

**AIR POLLUTION CONTROL DISTRICT  
SAN DIEGO COUNTY**

**NEW RULE 6 - MINOR VIOLATIONS**

**WORKSHOP REPORT**

The San Diego County Air Pollution Control District (District) conducted a public workshop on August 12, 1998, to receive comments regarding proposed new Rule 6 - Minor Violations. Workshop notices were mailed to all facilities permitted in San Diego County, the U. S. Environmental Protection Agency (EPA), the California Air Resources Board (CARB) and other interested parties. The workshop was attended by 31 people. Public comments, written comments and District responses are addressed as follows:

**1. WORKSHOP COMMENT**

The time period in Subsection (b)(2), which allows a source to be issued a Notice to Comply for a minor violation if there has been no prior similar violations within the previous 36 months, should be changed to 24 months.

**DISTRICT RESPONSE**

State law provides that a Notice to Comply shall be issued for minor violations. There are specified exceptions to this requirement such as intentional violations, chronic violations, or violations committed by a recalcitrant violator are excluded from being classified as minor violations. A chronic violation is defined in state law as a violation evidencing a pattern of neglect or disregard that results in the same or similar violation as previous violations by the same facility. The District has determined a source would be a chronic violator if it did not maintain a "clean record" for a given type of violation for a period of at least 36 months or three inspection cycles.

District goals in developing Rule 6 were to allow insignificant violations (including only de minimis emissions violations) as minor violations and to ensure the rule did not encourage or provide incentive for additional violations of air quality requirements. The District believes requiring a clean record for a minimum of 36 months or three inspection cycles is necessary to ensure Rule 6 will not encourage additional violations. Because of this, the practical effect of the rule will be to define how the violations that would normally occur are treated by the District (e.g., Notice of Violation or Notice to Comply).

The District also believes that a source inspected annually should not be issued a Notice to Comply for a violation observed in two out of three inspections (24 month reset period). Such a violation frequency would raise serious concerns about the facility's compliance rate during the other 727 days when inspections were not occurring. Lastly, the District's Results Oriented Inspection Program allows some smaller facilities to be inspected once every two years. If the time period were reduced to 24 months, such facilities would always be eligible for a Notice to Comply, even if the same violation was found during every inspection (e.g., a chronic violator). Therefore, the 36 months or three inspection cycles will remain in the rule.

**2. WORKSHOP COMMENT**

Will certificates of registration be called permits? If so, will the rule apply the same way to certificates of registration?

**DISTRICT RESPONSE**

A certificate of registration will not be called a permit. However for purposes of Rule 6, the same requirements will apply to both certificates of registration and permits to operate.

**3. WORKSHOP COMMENT**

The rule references "days" in several places, are these calendar or working days? The rule should specify which days are calendar days and which are working days.

**DISTRICT RESPONSE**

The District agrees. References to calendar days and working days will be specified in the rule in accordance with state law.

**4. WORKSHOP COMMENT**

Subsection (d)(5)(iii), for High-Volume Low Pressure (HVLP) requirements includes a requirement for a gauge to establish air cap pressure. Is this the only method for establishing air cap pressure?

**DISTRICT RESPONSE**

No. There are other means provided for in the applicable District rules. One example is the use of the manufacturer's chart with pressures at the air cap relative to the air inlet.

**5. WORKSHOP COMMENT**

Subsection (d)(1)(v) applies to transfer of ownership. Does this requirement apply to a transfer within the same company with the same name, but between different divisions? Would a transfer from one military base to another require a change of ownership?

**DISTRICT RESPONSE**

Transfers of permitted equipment within the same company do not require an application for a transfer of ownership. However, transfers of permitted equipment within the same company at a different location do require an application be filed for a change of location. Transfers of equipment between military bases may require applications for a change of location and a change of ownership. The reason is that permits may be issued to a specific command within the same military branch and transfers from one command to another will likely require a transfer of ownership.

**6. WORKSHOP COMMENT**

When a company has multiple locations (or stationary sources) would a Notice to Comply at one location result in a Notice of Violation at another?

