

## REVISIONS TO RULE 230 NOTICE TO COMPLY

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### BACKGROUND<sup>1</sup>

Rule 230, Notice To Comply, was adopted by the Air Pollution Control Board on November 9, 1999. The rule implemented Health and Safety Code (H&SC), sections 39150 through 39153, which were adopted in 1996 via Assembly Bill 2937. The law required local air pollution control districts to adopt a rule establishing conditions under which a Notice to Comply (NTC) is issued for a "minor violation" rather than a Notice of Violation (NOV).

The District Notice to Comply program began in 1992 with the issuance of NTCs for failure to have an APCD Permit to Operate. These NTCs were issued according to written District Policies and Procedures. In addition to implementing H&SC § 39150 – 39153, Rule 230 compiled these policies into one document. Rule 230 was also based on a model rule developed in 1997 by a statewide committee of district enforcement managers and legal staff by the California Air Pollution Control Officers Association (CAPCOA). A number of air pollution control districts throughout California have adopted NTC rules based on this model rule (see Appendix A).

An NTC imposes no payment or penalty on the recipient. It does, however, establish a time limit for compliance, not to exceed 30 days. The NTC is essentially a "fix-it" ticket for minor violations that are easily corrected. The District issues Notices of Violation for violations of a more serious nature. An NOV is also issued when a facility fails to comply with an NTC. NOV's are referred to the District's mutual settlement program and may result in monetary penalties.

NTCs are issued for a number of minor infractions, including administrative and procedural violations. NTCs may also be issued for infractions associated with excess emissions of an insignificant nature. Until July 2006, the District issued Notices to Repair (NTRs) for specific defective gasoline vapor recovery equipment. Like the NTC, the NTR carried no monetary penalty unless compliance is not achieved within the time frame allowed. Since July 2006, the District has issued NTCs for specific defective gasoline vapor recovery equipment.

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### PROPOSED REVISIONS

Original H&SC sections 39150 through 39153 included a specific sunset date of January 1, 2001. In 2000, the sunset date was amended to January 1, 2006. As a result, sections 39150 through 39153 were deleted from the Health and Safety code in 2006. See Appendix B for the original text.

Because the deleted sections are referenced in the rule, staff proposes to delete Rule 230 Section A as follows:

#### 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 air pollution violation and~~

~~establish guidelines for issuing a Notice to Comply.~~

In addition, an amended definition of "Notice to Comply" in renumbered Subsection C.4 is proposed:

4. **“Notice to Comply:” A written method of alleging a minor violation that meets the requirements of Health and Safety Code Section 39151, prepared by an authorized representative of the District, that complies with the requirements set forth in this rule.**

In the remainder of the rule, sections will be renumbered and references changed to accommodate the deleted section. A few typographical errors are being corrected in renumbered Subsection C.3. No proposed change to Rule 230 is intended to modify the function of the rule.

**DISCUSSION**

H&SC § 39150 through 39153 required local air pollution control districts to adopt a rule or regulation establishing conditions under which a Notice to Comply is issued to for a "minor violation" rather than a Notice of Violation. Section 39150 stated specifically that:

"...each district shall, for their respective jurisdictions, implement this chapter by adopting a regulation or a rule that classifies ... minor violations in accordance with subdivision (d)."

The requirements of H&SC § 39150, subsection (d), are included in Rule 230. Since state law specifically required districts to implement local rules, absence of the state law should have no effect on either the viability or enforceability of local rules.

As noted in Appendix A, at least 22 local districts in California have adopted Notice to Comply rules. None of these rules have been amended since sunset of H&SC § 39150 through 39153. Of those rules, four do not mention the establishing Health and Safety Code; the remainder do. In addition, five of the existing rules included the statutory sunset date and, as a result, are no longer effect.

The District is taking steps to correct the existing deficiency in Rule 230 to confirm it's legal viability. The rule is popular with industry because minor violations are treated at an appropriate level, avoiding notices of violation. As stated in H&SC §39150:

"It is the intent of the Legislature in enacting this chapter 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 districts, and the regulated community while maintaining protection of human health and safety and the environment."

Table 1 is a summary of the most common rules for which NTCs have been issued. During this period between 2000 and early 2008, 1,212 NTCs were issued. During the same time period, 2,354 Notices of Violation were issued.

**Table 1**  
**Summary of NTCs Issued - 2000-2007**

Rule	Name	NTCs
29	Conditions On Permits	381
74.10	Components at Crude Oil and Natural Gas Production and Processing Facilities	263
10	Permits Required	186
74.15	Boilers, Steam Generators and Process Heaters (5mmBTUs and up)	120
70	Storage and Transfer of Gasoline	83
74.9	Stationary Internal Combustion Engines	56
64	Sulfur Content of Fuels	21
74.18	Motor Vehicle and Mobile Equipment Coating Operations	16
71	Crude Oil and Reactive Organic Compound Liquids	10
32	Breakdown Conditions; Emergency Variances	7
	Miscellaneous Rules	69
	TOTAL	1212

**COST-EFFECTIVENESS AND IMPACT ANALYSES**

**Cost-Effectiveness**

California Health and Safety Code § 40703 requires the APCD Board to consider and make public, in adopting a regulation, its findings relative to cost-effectiveness of Air Quality Management Plan (AQMP) control measures. The proposed revisions to Rule 230 are not related to any control measure. Therefore, a finding on cost-effectiveness is not required.

