State of California
Environmental Protection Agency
Air Resources Board

Report to the California Legislature

on

Implementation of California's Minor Violation Program

(November 1, 1999)

This report is submitted to comply with the following requirements:

Health and Safety Code section 39150(a) (Minor Violation) states:

"The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, or welfare or the environment are taken into account."

Health and Safety Code section 39153(a) states:

"On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the result of that implementation. Each district shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Sections 39150 have been achieved."

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Acknowledgement

We would like to express ARB's gratitude to the management and staff of the 35 local air pollution control districts. The findings contained in this report were developed based on information and reporting requests they provided. These activities placed demands on staff still required to perform their normal duties. We acknowledge the professionalism and cooperation of District staff.

I. Executive Summary

A. Minor Violation Legislation

Legislation was enacted in 1996 (AB 2937, Brulte; Stats. 1996, Chapter 775), codified at sections 39150 through 39153 of the Health and Safety Code, that requires the ARB and California's 35 local and regional air pollution control and air quality management districts to adopt rules establishing a minor violation program. Under such a program, most minor violations would result in a notice to comply (NTC), rather than a notice of violation (NOV). An NTC provides a violator with an opportunity to correct a violation without the assessment of a fine or penalty. An NOV generally results in a fine or penalty.

The minor violation program prescribed by the legislation has several key components:

1. AB 2937 prohibits a violation that is knowing or willful, intentional, benefits the violator economically or competitively, or is part of a pattern of neglect or disregard for the law, from being classified as a minor violation;

2. AB 2937 prohibits violations that are chronic or that are committed by recalcitrant violators from being minor;

3. A "notice to comply" (NTC) issued for a minor violation is written in the course of conducting an inspection, unless testing must be done to determine the violation and such testing cannot be done during the course of the inspection. If, after test results are available, it is determined an NTC is warranted, the facility or operator will be notified in writing either by mail or in person;

4. The NTC shall clearly state the nature of the alleged minor violation and a means by which compliance can be achieved; and

5. The NTC as defined in AB 2937 must meet several criteria, including:
   (a) a time limit to comply, not to exceed thirty days;
   (b) the NTC must set forth a statement that the facility can be re-inspected at any time to ensure compliance with the NTC;
   (c) an NTC shall not be issued for any minor violation that is corrected immediately in the presence of an inspector. Such a "quick fix" violation may be documented in the inspection report, but the person shall not be subject to any further enforcement action; and
   (d) AB 2937 requires the ARB and the air districts to classify what violations can be considered minor and to establish an appeals process.

AB 2937 further states in H&SC section 39152(g), (j) and (k):

1. If a person fails to comply with the notice to comply, or if it is determined that the circumstances surrounding a minor violation are such that immediate enforcement action is warranted to prevent harm to the public health or safety or the environment, officials may take any needed enforcement action;
2. Nothing shall restrict the power of a city or district attorney, county counsel or Attorney General to pursue a criminal proceeding otherwise authorized by law, and nothing shall prevent local officials from cooperating or participating in such a proceeding;
3. If it is determined that circumstances are such that the assessment of a civil penalty is warranted or required by federal law, in addition to the issuance of a notice to comply, a civil penalty can be assessed if written findings that set forth the basis for the determination are made.

The legislation also requires that ARB prepare a report to the Legislature by January 1, 2000 on actions taken by ARB and the air districts to implement the legislation and the result of that implementation. This report is intended to fulfill that requirement.

B. Program Implementation - ARB and Local Air Districts

The ARB has adopted a minor violation regulation which became effective on May 7, 1999 (see Appendix I). The regulation applies to areas for which ARB is the primary enforcement authority: motor vehicle fuel content, consumer products, and cargo tanks. It incorporates key components of the legislation as noted above.

To date, a total of 28 air districts have adopted a minor violation regulation and are presently implementing a minor violation program (see Appendix II). All other districts are currently developing regulations. AB 2937 establishes no deadline for adopting a minor violation regulation and program. Like ARB, air districts have also incorporated the key components of the legislation into their regulations.

C. Results and Benefits of Implementation - ARB

Implementation resulted in changes to ARB's enforcement policy. Prior to adoption of the rule, emission-related violations were not considered minor by ARB. An NOV was required for all emissions-related violations and prosecutorial discretion was exercised in determining settlement terms and conditions, including the amount of any penalties. Penalty action did not necessarily follow every NOV issued, and the actual amount that was assessed depended upon the nature and circumstances of the violation(s), as generally determined at settlement negotiations between the agency and the violator.