**DISTRICT RESPONSE**

Generally, no. Usually each stationary source is responsible for violations at that location and each location is separately subject to Rule 6. The exception is when a person or company is a "recalcitrant

violator" as defined in Subsection (c)(7), then a Notice of Violation would be issued at the other locations.

**7. WRITTEN COMMENT**

Sources must not be given a second chance for a minor violation and should exclude any "clean record" process.

**DISTRICT RESPONSE**

Not allowing any clean record process would be contrary to state law which expressly states which violations are excluded from being classified as a minor violation. These exclusions are also listed in Section (b). Because state law's definition of chronic violation is vague, the clean record process in Subsection (b)(2) gives notice to all facilities on how the District will identify chronic violations. The 36 months or three inspection cycles will remain in the rule. See also District response to Comment No. 1 above.

**8. WRITTEN COMMENT**

The definition of "chronic violation" is too vague.

**DISTRICT RESPONSE**

The definition of "chronic violation" is defined by state law which required the adoption of this rule. The District has clarified the definition by adding Subsection (b)(2). See also District response to Comment No. 1 above.

**9. WRITTEN COMMENT**

A Notice to Comply should still be issued even if the violation is corrected during the inspection. The public has a right to know the compliance history of a company.

**DISTRICT RESPONSE**

Health and Safety Code §39152(d) prohibits issuing a Notice to Comply for a minor violation which is corrected immediately in the presence of the inspector. However, inspection reports documenting such corrective action are a matter of public record and may be used to show a pattern of disregard or neglect by a recalcitrant violator or a chronic violation.

**10. WRITTEN COMMENT**

Violations which result in excess emissions should not be classified as minor violations. The proposed definition of "de minimis" which is included in Subsection (c)(2) is so vague as to be meaningless, and affords undue discretion to the Air Pollution Control Officer (APCO) to determine what is a minor violation.

**DISTRICT RESPONSE**

The definition of "de minimis emissions" is defined in Subsection (c)(2) as a "trivial, or a very small amount." The District does not believe there is a satisfactory way to establish "de minimis emissions" levels for all types of minor violations. Therefore, it is more appropriate to allow the APCO to determine on a case-by-case basis which emissions violations are de minimis. The District believes that very few cases would be considered "de minimis emissions" violations.

**11. WRITTEN COMMENT**

Violations which result in excess emissions of toxics cannot be considered minor.

**DISTRICT RESPONSE**

Nearly all emission violations specified in Section (d) will involve some level, however negligible, of toxic air contaminants. The District does not agree these violations should be excluded from consideration as minor violations because there is a very small amount of associated toxic air contaminants. However, violations related to failure to order dry cleaning parts within two days of detection, gasoline tank submerged fill pipe lengths, and failure to properly empty gasoline tank spill boxes have been deleted from Section (d) and will not be considered minor violations.

In addition, other emission violations involving toxic air contaminants that will be treated by the District as a minor violation pursuant to Section (d)(9) cannot exceed any emission standard limitation or de minimis levels as determined by the District.

**12. WRITTEN COMMENT**

Violations of subsection (d)(5)(iii), and (6)(i) and (6)(iii) could prevent a determination of compliance. The following language should be added to these sections "provided the violation does not prevent a compliance determination of other applicable state or federal requirements, District rules and Regulations, or permit conditions."

**DISTRICT RESPONSE**

Subsection (b)(7), excludes from minor violations, "Any violation which precludes or hinders the District's ability to determine compliance with other applicable state or federal requirements, District Rules and Regulations, or permit conditions." Thus, the additional language requested is already provided for in the rule under Exclusions to minor violations in Subsection (b)(7) and does not need to be restated.

**13. WRITTEN COMMENT**

Subsections (d)(1)(i), (d)(1)(iv), and (d)(5)(ii) address permitting violations, such as a failure to receive an Authority to Construct or Permit to Operate which could result in excess emissions from the failure to establish appropriate controls and/or operating conditions. Facilities that begin construction, operation, or operation in a new location without authorization must not be rewarded for this behavior with leniency. These violations must not be considered minor.

