

REGULATION 1, RULE 2

NOTICE TO COMPLY

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SUBJECT: REGULATION 1, RULE 2, NOTICE TO COMPLY

The purpose of the Notice to Comply (NTC) is to achieve compliance by using an enforcement action appropriate to the severity of the violation. The NTC is to be used instead of a notice of violation for a violation that meets the requirements set forth in these guidelines. In almost all cases, these violations will involve procedural, administrative, or recordkeeping omissions that do not conceal a violation or will involve de minimis emissions. The purpose of the guidelines is to ensure that NTCs are uniformly and fairly used to bring minor violations into compliance. If there is any doubt whether a minor violation is subject to an NTC, the Inspector should consult the Supervising Inspector before initiating enforcement action.

SECTION 1: AUTHORITY AND REFERENCES

Regulation 1, Rule 2 was adopted in 1999 and establishes guidelines for implementing and conducting a notice to comply element within the enforcement program.

SECTION 2: GENERAL REQUIREMENTS FOR ISSUANCE OF NTCs**A. *Policy***

An NTC shall be the only means of citing a violation that meets the definition of minor violation (see Section 2B below) and is not corrected immediately (see Section 2C below).

Section 3 lists violations that will, in most cases, meet the definition of minor violation and for which an NTC shall be the only means of citing the violation unless the violation can be corrected immediately pursuant to Section 2C.

An NTC shall also be the only means of citing any other violation that meets the requirements of this Section, even if the violation is not of a type listed in Section 3.

B. *Minor Violation Defined*

1. The health, safety or welfare of any person is not endangered.

2. The environment is not endangered.
3. There is no increase in emissions of toxic air contaminants in excess of any emission standard, limitation, or other state or federal requirement that is applicable to that toxic air contaminant.
4. The violation does not cause or contribute to a violation of any State or National Ambient Air Quality Standard.
5. The violation does not interfere with the District's ability to determine compliance with other state or federal requirements, District rules and regulations, administrative or procedural plans or permit conditions, or requests for information or records.
6. Excess emissions are de minimis.
7. The violation is not knowing, willful, or intentional.
8. The violation does not benefit the violator economically, either by reducing costs or conferring a competitive advantage.
9. The violation is not chronic.
10. The violation is not committed by a recalcitrant violator.
11. The violation does not result in a nuisance.

C. Exception for Immediate Correction

An NTC shall not be issued for a violation that otherwise meets the requirements of this Section if the violation is corrected immediately in the presence of the inspector.

SECTION 3: SPECIFIC MINOR VIOLATIONS FOR WHICH AN NTC MAY BE ISSUED

The following violations have been determined to be minor violations for which an NTC shall be issued, provided all requirements of Section 2 are met:

A. Recordkeeping and Reporting (General)

1. Inadvertent omissions or deficiencies in recordkeeping, either a missing element on any day or any few missing days, that do not prohibit an overall compliance determination. The weight of evidence should indicate compliance.

Regulation: 500 series sections and 2-1-307, 2-6-307

If mass emissions, usage, VOC content, mix ratios, etc., can be estimated for the period of missing records using available data and the typical historical information (mix ratios, VOC contents, etc.), and the estimate does not show an exceedance of a limit, an NTC may be issued.

The inspector must be able to determine compliance, even with the omissions in recordkeeping, in order to issue an NTC. If compliance with the regulation cannot be determined, the inspector should issue a Notice of Violation (NOV).

Note: If other sources of information indicate that production was abnormally high during the period, or that mix ratios, and/or VOC content varied significantly, then the violation should be issued under standard procedures for an NOV.

2. Records not physically available at the time of inspection, but the records exist and can be produced in a timely manner. This includes the short-term inability to provide records due to inaccessibility of electronic media (e.g., server is down, power outage) provided the records can be produced once the electronic media are available.

Regulation: 500 series sections and 2-1-307, 2-6-307

The facility representative must confirm that (1) the records exist, (2) the records are not on-site or are stored electronically, and (3) the records are not retrievable at the time of inspection. The records must be made available for review before the NTC can be cleared.

3. Inadvertent instrument recordkeeping omissions and a majority of the information is available and indicates compliance.

Regulation: 2-1-307, 2-6-307

4. Late reporting of Reportable Compliance Activities (RCAs) where the indicated excess was due to monitor malfunction, interference of steam, or other types of false readings.

Regulation: 1-522, 523

5. Late reporting or failure to report where there is not a pattern of late reporting or failure to report. The facility must be able to demonstrate that good management practices are in place for reporting.