Previously, a notice to comply was issued for procedural violations only. Adoption of ARB's minor violation program now requires ARB to issue a notice to comply instead of a notice

of violation in situations where an emission violation is determined by the Executive Officer to be of such inconsequential amount that it is "de minimis". Specific changes to ARB's enforcement policy include:

- ✓ Addition of "de minimis" emission-related violations for consideration as minor;
- ✓ Documentation of "quick fix" violations in which no notice is written if the source immediately returns to compliance;
- ✓ An appeal process for NTC violations;
- ✓ Establishment of a maximum 30-day time limit within which the source must return to compliance; and
- ✓ Criteria defining chronic and recalcitrant violators.

To complement the regulation, the ARB has also developed a Policy and Procedure Manual for the issuance of NTCs for minor violations. Since May 1999, five NTCs have been issued for reporting violations associated with fuels regulations. Prior to implementation of ARB's new minor violation program, these would have been handled using ARB's enforcement discretion based on circumstances as described above (possibly with a Notice to Comply letter, possibly with a settlement conference).

Benefits of this legislation for ARB include the formalization of ARB's existing policy and more specific guidelines which are now provided in the Manual. The Manual cites certain instances when an NTC may be issued. This has resulted in a more specific and consistent method of issuing an NTC and with emphasis on returning a source to compliance within a 30-day timeframe.

D. Results and Benefits of Implementation - Local Air Districts

Results of air district implementation can be discussed in five categories:

1. Adoption of Rules
   Twenty-eight (28) of the 35 air districts have adopted a rule.

2. Establishment of a Minor Violation Program (where one did not exist)
   The legislation resulted in the establishment of a minor violation policy in thirteen (13) districts where there had been none.

3. Changes to Existing Minor Violation Programs
   The legislation resulted in changes to existing minor violation enforcement policy in some districts. These changes include:

   - ✓ Inclusion of a "record of corrective action taken" which documents actions taken by the source to return to compliance;
   - ✓ Inclusion of "re-inspection language" whereby a source is notified that an inspector may re-inspect at any time to determine compliance with the NTC;

- ✓ "Quick Fix" violations in which no notice is written if the violation is fixed immediately in the presence of the inspector;
- ✓ Establishment of a maximum 30-day time limit within which the source must return to compliance;
- ✓ Inclusion of "de minimis" emissions-related violations as minor; and
- ✓ Establishment of an appeals process.

4. Issuance of NTCs under the New Minor Violation Program

Statewide, local air districts have issued approximately 3,600 NTCs.

5. Resulting Benefits of Legislation

In order to obtain information for this report, we sent each of the 35 local and regional air quality and air pollution control districts a survey. From these surveys, and through the information gathering process, ARB received comments on the benefits of the legislation. These comments included the following:

- ✓ Statements that the industry preferred the NTC, as it provided no penalties but got industry's attention enough to come into compliance;
- ✓ Formalization of existing minor violation policies;
- ✓ Improved structure in the guidelines for issuance of a notice to comply;
- ✓ Better consistency and uniformity of enforcement in the field;
- ✓ Better compliance with recording keeping deadlines; and,
- ✓ The establishment of minor violation policies in districts where there were none.

All of these improvements and benefits have resulted in a more specific and consistent method of issuing an NTC, with emphasis on returning a source to compliance within a 30-day timeframe.

E. Results of Implementation - Legislative Intent

H&SC 39150 states that it is the intent of the Legislature in enacting Chapter 3 - Minor Violations, to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the district, and the regulated community while maintaining protection of human health and safety and the environment. As part of the survey noted above, we asked each of the 35 air districts to respond either 'yes' or 'no' to each of the following questions:

- ✓ Do you believe the intent of the legislation has been met?
- ✓ Faster compliance times?
- ✓ Resource efficiency?
- ✓ Better working relationship with industry?
- ✓ No adverse effect on the environment or public health?