**DISTRICT RESPONSE**

Failure to have an Authority to Construct or a Permit to Operate prior to operation are procedural violations which usually do not result in excess emissions. Subsection (d)(1)(i) provides if the violator knew or should have known a permit was required then the violation is not classified as a minor violation. Additionally, the exclusions in Section (b) preclude from consideration as minor violations: violations which allow a violator to benefit economically, violations which increased emissions above a de minimis amount, and violations which cause a public nuisance or endanger the environment.

**14. WRITTEN COMMENT**

Several "minor" violations listed in Subsection (d) involve excess emissions. Because the rule does not consider excess emissions violations above a "de minimis" level to be minor, it appears that the Air Pollution Control District has determined that in each of these instances, no more than a de minimis level of emissions will occur. Backup documentation should be provided supporting the decision that each item listed in Subsection (d) will represent no more than a "de minimis" level of excess emissions.

**DISTRICT RESPONSE**

The requested information is provided in Attachment A.

**15. WRITTEN COMMENT**

The electronic failure of the Healy 6280 monitor should be added as a minor violation, when it is only an electronic failure and the vacuum level can be verified by checking the magnehelic gauge.

**DISTRICT RESPONSE**

The District agrees that failures specifically limited to electronic failures (e.g., a light indicating a vacuum failure, or a light burned out) or a monitor out of paper are minor violations if the District can verify the gauge shows the proper vacuum level. They will be added to the rule.

**16. WRITTEN COMMENT**

Failure to paint manhole covers and vent lines white should be a minor violation.

**DISTRICT RESPONSE**

The District disagrees because the failure to paint manhole covers and vent lines white may result in excess toxic emissions.

**17. WRITTEN COMMENT**

When the Healy system magnehelic gauge indicates a high vacuum level above 85" water column, this violation should be considered minor.

**DISTRICT RESPONSE**

CARB Executive Order which certified the Healy bootless vapor recovery system specifies the operating range as between 65" and 85" water column. The Executive Order specifically states it is a failure of the system to operate outside this range. This type of violation may result in excess emissions and is not a minor violation.

**18. WRITTEN COMMENT**

When a pump is installed other than what is specified in the Authority to Construct, this should be considered a minor violation.

**DISTRICT RESPONSE**

A violation of Rule 10(a) which requires an Authority to Construct before construction commences is a minor violation only for those facilities not having prior permitting experience. If equipment installed under the initial application is other than as specified in the Authority to Construct, the facility is in violation of Rule 10(a) and will not be issued a minor violation.

**19. WRITTEN COMMENT**

When a Healy 6280 monitor is not installed in view of the cashier, or the view is obstructed, the Healy monitor will record errors regardless of where it is located, this should be a minor violation.

**DISTRICT RESPONSE**

The District agrees the monitor will record errors regardless of where it is located and will be added to the rule.

**20. ARB WRITTEN COMMENT**

CARB recommends deleting reference to "federal requirements" from Section (a) in order to be consistent with the statewide California Air Pollution Control Officers Association (CAPCOA) Model Rule. CAPCOA received a letter from U.S. EPA insisting federal requirements be excluded from the applicability of the rule.

**DISTRICT RESPONSE**

The District will delete "federal requirements" from Section (a), applicability.

# ATTACHMENT A

## RULE 6 - MINOR VIOLATIONS

### WORKSHOP REPORT

The calculations presented below are based on District records for the actual number of Notices of Violation (NOVs) and Notices to Comply (NTCs) issued and inspectors' observations of violations. These calculations require various assumptions to be made because most violations will vary to some degree in duration and magnitude. The District believes the following assumptions are representative and typical of the various minor violations in Rule 6 Section (d), which are considered de minimis emissions. It should also be noted that District rules identified below were enacted to minimize emissions from normal business activities.

Based on the actual number of minor violations that occurred in the County during the last three years and the various assumptions, the associated emissions averaged 659 lbs volatile organic compound (VOC) and 39 lbs of particulates per year. This equates to less than two lbs per day of emissions from all of the minor violations.