Regulation: 2-1-307, 2-6-307; 8 (various)

6. Failure to submit facility annual update information where there is not a pattern of failure to submit.

Regulation: 1-441

7. Inadvertent omissions or deficiencies in reporting documents (annual, monthly, quarterly, other) where there is not a pattern of omissions or deficiencies in past reports.

Regulation: 2-6-307, 8 (various)

B. Permits/Permit Conditions/Registrations

1. Failure to post permits or have permits available during an inspection.

Regulation: 2-1-405

2. At autobody shops, failure to have a Permit to Operate if the shop has had no prior contact with the District.

Regulation: 2-1-302

3. Administrative violations of Portable Engines (PEs) and Portable Engine-Driven Equipment Units (PEUs) registered with the state Portable Equipment Registration Program (PERP), for example, failure to post registration identification.

California Health and Safety Code Sections 41750-41755

4. Failure to register a petroleum drycleaning operation with the District.

Regulation: 1-410

5. Permit condition usage limit exceedances, of POC only, for plants that emit less than 50 TPY.

Regulation: 2-1-307

Note: If exceedances occur at plants emitting greater than 50 TPY, an NOV should be issued.

C. Solvent Usage

1. Open containers of unheated solvent in work area if (1) each container has a capacity of one gallon or less and (2) materials in containers are involved with production activities (i.e., not in storage) and are not left unattended for an extended duration.

Regulation: Various Regulation 8 rules

The volume of liquid in all of the containers should not be added for the purposes of comparison with the one-gallon criteria. Containers that are not sealed or airtight, but are covered are not considered "open." Holes or funnel attachments which allow solvent to be poured into the container are acceptable. Discretion must be used to determine that a good-faith effort has been made on the part of the operator to prevent emission of VOCs into the atmosphere. Solvent containers, open to the atmosphere, located in storage areas are subject to an NOV, not an NTC.

2. An insignificant number of solvent-laden cloths (paper or fabric) left exposed in the work area. In contrast, a barrel or drum full of solvent-laden cloths would not qualify for an NTC.

Regulation: Various Regulation 8 rules

Cloths laden with nonvolatile oils or greases should not be considered a violation; neither an NTC nor an NOV should be issued.

3. Cold cleaners left uncovered when not in use, provided the solvent meets the low volatility requirement in Regulation 8-16-118.

Regulation: 8-16-303.2.1

4. Failure to mark the maximum fill capacity on cold cleaners and solvent sinks, provided they meet the freeboard requirements.

Regulation: 8-16-303.4.1 and 8-30-301.4

5. Failure to have a permanent, conspicuous label summarizing applicable operating requirements for vapor solvent cleaners, conveyORIZED solvent cleaners and cold cleaners.

Regulation: 8-16-301.2.4, 302.2.4, 303.3.4

D. Industrial and Refinery Operations

1. Taped legs on floating roof tanks where the tape is weathered and loose but the vast majority of legs are in compliance.

Regulation: 8-5-320.4

The number of defective taped roof support legs, gaps >1/2" and less than 1", should not exceed ten percent of the total tank legs.

2. Submerged fill tubes on underground and aboveground storage tanks that are greater than 6 inches and less than 14 inches from the tank bottom.

Regulation: 8-5-301.1

3. Zero gap violation of >0.06" but less than 1/8" if gap is not more than 12" long.

Regulation: 8-5.322.5

4. Missing identification tags for valves, flanges, and components (tag has fallen off) where there is an existing tag identification system in place.

Regulation: 8-18-401.1, 8-22-401, 8-25-405, etc.

Note: Tagged leakers (subject to Regulations 8-18-402, 8-22-402.2, and 8-25-402) that do not have visible tags as required by the regulation are subject to an NOV. Note that the APCO may approve identification systems that do not involve a physical marking system.

5. Inadvertent omission or deficiency in the capture or submittal of a video image or archive of images.

Regulation: 12-11-401.8, 507

6. Failure to sample vent gas composition within 30 minutes of commencement of flaring and there is not a pattern of late vent gas sampling.

Regulation: 12-11-502.2

7. Periods of inoperation of flare vent gas flow and vent gas composition monitoring that exceed 30 days per calendar year provided there are no more than two exceedances in any calendar year per monitor.

Regulation: 12-11-506.1**E. Dry Cleaning**

1. A PERC vapor leak that has not been noted on a leak checklist and that measures between 100 and 500 ppmv in concentration as indicated by a portable analyzer. (No action if below 100 ppm PERC.)

Regulation: 11-16-309.2.4

2. A PERC leak meeting the requirements of a leak-repair extension.

Regulation: 11-16-309.2.5

3. Temperature gauge on refrigerated condenser not easily visible to operator.

Regulation: 11-16-305.1.4(b)

4. Failure to order a part within two days after detection of leak, or to install a part within 5 days of receipt of it. Can only apply if leak measures less than 50 ppmv.