Of the 28 districts that returned a survey, five chose not to answer these questions indicating it was "too early to determine". Of the remaining 23 districts that returned our survey, 19 reported that they believed that the intent of the legislation has been met. Twenty-one reported that they believed that the legislation has had no adverse effect on the environment. Twenty-three (23) districts responded as noted below:

- ✓ 83% stated that the intent of legislation had been met;
- ✓ 52% stated that faster compliance has been achieved for minor violations;
- ✓ 61% stated that greater resource efficiency has resulted;
- ✓ 70% stated that better working relationships had resulted; and
- ✓ 91% stated that the program has had no adverse effect on public health or the environment.

ARB also reviewed each District's regulation and independently confirmed that the regulations were consistent with the legislation.

F. Degree to Which Health and Safety Code Section 39150(a) Has Been Achieved

The ARB and 80% (28) of the local air pollution control districts have complied with the requirements of 39150(a) by establishing an enforcement policy for minor violations, and by adopting a rule and incorporating language in that rule to require that the danger or potential danger the violation poses to human health or welfare or the environment be taken into account when determining what violations will be considered minor.

G. ARB Approval of Legislative Report

This report was presented to the Air Resources Board at the November 18, 1999 board meeting. The Board approved the report by adopting Resolution number **99-37.**

II. Minor Violation Legislation

In 1996, legislation was enacted which required ARB and the 35 local and regional California air pollution and air quality management districts to adopt rules defining minor violations and provide guidelines for issuing a "notice to comply" (NTC). The legislation (AB 2937, Brulte; Stats. 1996, Chapter 775) added H&SC sections 39150 - 39153. Its purpose was to provide a mechanism identifying and correcting minor violations short of assessing fines or penalties. The legislation requires that ARB prepare a report to the Legislature on program implementation by January 1, 2000. The report is to contain actions taken by the ARB and the local air districts to implement a minor violation program and the results of that implementation. Also to be included is an evaluation of the degree to which the purposes described in section 39150(a) have been achieved by local districts. Purposes of 39150(a) include establishing an enforcement policy for minor violations and defining a minor violation when taking into account the danger or potential danger the minor violation poses to human health or welfare, or the environment.

The main difference between the "notice to comply" (NTC) and a "notice of violation" (NOV) is that there are no civil, criminal, or administrative penalties associated with a NTC, except as provided for in law, if the violation is corrected.

The minor violation program prescribed by the legislation has several key components:

A. AB 2937 prohibits a violation that is knowing or willful, intentional, benefits the violator economically or competitively, or is part of a pattern of neglect or disregard for the law, from being classified as a minor violation;

B. AB 2937 prohibits violations that are chronic or that are committed by recalcitrant violators from being minor;

C. A "notice to comply" (NTC) issued for a minor violation is written in the course of conducting an inspection, unless testing must be done to determine the violation and such testing cannot be done during the course of the inspection. If, after test results are available, it is determined an NTC is warranted, the facility or operator will be notified in writing either by mail or in person;

D. The NTC shall clearly state the nature of the alleged minor violation and a means by which compliance can be achieved; and

E. The NTC is defined in AB 2937 and must meet certain criteria including:
(a) a time limit to comply, not to exceed thirty days;
(b) the NTC must set forth a statement that the facility can be re-inspected at any time to ensure compliance with the NTC;
(c) an NTC shall not be issued for any minor violation that is corrected immediately in the presence of an inspector. Such a "quick fix" violation may be

documented in the inspection report, but the person shall not be subject to any further enforcement action; and
(d) AB 2937 requires the ARB and the air districts to classify what violations can be considered minor and to establish an appeals process.

AB 2937 further states (reference H&SC section 39152(g), (j) and (k):

1. If a person fails to comply with the notice to comply, or if it is determined that the circumstances surrounding a minor violation are such that immediate enforcement action is warranted to prevent harm to the public health or safety to the environment, officials may take any needed enforcement action;

2. Nothing shall restrict the power of a city or district attorney, county counsel or Attorney General to pursue a criminal proceeding otherwise authorized by law, and nothing shall prevent local officials from cooperating or participating in such a proceeding; and

3. If it is determined that circumstances are such that the assessment of a civil penalty is warranted or required by federal law, in addition to the issuance of a notice to comply, a civil penalty can be assessed if written findings that set forth the basis for the determination are made.