The total VOC emissions from point sources in San Diego County for 1995 was 18,151 tons. Comparing the total point-source emissions in the County to the total emissions attributed to minor violations, the minor violations accounted for only 0.0018% of the County's 1995 point sources annual VOC emissions.

Rule 6, (d)(2)(i) and (d)(2)(ii) - Noncompliance with Rule 67.17, open containers not more than five gallons.

#### ASSUMPTIONS:

- (a) **A container used for storing coatings (not solvents) = 90% of all violations.**  
[Coatings are more widely used in the County than solvents. Also, solvents tend to smell worse than compliant coatings, thus facilities are more likely to keep odorous solvent containers covered.]
- (b) **A container used for storing solvents accounts for 10% of all violations.**
- (c) **One-gallon container is a representative size container.**  
[While Rule 6 covers containers with a volume of five gallons or less, the five-gallon containers normally have a smaller cap that might be left open, it is the one-gallon container that would normally have the whole lid removed. There is also a significant number of containers being used below the one-gallon size (quarts, etc.)]

- (d) **Containers are being used for compliant coatings with VOC content of 340 g/l.**  
 [In the individual VOC rules, there is a number of specialty categories with a wide range of limits for the various VOC containing materials. This range is between 20 and 880 g/l (less water and less exempt compounds). However, specialty categories represent, generally, only a small part of all coatings used. A representative VOC content that would reflect general coating categories is being assumed as 340 g/l (less water and less exempt compounds). This equates to a VOC content of approximately 2.83 lbs of VOC per gallon.]
- (e) **Containers are being used for compliant solvents with VOC content of 880 g/l. This equates to a VOC content of approximately 7.33 lbs of VOC per gallon.**
- (f) **Fifty percent of coating's solvent will evaporate in one day.**  
 [Realistically, a container left uncovered would already be partially used. Once the coating container is left uncovered and the coating's solvent starts to evaporate, there is a "skin" that forms on the top layer of the coating and retards further evaporation. Since no data is available on exactly when the skin forms, and there is such a wide range of coatings being used, it will be assumed that 50% of the coating's solvent will evaporate over one day.]
- (g) **Entire content of a one-gallon solvent container will evaporate in one day. (Assumes worst case scenario.)**
- (h) **One one-gallon container per violation.**

**GIVEN:**

**There were a total of 486 NTCs and 131 NOV's issued during the last three years for Rule 67.17, for a total of 617 violations.**

**CALCULATIONS:**

The annual emissions expected from the assumptions described above is calculated as follows:

For Coatings:

$$\frac{2.83 \text{ lb VOC}}{\text{gal}} \times \frac{1 \text{ gal}}{\text{container}} \times (0.50) \times \frac{617 \text{ container violations}}{3 \text{ years}} \times (0.90) = \frac{262 \text{ lb VOC}}{\text{year}}$$



For Solvents:

$$\frac{7.33 \text{ lb VOC}}{\text{gal}} \times \frac{1 \text{ gal}}{\text{container}} \times (1.00) \times \frac{617 \text{ container violations}}{3 \text{ years}} \times (0.10) = \frac{151 \text{ lb VOC}}{\text{year}}$$

Total from both Coatings and Solvents = 262+151 = **413 lb/yr.**

Rule 6, (d)(3)(iii) - Noncompliance with Rule 67.6, cold solvent cleaner left uncovered when not in use.

#### **ASSUMPTIONS:**

Cold solvent degreaser information below was obtained from emission analysis of Rule 67.6 and National Emission Standards for Hazardous Air Pollutant (NESHAP) requirements.