In addition, because BACT requirements and feasible control measures are not involved, an incremental cost-effectiveness analysis under Health & Safety Code Section 40920.6 is not required.

**Socioeconomic Impact Analysis**

California Health and Safety Code § 40728.5, which went into effect on January 1, 1992, requires that the APCD Board consider the socioeconomic impact of any new rule or amendment to an existing rule if air quality or emission limits are affected. The proposed

amendments to Rule 230 do not significantly affect air quality or emission limitations in Ventura County. Therefore, this analysis is not required.

#### Environmental Impacts of Methods of Compliance

California Public Resources Code § 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance if the proposed rule requires "the installation of pollution control equipment, or [specifies] a performance standard or treatment requirement..." The proposed revisions to Rule 230 are administrative in nature and involve no pollution control equipment. Therefore, an analysis is not required.

#### California Environmental Quality Act

The proposed revisions to Rule 230 are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this change may have a significant effect on the environment..

#### Analysis of Existing Federal and District Regulations

California Health & Safety Code § 40727.2(a) requires districts to provide a written analysis of existing regulations prior to adopting, amending or repealing a regulation. Section 40727.2(a) states:

In complying with Section 40727, the district shall prepare a written analysis as required by this section. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall also identify any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b).

The proposed revisions to Rule 230 include no emission control standards; therefore, the requirements of Health & Safety Code § 40727.2(a) are satisfied pursuant to Health & Safety Code § 40727.2(g).

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### PUBLIC MEETINGS AND COMMENTS

No public workshop was held due to the non-controversial nature of the issue.

Advisory Committee  
June 24, 2008

After a brief staff presentation and discussion, the Advisory Committee unanimously recommended the proposed revisions to Rule 230 to the Air Pollution Control Board.

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### REFERENCES

1. *Staff Report for Rule 230, Notice to Comply*, Ventura County Air Pollution Control District, November 9, 1999, page 1

**Appendix A  
 California Districts with Notice to Comply Rules**

District		Rule	H&S §39150 Sited	Last Revision	Comment
1	Amador County APCD	524 Notice To Comply	Y	6/30/1998	
2	Antelope Valley AQMD	112 Notice To Comply Program	Y	5/17/2005	
3	Bay Area AQMD	1-2 General Provisions And Definitions	N	2/3/1999	
4	Butte County AQMD	701 Procedures For Enforcing Minor Violations ...	N	8/22/2002	
5	El Dorado County AQMD	517 Notice To Comply	Y	2/15/2000	Rule has expired
6	Great Basin Unified APCD	109 Minor Violations	Y	9/12/2001	Repealed, readopted
7	Imperial County APCD	112 Notice To Comply	Y	4/4/2000	
8	Kern County APCD	110-1 Notice To Comply	N	1/8/1998	
9	Mendocino County AQMD	1-530 - Notice To Comply	Y	12/1/1998	Rule has expired
10	Mojave Desert AQMD	112 Notice To Comply Program	Y	1/25/1999	
11	Monterey Bay Unified APCD	107 Minor Violations	Y	9/16/1998	
12	North Coast Unified AQMD	1-5-530 Notice To Comply	Y		Rule has expired
13	Northern Sierra AQMD	527 Notices To Comply (Minor Violations)	Y		
14	Placer County APCD	805 Notice To Comply	Y	8/12/1999	Rule has expired
15	Sacramento Metropolitan AQMD	108 Minor Violation	Y	10/1/1998	
16	San Diego County APCD	1-6 Minor Violations	N	12/15/1999	
17	San Joaquin Valley Unified APCD	1180 Notices To Comply	Y	8/20/1998	
18	San Luis Obispo County APCD	110 Notice To Comply	Y	1/28/1998	Rule has expired
19	Shasta County AQMD	3-30 Notice To Comply For Minor Violations	Y	5/12/1998	
20	South Coast AQMD	112 Definition Of Minor Violation And Guidelines ...	Y	5/13/1998	
21	Ventura County APCD	230 Notice To Comply	Y	11/9/1999	
22	Yolo-Solano AQMD	3-12 Notice To Comply Rule	Y	5/13/1998	

**Appendix B**  
**HEALTH AND SAFETY CODE SECTIONS 39150-39153**  
**Division 26 Air Resources**  
**Deleted January 1, 2006**

**§ 39150.** (Operative until January 1, 2006)Legislative findings and declarations; Intent; Rules and regulations; Classifying types of violations

(a) 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, safety, or welfare or the environment are taken into account.

(b) It is the intent of the Legislature in enacting this chapter 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 districts, and the regulated community while maintaining protection of human health and safety and the environment.

(c) The state board and each district shall, for their respective jurisdictions, implement this chapter by adopting a regulation or a rule that classifies the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division, that the state board or the district finds are minor violations in accordance with subdivision (d).