It should be noted that no deadline is specified in the legislation for the adoption of a minor violation program. It should also be noted that the legislation remains in effect only until January 1, 2001 unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

III. ARB Implementation of H&SC Chapter 3 (Minor Violations)

ARB has implemented a minor violation program by adopting a regulation and developing an inspector's manual. The regulation applies to areas for which ARB has principal enforcement authority (see Appendix I). These areas include motor vehicle fuels content, consumer products, and cargo tank inspections (H&SC sections 43830 et. seq., 41712 and 41962, respectively). ARB's Regulation *Definition of Minor Violation and Guidelines for Issuance of a Notice to Comply* added sections 60090 through 60094 of Article 6 of Subchapter 1 of Division 3 of Title 17, California Code of Regulations and became law on May 7, 1999.

ARB has complied with the purpose of Chapter 3 "Minor Violations" and AB 2937 (codified at 39150 - 39153 of the Health and Safety Code) by including specific language in the adopted regulation that specifies that when determining what violations are to be considered minor, ARB must take into account the danger or potential danger the violation poses to human health, welfare, or the environment.

IV. Results and Benefits of Implementation by ARB

Changes to ARB's existing enforcement policy include the addition of "de minimis" emission-related violations for consideration as a minor violation. Prior to adoption of the rule, emissions-related violations were not considered minor by ARB. An NOV was required for all emissions-related violations and prosecutorial discretion was exercised in determining settlement terms and conditions, including the amount of any penalties. Penalty action did not necessarily follow every NOV issued, depending on the factors set forth in Health and Safety Code sections 42403 and 43031 which include, but are not limited to: the extent of harm caused by the violation; the nature and persistence of the violation; the frequency of past violations; the maintenance record of the source; the nature, extent, and response time of action taken to mitigate the violation; and the financial burden to the perpetrator. Civil and criminal monetary penalties range from up to $1,000 to $50,000 per violation for consumer product and cargo tank violations, and from up to $1,000 to $250,000 per violation per day for motor vehicle fuels content violations. The actual amount assessed depended upon the nature and circumstances of the violation(s) as generally determined at settlement negotiations between the agency and the violator. A notice to comply was issued for procedural violations only.

Under ARB's new Minor Violation Program, a de minimis emission-related violation is defined as an emission violation that is determined to be so inconsequential as to be trivial, or "de minimis". ARB determined that there was no way to establish precise "de minimis" emission thresholds for all types of violations. Therefore, the ARB's Executive Officer has the authority to use his or her judgment on a case-by-case basis to determine which emissions violations would fall under the definition of "de minimis".

Adoption of ARB's minor violation program now requires ARB to issue a Notice to Comply instead of a Notice of Violation in situations where an emission violation is determined by the Executive Officer to be of such an inconsequential amount, that it is de minimis. Changes to ARB's enforcement policy include:

- ✓ Addition of "de minimis" emission-related violations for consideration as minor (section 60091(a)(1)(A));
- ✓ Documentation of "quick fix" violations in which no notice is written if the source immediately returns to compliance (section 60093 (d));
- ✓ An appeal process for NTC violations (section 60093 (j));
- ✓ Establishment of a maximum 30-day time limit to return to compliance (section 60091 (e)(3)(C)); and
- ✓ Criteria defining chronic and recalcitrant violators (section 60091(a) & (g)).

To implement the Minor Violation Program, ARB developed a Policy and Procedures Manual. The manual was issued to all ARB inspectors in August 1999. The manual includes specific situations where an NTC may be issued and procedures for issuance and distribution of NTC forms and letters. Now that a manual has been developed, the NTC will be used as a

compliance tool for minor violations.

A total of five (5) NTCs have been issued under the new regulation since it was adopted in May 1999. These were issued for procedural fuel reporting violations. Prior to the adoption of ARB's New Minor Violation Policy, these could have been handled with a notice to comply or possibly a small settlement.

Benefits of this legislation for ARB include the formalization of ARB's existing policy and more specific guidelines which are now provided in the Manual. The Manual cites certain instances when an NTC may be issued. This has resulted in a more structured and consistent method of issuing an NTC, with emphasis on returning a source to compliance within a 30-day timeframe.