- (a) **The size of a representative cold solvent unit has a five sq. ft. surface area tank opening.**  
[There are approximately 107 units > 5 sq. ft., and approximately 265 units < 5 sq. ft.]
- (b) **The representative solvent density is 880 g/l. (Approximately 7.33 lbs of VOC per gallon.)**  
[Mineral spirits was used as a representative solvent. The worst case emission factor of 1.1 lb/day per unit will be used.]
- (c) **The representative time the cold solvent cleaner was left uncovered is one day.**  
[If an open degreaser is found by an Air Pollution Control District (APCD) inspector, the facility would immediately close the lid and a violation would be issued. However, for this analysis, we assume a worst case where the lid remains off the entire day.]
- (d) **One unit per NOV.**

#### **GIVEN:**

- (a) **The emission reduction potential for a working mode cover is 40%.**  
[If the cover were not present, the 40% reduction would not take place. This number will be used to reduce the actual emission reductions for the one day in question.]
- (b) **There were a total of 221 NOVs issued over the last three years.**

**CALCULATIONS:**

$$\frac{1.1 \text{ lb VOC}}{\text{day per unit}} \times (1.40) \times (1 \text{ day}) \times \frac{221 \text{ units}}{3 \text{ years}} = \frac{113 \text{ lb VOC}}{\text{year}}$$

Rule 6, (d)(3)(iv) - Rule 67.6, cold solvent cleaners with solvent level less than two inches above the maximum fill line.

**ASSUMPTIONS:**

- (a) **The size of a representative cold solvent unit is five sq. ft. surface area tank opening.**  
[There are approximately 107 units > 5 sq. ft. and approximately 265 units < 5 sq. ft.]
- (b) **The representative solvent density is 880 g/l.**  
[Mineral spirits was used as a representative solvent. The worst case emission factor of 1.1 lb/day per unit will be used.]
- (c) **The representative time the cold solvent cleaner was left with a solvent level less than two inches above the maximum fill line is one day.**

**GIVEN:**

- (a) **The emission reduction potential for a compliant freeboard ratio is 20%.**  
[If the level was above the maximum fill line, the freeboard ratio would be changed. Assume that the ratio went from 1.0 to 0.75, the emission reduction for the freeboard ratio would not be realized (i.e. the 20% reduction would not take place). This number will be used to reduce the actual emission reductions for the one day in question.]
- (b) **There were a total of 33 NOV's issued for the last three years.**

**CALCULATIONS:**

$$\frac{1.1 \text{ lb VOC}}{\text{day per unit}} \times (1.20) \times (1 \text{ day}) \times \frac{33 \text{ units}}{3 \text{ years}} = \frac{15 \text{ lb VOC}}{\text{year}}$$

AIR POLLUTION CONTROL DISTRICT  
COUNTY OF SAN DIEGO

**PROPOSED NEW RULE 6 - MINOR VIOLATIONS**

Proposed new Rule 6 is to read as follows:

**RULE 6. MINOR VIOLATIONS**

**(a) APPLICABILITY**

This rule applies to any person or facility subject to San Diego County Air Pollution Control District (District) Rules and Regulations, permit conditions, and/or state requirements.

**(b) EXCLUSIONS**

This rule shall not be applied to:

- (1) Any knowing, willful or intentional violation,
- (2) Any violation of the same or similar nature as a prior Notice to Comply or Notice of Violation by the same person or facility within the previous 36 months or the last three inspection cycles, whichever time period occurs first,
- (3) Any violation which enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage,
- (4) Any violation that is a chronic violation or is committed by a recalcitrant violator,
- (5) Any violation which results in an increase in the emission of any air contaminant by more than a de minimis amount,
- (6) Any violation which causes a public nuisance, or endangers people, public health, or the environment, or significantly contributes to the violation of any state or National Ambient Air Quality Standard,
- (7) Any violation which precludes or hinders the District's ability to determine compliance with other applicable state or federal requirements, District Rules and Regulations, or permit conditions, or
- (8) Any violation which causes an increase in emissions of any toxic air contaminant in excess of any emission standard limitation, rule, permit condition, or other state or federal requirement that is applicable to that pollutant as a toxic air contaminant, or as a hazardous air pollutant as defined by the U.S. Environmental Protection Agency pursuant to Section 112 of the federal Clean Air Act.