(d) In classifying the types of violations that are minor violations, the state board or the district shall consider all of the following factors:

- (1) The magnitude of the violation.
- (2) The scope of the violation.
- (3) The severity of the violation.
- (4) The degree to which a violation puts human health, safety, or welfare or the environment into jeopardy.
- (5) The degree to which a violation could contribute to the failure to accomplish an important goal or program objective as established by this division.
- (6) The degree to which a violation may make it difficult to determine if the violator is in compliance with other requirements of this division.

(e) For purposes of this chapter, a minor violation of this division shall not include any of the following:

- (1) Any knowing, willful, or intentional violation of this division.
- (2) Any violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
- (3) Any violation that is a chronic violation or that is committed by a recalcitrant violator.

(f) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (e), the state board or district or an authorized or designated officer shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.

Added Stats 1996 ch 775 § 1 (AB 2937).

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60090, 60091, 60092, 60093, 60095, 60096

ANNOTATIONS

Editor's Notes--For repeal of chapter, see H & S C § 39153.

**§ 39151.** (Operative until January 1, 2006)"Notice to comply"

For purposes of this chapter, "notice to comply" means a written method of alleging a minor violation that is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection by an authorized representative of the state board or district or an authorized or designated officer. 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 representative of the state board or the district or an authorized or designated officer shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the representative of the state board or district or an authorized or designated officer determines that the issuance of a notice to comply is warranted, the representative or officer shall immediately notify the facility owner or operator in writing.

(b) A copy of the notice to comply is presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written. If offsite testing is required pursuant to subdivision (a), a copy of the notice to comply may be mailed to the owner or operator of the facility.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the requirement cited by the state board's or district's representative or an authorized or designated officer may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 39152 with regard to the possible reinspection of the facility.

Added Stats 1996 ch 775 § 1 (AB 2937).

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60090, 60091, 60092, 60093, 60095, 60096

ANNOTATIONS

Editor's Notes--For repeal of chapter, see H & S C § 39153.

**§ 39152.** (Operative until January 1, 2006) Issuance of notice to comply; Procedure for compliance; Appeal; Civil penalty

(a) An authorized representative of the state board or district or an authorized or designated officer, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site at which the minor violation is alleged to have occurred if the authorized representative finds that a notice to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) 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 working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply and return it to the state board's or district's representative or an authorized or designated officer, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this division pursuant to Section 42400.2 or 42402.2.

(c) 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.

(d) 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, but the person shall not be subject to any further action by the state board's or district's representative or an authorized or designated officer.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the state board's or district's representative or an authorized or designated officer shall cite a minor violation. The state board's or district's representative or an authorized or designated officer shall not take any other enforcement action specified in this division to enforce the minor violation against a person who has received a notice to comply if the person is in compliance with this section.

(f) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations cited in the notice to comply, the person shall give written notice of appeal to the state board or district, which shall develop a process for reviewing and determining the disposition of the appeal.

(g) Notwithstanding any other provision of this section, if a person fails to comply with a notice to comply within the prescribed period, or if the state board or district or an authorized or designated 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 state board or district or an authorized or designated officer may take any needed enforcement action authorized by this division.

(h) A notice to comply issued to a person pursuant to this section shall contain a statement that the inspected facility may be subject to reinspection at any time. Nothing in this section shall be construed as preventing the reinspection of a facility to ensure compliance or to ensure that minor violations cited in a notice to comply have been corrected.

(i) Nothing in this section shall be construed as preventing the state board or district or an authorized or designated officer, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(j) Nothing in this section restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this section prevents the state board or district, or any representative of the state board or district, from cooperating with, or participating in, such a proceeding.

(k) Notwithstanding any other provision of this section, if the state board or district or an authorized or designated officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this division is warranted or required by federal law, in addition to issuance of a notice to comply, the state board or district or an authorized or designated officer shall assess a civil penalty in accordance with this division, if the state board or district or an authorized or designated officer makes written findings that set forth the basis for the determination of the state board or district.

Added Stats 1996 ch 775 § 1 (AB 2937).

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60090, 60091, 60092, 60093, 60095, 60096

ANNOTATIONS

Editor's Notes--For repeal of chapter, see H & S C § 39153.

**§ 39153.** (Operative until January 1, 2006)Report to Legislature; Repeal of chapter

This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2006, deletes or extends that date.

Added Stats 1996 ch 775 § 1 (AB 2937). Amended Stats 2000 ch 805 § 1 (SB 1865), operative until January 1, 2006.

Amended Stats 2001 ch 745 § 136 (SB 1191), effective October 12, 2001.

References at the time of publication (see page iii):

Regulations: 17, CCR, sections 60090, 60091, 60092, 60093, 60095, 60096

ANNOTATIONS

Amendments:

2000 Amendment:

(1) Substituted "January 1, 2005" for "January 1, 2000" in the first sentence of subd (a); (2) amended subd (b) by (a) substituting "January 1, 2006" for "January 1, 2001" in two places" and (b) substituting "that is enacted" for "which is enacted".

2001 Amendment:

(1) Deleted former subd (a) which read: "(a) On or before January 1, 2005, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the results 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 Section 39150 have been achieved."; and (2) deleted the subd (b) designation.