V. Air District Model Rule

The ARB and the California Air Pollution Control Officers Association (CAPCOA) worked together to make state and local regulations as consistent as possible and meet the intent of the legislation. Specifically, CAPCOA established a committee which included ARB staff to develop a model rule for consideration by all districts and by the ARB (see Appendix III). As part of the development process, workshops were held to receive input from various interest groups. Following the workshops, the model rule was sent to all 35 air districts for use in developing each district's own rule. For the most part, rules adopted by the districts are very similar to the model rule. ARB also used the model rule as a starting point in its development of a state regulation.

ARB staff has reviewed all minor violation rules submitted by local air districts. All district rules were consistent with the minor violation statute. Of the 28 districts adopting rules, **nine** have included "de minimis" emission-related violations (with language very similar to the ARB's definition).

VI. District Implementation of Health and Safety Code Chapter 3 (Minor Violations)

To help determine the status of program implementation, ARB asked each of the 35 local air districts to provide rule adoption information (see Appendix II). Data collected indicated the following:

- ✓ Twenty-eight (28) of the 35 local air districts (80%) have adopted a notice to comply rule, and
- ✓ Seven (7) of the 35 local air districts have not adopted a notice to comply Rule.

ARB also asked the Districts to respond to a survey. Twenty-eight districts returned surveys which showed the following:

- ✓ Fifteen (15) of the 28 districts that have adopted a rule had an NTC program or policy in place prior to the legislation;
- ✓ Two (2) of the seven (7) that have not adopted a rule have an NTC policy in effect; and,
- ✓ All of the seven (7) that have not adopted a rule have taken steps toward adopting a rule (drafting and workshopping rules and/or having hearings scheduled before their governing boards).

VII. Results and Benefits of Implementation by Districts

As the implementation is in various stages according to district progress, the results of implementation also vary. ARB has determined that the results of district implementation of this legislation can be discussed based on the following five categories:

A. Adoption of Rules;
B. Establishment of a Minor Violation Program (where one did not exist);
C. Changes to Existing Minor Violation Programs;
D. Issuance of NTCs Under the New Minor Violation Program; and,
E. Resulting Benefits of Legislation.

The remainder of this section describes results in each of the five categories listed above.

A. Adoption of Rules

Of the 35 local air pollution control districts, 28 have adopted a minor violation rule. Of the 28 adopted rules, all are similar and comply with the requirements of AB 2937. The main difference among the rules is that some (ten) contain a definition of minor violation that includes "de minimis" emission violations. All adopted rules contained language specifying that the danger a violation poses to or the potential danger the violation poses to human health, welfare or the environment must be taken into account.

B. Establishment of Minor Violation Programs

Of the 28 local air districts that have adopted a rule, 13 reported to ARB that they had no NTC policy in place prior to the adoption of their rule. Therefore, the legislation resulted in the establishment of a minor violation policy in 13 districts where there had been none.

C. Changes to Existing Minor Violation Programs

Of the 28 districts that adopted a rule, fifteen had an existing NTC policy. Three of these fifteen reported that they had made "significant" changes to the existing policy. Reported changes are the following:

1. Inclusion of "record of corrective action taken" which documents actions taken by the source to return to compliance;
2. Inclusion of "re-inspection" language whereby a source is notified that an inspector may re-inspect at any time to determine compliance with the NTC;
3. "Quick fix" violations in which no notice is written if the violation is fixed immediately in the presence of the inspector;
4. Establishment of a 30-day time limit within which the source must return to compliance;
5. Inclusion of "de minimis" emissions violations as minor; and
6. Establishment of an appeals process.

The remaining **twelve** districts reported no significant changes had been made to their existing policy due to the implementation of this legislation. These districts already had a mechanism to deal with minor violations.

D. *Issuance of NTCs Under New Minor Violation Programs*

The 28 local air districts which have adopted a minor violation regulation have issued a total of 3,068 NTCs (data as of 10-18-99) under programs established by this legislation (it is estimated that by 11-18-99 this number will be 3,600). The districts have reported that ninety-five (95) NTCs have been followed by an NOV for failure to comply with the NTC. The actual number of NOVs may be higher, since not all districts track follow-up NOVs. Documentation of quick fixes was reported by two districts (ARB did not specifically ask for this information; it was provided by two districts in the "comments" portion of the survey). The two districts reporting quick fix information documented 180 quick fixes under their minor violation program. Under the legislation, no NOV or NTC can be issued for minor violations corrected immediately in the presence of an inspector ("quick fix".)

