

## RULE 112

### Notice to Comply Program

#### (A) General

##### (1) Purpose

- (a) The purpose of this Rule is to implement the provisions of Chapter 3, Part 1 of Division 26 of the California Health and Safety Code (commencing with [§39150](#)).

#### (B) Definitions

##### (1) For the purpose of this Rule the following definitions apply:

- (a) “Air Contaminant” - Any discharge, release, or other propagation into the atmosphere including, but not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof.
- (b) “Air Pollution Control Officer” (APCO) – The person appointed to the position of Air Pollution Control Officer of the District pursuant to the provisions of California [Health and Safety Code §40750](#), and his or her designee.
- (c) “Ambient Air Quality Standards” – Any National Ambient Air Quality Standard promulgated pursuant to the provisions of [42 U.S.C. §7409 \(Federal Clean Air Act §109\)](#) or any State Ambient Air Quality Standard promulgated pursuant to the provisions of California [Health and Safety Code §39606](#).
- (d) “Chronic Violation” – A Violation of the District’s Rules & Regulations by a Facility where there is evidence indicating that the violation is of the same or similar nature to previous violations and that such violations have recurred over a period of time.
- (e) “De Minimis Emissions” - Are a very small or trivial amount of air contaminants as determined by the Air Pollution Control Officer on a case by case basis.

- (f) “District” – The Mojave Desert Air Quality Management District, the geographical area of which is described in [Health & Safety Code §41210\(b\)](#).
- (g) “Facility” – Any building, structure, article, machine, equipment or any combination thereof which is subject to District Rules & Regulations.
- (h) “Minor Violation” – Any violation of District Rules or Regulations which meets the criteria set forth in [Section \(C\)\(1\)](#) below.
- (i) “Notice to Comply” – A written method of alleging a minor violation written in the course of conducting an inspection of a Facility by an authorized representative of the District which complies with the provisions of the Notice to Comply Program as promulgated pursuant to [Section \(C\)\(2\)](#) by the APCO.
- (j) “Procedural Requirement” – A requirement of the District Rules and Regulations of Permit Condition which requires a specific action but which does not directly involve the emission of air contaminants.
- (k) “Permit Conditions” – Written requirements included in any permit issued by the District pursuant to the provisions of a program adopted pursuant to [Article 1, Chapter 4, Part 4 of Division 26 of the California Health & Safety Code \(commencing with Section 42300\)](#); or of any program adopted pursuant to other applicable provisions of State or Federal law or regulations.
- (l) “Recalcitrant Violator” – A person or Facility where there is evidence to indicate 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 and Federal law or regulations.
- (m) “Rules and Regulations” – The Rules and Regulations of the District enacted pursuant to the provisions of [Health & Safety Code §40702](#) in compliance with the procedure of [Chapter 6.5 of Part 2 of Division 26 of the California Health & Safety Code \(commencing with §40725\)](#) and any other applicable provisions of State or Federal law or regulations.

(C) Requirements

(1) Minor Violations

- (a) Minor Violations of District Rules and Regulations include any violation of District Rules and Regulations which meet all of the following criteria:

- (i) The violation does not result in more than a de minimis emission of air contaminants, and
  - (ii) The violation does not endanger the health, safety or welfare of any person or persons; and
  - (iii) The violation does not endanger the environment; and
  - (iv) The violation does not cause or contribute to the violation of any State or National Ambient Air Quality Standard; and
  - (v) The violation does not preclude the District's ability to determine if the Facility is in compliance with other District Rules and Regulations, procedural requirements, permit conditions, or applicable provisions of State and Federal law or regulations.
- (b) Notwithstanding [paragraph \(C\)\(1\)\(a\)](#) above, no violation of District Rules and Regulations shall be considered a Minor Violation if:
- (i) The violation is knowing, willful or intentional; or
  - (ii) The violation enables the violator to benefit economically from noncompliance either by realizing reduced costs or by gaining another competitive advantage; or
  - (iii) The violation is a chronic violation; or
  - (iv) The violation is committed by a recalcitrant violator; or
  - (v) The violation is of the requirement to obtain a permit pursuant to [District Regulation II](#); or
  - (vi) The violation is of a condition contained in a valid Federally Operating Permit duly issued pursuant to [District Regulation XII](#).

(2) Notice to Comply Program

- (a) Upon the adoption of this rule the APCO shall develop a Notice to Comply Program which complies with the provisions of this Rule and provides for all the following:
- (i) That a single Notice to Comply be issued to the owner/operator, representative or employee of the Facility inspected:
    1. For all Minor Violations found during the inspection before leaving the facility; or
    2. If offsite testing is required to determine compliance, a copy of the Notice to Comply may be mailed within a reasonable time period from the date of the inspection.
  - (ii) That the Notice to Comply contain:
    1. A statement of the nature of each alleged violation; and
    2. A suggested means by which compliance with the appropriate Rule or Regulation may be achieved; and

3. A time limit, not to exceed thirty (30) days, by which date compliance must be achieved; and
  4. A statement that the facility may be subject to reinspection at any time.
- (iii) Provisions for allowing the violator to certify compliance by returning a signed copy of the Notice to Comply to an authorized District representative within five (5) working days of the violator's achieving compliance with the appropriate Rule or Regulation;
  - (iv) Provisions requiring that a Notice to Comply will not be issued for any Minor Violations which are corrected during the inspection in the presence of the inspector;
  - (v) Provisions for written appeal of the Notice to Comply to the APCO and for the disposition of such appeal;

(D) Limitations

- (1) Nothing in this Rule shall limit the authority of the APCO, District Counsel or other authorized District representative to:
  - (a) Take additional enforcement action against a violator who has failed to comply with a Notice to Comply; or
  - (b) Require a person subject to a Notice to Comply to submit reasonable and necessary documentation to support a claim of compliance; or
  - (c) Cooperate with or participate in a criminal enforcement proceeding brought by an authorized person in the name of The People of the State of California; or.
  - (d) Assess a civil penalty, upon written findings, that such civil penalty is required by Federal law or regulations.

[SIP: Not SIP.]