Regulation: 11-16-309.2.5(a)

5. Failure to correct a leak within 15 days of detection and a 30-day extension has been granted.

Regulation: 11-16-309.2.5(b)

6. Training certificate of current trained operator, copy of certificate for separated trained operator, or manufacturer's operating manual(s) not physically available at time of inspection, provided certificates and/or manual(s) exist and can be produced in a timely manner.

Regulation: 11-16-501.5 and .6

7. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination as to the weekly regularity of operation and maintenance checks of equipment.

Regulation: 11-16-309.1 and 501.4.1

8. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination as to the weekly regularity of leak inspections.

Regulation: 11-16-501.4.2

9. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination as to PERC usage based on any of the following: pounds of materials cleaned per load; purchase and delivery receipts for solvent, waste recovered from solvent still, cooker or other sources; dates of waste recovery, filter changes, drainage and/or drying filters; hazardous waste disposal manifests (or hauler's cumulative annual statement).

Regulation: 11-16-501.1, .2, and .3

10. Failure of an operator to complete the refresher course of an environmental training program once every three years if the refresher course was not reasonably available. The operator should be able to demonstrate a good faith effort to complete the course, for example registration paperwork and documentation that the class was cancelled.

Regulation: 11-16-310

Note: Failure to register a petroleum drycleaning operation with the District is referenced in Section 3B, Permits/Permit Conditions/Registrations.

F. Gasoline Dispensing Facilities

1. Vapor recovery signs not adequately posted.

Regulation: 8-7-307

Note: When the telephone number is missing on instruction signs, the Inspector should provide the operator with the District-printed sticker with the proper telephone number so that the operator can immediately affix the sticker to the instruction sign.

2. Less than 1 inch of organic liquid, including gasoline, in a containment sump, provided the sump is below ground, covered, and does not exceed 18 inches in diameter.

Regulation: 8-7-308

Note: Equal to or greater than 1 inch of organic liquid is subject to an NOV.

3. Submerged fill tubes on underground and aboveground storage tanks that are greater than 6 inches and less than 14 inches from the tank bottom.

Regulation: 8-7-301.3

4. Inability to provide access inside dispenser cabinets at gasoline dispensing facilities, because keys are not available at the time of inspection.

Regulation: 8-7-502

5. Installation of dust caps that are not certified for the GDF's Phase I system.

Regulation: 8-7-301.2

G. *Open Burning*

1. Small, insignificant open fires at a single family dwelling where all of the following apply:
 - 1) The size of the burn pile is less than 1 cubic yard.
 - 2) The fire is immediately extinguished.
 - 3) No citizen complaints or fire department referrals were received.
 - 4) No prior NOVs have been issued to the same violator

Regulation: 5-301

2. Failure to provide notification to the District prior to a burn described in Regulation 5-406. This policy does not apply to failure to provide prior written notification made for structural fire training pursuant to the

requirements of Regulation 11-2-401.3 (Asbestos Demolition, Renovation and Manufacturing.)

Regulation: 5-406

H. Asbestos Demolition, Renovation and Manufacturing

The following minor violations are subject to issuance of NTCs only if they occur at single family dwellings (SFDs), as defined by CFR Title 40, Volume 7, part 61-61 (A building with 4 or fewer units on a single parcel of land).

1. Failure to remove regulated asbestos containing material (RACM) prior to demolition where work practice has not disturbed the RACM.

Regulation: 11-2-303.3

2. Viewing ports inadequate to allow proper observation.

Regulation: 11-2-303.6

3. Failure to have or provide a survey to the District prior to commencement of any demolition or renovation.

Inadequate survey.

Survey conducted by a non-certified individual.

Regulation: 11-2-303.8

4. No labels with name and address of waste generator.

Regulation: 11-2-304.1

5. Small amount of RACM debris (< 1 square inch)

Regulation: 11-2-304.1

6. Job started prior to original start date and no new date reported or not reported 10 days prior to actual start date.

Regulation: 11-2-401.3

7. Job started after original start date and no new date reported or not reported prior to original start date.

Job continued past notified completion date.

Change in contractor not reported.

Change in removal amounts not reported.

Regulation: 11-2-401.5

These guidelines are intended to provide staff with standardized procedures. District staff may deviate from these guidelines following approval from District management. The guidelines do not modify District regulations or other applicable law, and do not create binding requirements on the APCO or any entity outside the District. In the event of a conflict between these guidelines and District regulations, the latter will govern.