The following table describes the results of implementation based on the number of NTCs issued by local districts. It lists the total number of NTCs issued for each district since the rule was adopted in that district. NTCs issued before rule adoption are not listed. The date the rule was adopted in each district is listed. Also listed is the number of NOVs issued for not complying with the Notice to Comply. There were no appeals of NTCs.

Issuance of NTCs by Local Air Districts

District	NTCs Issued	Follow-up NOVs Issued	Rule Adoption Date
Amador	16	0	6/30/98
Bay Area AQMD	155	1	2/3/99
Butte County APCD	100	2	4/17/97

District	NTCs Issued	Follow-up NOVs Issued	Rule Adoption Date
Feather River AQMD	25	0	6/2/97
Glenn County APCD	0	0	5/1/99
Great Basin Unified	0	0	5/26/99
Kern County APCD	42	0	1/8/98
Lake County AQMD	0	0	8/18/98
Lassen County APCD	0	0	4/21/99
Mendocino County	3	0	12/1/98
Monterey Bay Unified	41	0	9/16/98
North Coast Unified	1	0	9/25/98
Northern Sierra AQMD	5	0	11/27/98
Northern Sonoma	1	0	4/21/99
Sacramento Metro	227	0	10/1/98
San Joaquin Valley	347	10	8/28/98
San Luis Obispo County	1	0	1/28/98
Shasta County AQMD	16	0	5/12/98
South Coast AQMD	1996	81	11/13/98
Tehama County APCD	7	0	4/21/98
Yolo-Solano AQMD	85	1	11/13/98

[Data as of Monday 10-18-99)

Note: Not all Districts with an adopted rule have issued NTCs and not all districts have reported NTC activity

E. Resulting Benefits of Legislation

In order to obtain information for this report, we sent each of the 35 local and regional air quality and air pollution control districts a survey. From these surveys, and through the data gathering process (meetings, etc.), ARB received comments on the benefits of the legislation. These comments included statements that the industry preferred the NTC, as it provided no penalties but got industry's attention enough to come into compliance. Other benefits reported by

districts are the formalization of existing minor violation policies, improved structure in the guidelines for issuance, and the establishment of minor violation policies in districts were there were none.

One of the larger districts indicated that the legislation resulted in documented guidelines for inspectors for all rules and subsections of the rules. This eliminated a deficiency in their existing enforcement policy and resulted in consistency and uniformity of enforcement in the field. Another district reported an increase in the timely submittals of record-keeping data, due to the possibility of an NTC (with follow-up NOV if necessary) being issued for not reporting promptly. This again got industry's attention and resulted in more timely submittals than in the past. All of these reported improvements and benefits have resulted in a more specific and consistent method of issuing an NTC with emphasis on returning a source to compliance within a 30-day timeframe.

Two districts indicated that since they already had established minor violation programs, the legislation created unnecessary paperwork and an unfunded mandate. However, one of these districts also reported the benefit of a more structured program.

VIII. District Survey Information Pertaining to Legislative Intent

H&SC section 39150 states that it is the intent of the Legislature in enacting Chapter 3 - Minor Violations, to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the district, and the regulated community while maintaining protection of human health and safety and the environment. Since the local air districts have information in these areas, we polled each with our survey.

Of the 28 districts that returned our survey, five chose not to answer the questions regarding legislative intent because district staff believe it is "too early to determine". Of the twenty-three that did answer the five questions regarding legislative intent, 19 (83%) reported that they believed that the intent of the legislation has been met. Twenty-one (91%) reported that they believed that the legislation has had no adverse effect on the environment. The following table summarizes responses to the questions ARB posed to each district about whether they believed the legislative intent of this chapter had been realized (the table reflects the "yes" answers of the 23 districts that responded to these questions).

Intent of Legislation Met?	Faster Compliance Times?	Resource Efficiency?	Better Working Relations?	No Adverse Effect on Environ. or Public Health?
19 (83%)	12 (52%)	14 (61%)	16 (70%)	21 (91%)

IX. Degree to Which the Purposes of Section 39150(a) Have Been Achieved by Districts

Direction provided by statute (H&SC section 39153(a)) specifies that each district shall provide the ARB with information that ARB requests to determine the degree to which the purposes described in subdivision (a) of Section 39150 have been achieved. ARB received and analyzed this data. ARB has broken down 39150(a) into three specific requirements (A, B, and C) and makes a determination on each of these requirements below.

