of Breakdown Occurrence: It shall constitute a separate violation of this rule for any person to file with the APCO a report which falsely, or without probable cause, claims that an occurrence is a breakdown occurrence.

5.7 Extended Breakdown Provisions: For any occurrence which causes a breakdown condition meeting the requirements of Rule 105(5.1) and which may persist for longer than twenty-four (24) hours (ninety-six hours for monitoring equipment), the owner or operator may, in lieu of shutdown, may petition the Hearing Board for an emergency variance.