**(c) DEFINITIONS**

For the purposes of this rule, the following definitions shall apply:

- (2) Rule 67.17 and/or permit conditions applying to any of the following:

Open containers used to store VOC containing materials not greater than five gallons, containers over five gallons with an access opening not greater than three inches in diameter, and/or containers used to store organic solvent containing cloths (paper or fabric) left uncovered.

- (3) Rule 67.6 and/or permit conditions applying to any of the following:

(i) Failure to permanently mark or have a line indicating the maximum allowable solvent level for dip tanks provided they meet the freeboard requirements.

(ii) Failure to label solvent cleaners with operating instructions.

(iii) Cold solvent cleaners left uncovered when not in use.

(iv) Cold solvent cleaners with solvent level less than two inches above the maximum fill line.

(4) Recordkeeping requirements provided the violation does not prevent a compliance determination of other applicable state or federal requirements, District Rules and Regulations, or permit conditions.

- (5) The following operational, administrative or procedural requirements:

(i) Failure to register and/or test circulating water for cooling towers.

(ii) Failure to notify the District of an intent to relocate portable equipment (e.g., engines, sand screens, batch plants, etc.) provided no New Source Review (NSR) thresholds have been exceeded.

(iii) Failure to have an air cap pressure gauge or other measuring requirements for high volume low pressure (HVLP) application equipment on site.

(iv) HVLP equipment operating at a pressure greater than 10 psig but less than 30% above the HVLP equipment's operating limits except when applying materials containing hexavalent chromium, nickel or nickel compounds, or copper or copper compounds.

(v) Breakdown notifications made after two hours but less than four hours after detection of the breakdown, provided all other requirements of Rule 98 are satisfied.

(vi) Roofing kettle temperature not greater than 10° F above the allowable operating temperature specified on the permit to operate.

(vii) Inoperative temperature, pressure, and/or flow gauges provided the violation does not prevent a compliance determination of other applicable state or federal requirements, District Rules and Regulations, or permit conditions.

- (6) Rules and/or permit conditions applying to dry cleaning facilities:

Comply is warranted, the District shall immediately notify the owner or operator in writing. The Notice to Comply may be mailed to the owner or operator of the facility.

(2) A Notice to Comply shall clearly state the nature of the alleged minor violation, a means by which compliance with the requirement(s) cited may be achieved, and a reasonable time limit in which to comply, which shall not exceed 30 calendar days.

(3) A single Notice to Comply shall be issued for all minor violations cited during the same inspection and 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 which is corrected immediately in the presence of the inspector during the normal course of an inspection. A copy of inspection results documenting corrective action will be provided to the person who corrects a minor violation immediately in the presence of the inspector. However, if a minor violation cannot be corrected during the normal course of the inspection without delaying the inspector, a Notice to Comply will be issued. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator or a chronic violation.

(5) A Notice to Comply shall contain a statement that the inspected facility may be subject to re-inspection at any time. Nothing in this rule shall be construed as preventing the re-inspection of a facility at any time to ensure compliance or to ensure that cited minor violations have been corrected. Any false statement that compliance has been achieved is a violation subject to further legal action pursuant to Division 26 of the California Health and Safety Code, section 42400, et seq.

(6) Except as otherwise provided herein, a Notice to Comply shall be the only means by which the District shall cite a minor violation. The District shall not take any other enforcement action 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 rule.

(7) A person who receives a Notice to Comply shall, within five working days of achieving compliance, sign the Notice to Comply form stating the person has complied with all the items cited, and return the form to the District.

(8) Nothing in this rule shall be construed as preventing the District from requiring a person receiving a Notice to Comply to submit reasonable and necessary documentation to support a claim of compliance.

(9) Nothing in this rule shall restrict the power of any city attorney, the District Attorney, 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 rule prevents any representative of the District, from cooperating with, or participating in, such a proceeding.

(10) Notwithstanding any other provisions of this rule, if the District determines that the circumstances surrounding a particular minor violation are such that the assessment of a penalty is warranted, or required by federal law, in addition to the issuance of a Notice to Comply, the District shall assess a penalty in accordance with Division 26 of the California Health and Safety Code, section 42400, et seq., if the District makes written findings that set forth the basis for the determination by the District.