A. Establishment of Program

"The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division..."(emphasis added).

Eighty percent (80%) of the Districts have complied with the requirement of the statute by adopting a rule. The remainder either have a hearing scheduled to present a rule to their governing board to consider, have an existing policy already in place, or are still developing rules. All are making progress.

B. Define a Minor Violation

39150(a) "...that the enforcement agency finds are minor ..." (emphasis added)

All twenty-eight districts adopting rules (80%) have included language defining "minor violation" in their adopted regulations.

C. Danger to Public and Environment

39150(a) "...when the danger [the minor violations] pose to, or the potential that they have for endangering, human health, or welfare or the environment are taken into account".

Of the 28 districts with an NTC rule, all contain specific language that states that no violation can be considered a minor violation without taking into account the danger or potential danger the minor violation poses to human health, welfare, or safety of any person(s) or the environment.

X. ARB Approval of Legislative Report

This report was presented to the Air Resources Board at the November 18, 1999 Board meeting. The Board approved the report by adopting Resolution number 99-37.

XI. Conclusions

The ARB and 28 of the 35 local air pollution control districts have complied with the requirement of AB 2937 and Chapter 3 - Minor Violations (codified at 39150 - 39153 of the California Health & Safety Code), by adopting a rule and establishing a minor violation program.

The ARB and 28 of the 35 local air pollution control districts have complied with the intent of 39150(a) that an enforcement policy be established for violations of Chapter 3, Minor Violations (codified at 39150 - 39153). The enforcement agencies find these violations are minor when the danger they pose to, or the potential that they have for endangering, human health or welfare or the environment are taken into account.

Nineteen (83%) of the twenty-three local air districts returning complete surveys reported that they believe the intent of AB 2937 has been met. Twenty-three completed surveys were returned representing approximately 66% of the 35 air districts.

Benefits of the legislation include the following:

- ✓ Formalization of ARB's existing NTC policy;
- ✓ More specific guidelines for issuing NTCs provided in ARB's New NTC Policy and Procedures Manual;
- ✓ Satisfaction of some industry's preference of the NTC as a tool to get their attention and return to compliance without monetary penalty;
- ✓ Formalization of existing air district minor violation policies;
- ✓ Establishment of Minor Violation Programs in air districts where none existed;
- ✓ Establishment of a more specific and consistent method of issuing an NTC with emphasis on returning a source to compliance within a 30-day timeframe (both the ARB and local air districts);
- ✓ Better consistency and uniformity of enforcement in the field due to documentation of instances where a NTC may be issued for all rules and rule subsections; and
- ✓ An increase in the timely submittals of record-keeping data, due to the possibility of receiving an NTC (with follow-up NOV if necessary) for not reporting promptly.

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

Appendix II
Status of District Rule Adoptions

Districts with Rule

DISTRICT	NTC Rule#	DATE ADOPTED	Scheduled Hearings
Amador	524	06/30/98	
Antelope Valley APCD	112	01/19/99	
Bay Area AQMD	Reg 1, Rule 2	02/03/99	
Butte County APCD	705	04/17/97	
Colusa County APCD	1.7	04/28/98	
El Dorado County APCD			Hearing 11/99
Feather River AQMD	9.9	06/02/97	
Glenn County APCD	3.2	05/01/99	
Great Basin Unified APCD	109	05/26/99	
Kern County APCD	110.1	01/08/98	
Lake County AQMD	950	08/18/98	
Mendocino County APCD	530	12/01/98	
Mojave Desert AQMD	112	01/25/99	
Monterey Bay Unified APCD	107	09/16/98	
North Coast Unified AQMD	530	09/25/98	
Northern Sierra AQMD	527	11/27/98	
Northern Sonoma County APCD	Rule 550 Reg 1	04/21/99	
Placer County APCD	805	08/12/99	
Sacramento Metro AQMD	108	10/01/98	
San Diego County APCD			Hearing 11/99
San Joaquin Valley Unified APCD	1180	08/28/98	
San Luis Obispo County APCD	110	01/28/98	
Santa Barbara County APCD	106	07/15/99	
Shasta County AQMD	3:30	05/12/98	
South Coast AQMD	112	11/13/98	
Tehama County APCD	4:38	04/21/98	
Yolo-Solano AQMD	3.12	11/13/98	
Ventura County APCD			Hearing 11/9/99

November 1, 1999

Districts with No Rule

District	Hearing Date
Calaveras County APCD	
Imperial County APCD	Possible workshop 11/99
Lassen County APCD	
Mariposa County APCD	
Modoc County APCD	
Siskiyou County APCD	
Tuolumne County APCD	Possible Hearing 12/99

Appendix III
Air District Model Rule

(Adopted _____)

CAPCOA
Model Notice to Comply Rule
10/20/97

(a) 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.

(b) Applicability

This rule applies to any person subject to state requirements, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by a district.

(c) Definitions

(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.

(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, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by a district.

(3) (A) **MINOR VIOLATION:** The failure of any person to comply with administrative or procedural requirements of applicable state requirements, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the district which meets the following criteria:

(i) Does not result in an increase of emissions of air contaminants;

(ii) Does not endanger the health, safety, or welfare of any person or persons;

(iii) Does not endanger the environment;

(iv) Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;

(v) Does not preclude or hinder 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.

(B) Notwithstanding subparagraph (c)(3)(A) above, no violation of an applicable state or federal requirement, district rule or regulation, administrative or procedural plan or permit condition, or request for information or records shall be considered a minor violation if:

(i) The violation involves failure to comply with the emission standards 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

(ii) The violation is knowing, willful, or intentional; or

(iii) The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or

(iv) The violation is chronic; or

(v) The violation is committed by a recalcitrant violator; or

(vi) The violation results in a nuisance.

(4) **NOTICE TO COMPLY:** A written method of alleging a minor violation that meets the requirements of Health and Safety Code section 39151.

(5) **PROCEDURAL REQUIREMENT:** A provision 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.

(6) **RECALCITRANT VIOLATOR:** 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 district rules and regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

(d) Requirements

(1) Except as otherwise provided in paragraph (d), a Notice to Comply shall be the only means by which the APCO/Executive Officer shall cite a minor violation. The APCO/Executive Officer shall not take any other enforcement action specified in this division 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 section.

(2) Any person who receives a Notice to Comply pursuant to this subparagraph shall have the period specified in the Notice to Comply from the date of receipt of the Notice to Comply in which to achieve compliance with the requirement cited on the Notice to Comply. Within five (5) working days of achieving compliance, the person who received the Notice to Comply shall sign and return it to the Executive Officer, stating that the person 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 a false statement that compliance has been achieved is a violation subject to further legal action pursuant to the Health and Safety Code, section 42400, et seq.

(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) A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report or other district documents, but the person or facility shall not be subject to any further action by the district'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.

(5) Testing

(A) If testing is required by the state board or district or an authorized or designated officer to determine compliance, and the testing cannot be conducted during the course of the inspection, the APCO/Executive Officer shall have a reasonable period of time to conduct the required testing.

(B) If, after the test results are available, the APCO/Executive Officer determines that the issuance of a Notice to Comply is warranted, the APCO/Executive Officer shall immediately notify the person or facility owner or operator in writing. If off site testing is required pursuant to subdivision (d)(5)(A), a copy of the Notice to Comply may be mailed to the person or owner or operator of the facility.

(6) Notwithstanding any other provision of paragraph (d), if a person or facility fails to comply with a Notice to Comply within the prescribed period, or if the APCO/Executive Officer 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/Executive Officer may take any needed enforcement action authorized by law.

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

(8) Nothing in this rule shall be construed as preventing the APCO/Executive Officer, on a case-by-case basis, from requiring a person or facility subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance by the person or facility.

(9) 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.

(10) Notwithstanding any other provision of paragraph (d), if the APCO/Executive Officer 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 district shall assess a penalty in accordance with Division 26 of the Health and Safety Code, section 42400, et seq., if the APCO/Executive Officer makes written findings that set forth the basis for the determination of the district.

(e) Appeals

Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the APCO/Executive Officer within (district specified #) 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/ Executive Officer shall grant or deny the appeal within (# of days). If the APCO/Executive Officer fails to respond, the appeal shall be deemed denied. The APCO/Executive Officer's decision shall be final.

(f) 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.

(f) Expiration

This rule shall remain in effect only until January 1, 2001, and as of that date is repealed unless a later enacted rule, which is enacted on or before January 1, 2001, deletes or 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.