

Updated Informative Digest

MINOR VIOLATIONS AND ISSUANCE OF A NOTICE TO COMPLY

Sections Affected

Adoption of new sections 60090 through 60094, Title 17, California Code of Regulations (CCR).

Background

AB 2937 (Brulte; Stats. 1996, Chapter 775) was enacted in 1996 to limit enforcement actions by specified agencies for minor violations to the writing of a "Notice to Comply". AB 2937 added sections 39150 - 39153 to the Health and Safety Code (H&SC) and amended section 42400.5. It also added similar provisions to the Water Code, which are not addressed in this rulemaking decision.

AB 2937 requires the Air Resources Board (ARB or Board), the local air pollution control districts, the State Water Resources Control Board and regional water quality control boards to adopt regulations classifying minor violations and to implement a "Notice to Comply" (NTC) program in accordance with the statutory criteria. This rulemaking action does not pertain to local air district minor violation programs. They are currently drafting and adopting their own rules to comply with this legislation.

The ARB is required to adopt regulations to classify minor violations in the areas for which it has direct enforcement authority. These areas include motor vehicle fuels content, cargo tank inspections, and consumer products (H&SC sections 43830 et seq., 41962, and 41712, respectively).

At the April 23, 1998 public hearing, the Board approved a regulation which defines minor violations and establishes guidelines for the issuance of the notice to comply associated with the minor violation. Modifications were made to the originally proposed text, which were circulated for a 15-day public comment period. These modifications and all other text of the regulation were adopted by Executive Order G-98-065.

The ARB has defined two classifications of minor violations: 1) emissions-related "de minimis" minor violations, and 2) procedural minor violations. The ARB's Executive Officer has the ability to use his or her judgment on a case-by-case basis to determine which violations are "de minimis".

The identification of a violation as minor is subject to the limitations specified by AB 2937. Specifically, AB 2937 prohibits any 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. The main difference between a NTC and a notice of violation (NOV) is that there are no civil, criminal or administrative penalties associated with a

NTC, except as otherwise specifically provided for in law, if the violation is promptly corrected.

The ARB is required to prepare a report to the Legislature by January 1, 2000 on actions taken by the ARB and the local air districts to implement AB 2937 and the results of that implementation. A status report on ARB's minor violation program will be presented to the Air Resources Board in June 1999.

Description of the Regulatory Action

The regulation provides that no emissions related violation may be considered a minor violation, unless the violation is determined by ARB's Executive Officer (or delegated staff pursuant to H&SC section 39516) to be so trivial or inconsequential as to be "de minimis". Toxic air contaminants are included in this classification, as long as the level of the toxic portion of the emissions violation are not above specified legal limits. The Executive Officer has the discretion to determine a de minimis violation on a case-by-case basis, and the Board has not prescriptively established these "de minimis" levels. The regulation provides that specified procedural violations shall be included within the definition of minor violation.

The regulation specifies that a "notice to comply" (NTC) is to be written in the course of conducting an inspection except where testing must be conducted. The NTC must clearly state the nature of the alleged minor violation, a means by which compliance can be achieved, and a time limit to comply, not to exceed thirty days. Included is a means of written appeal of the NTC pursuant to criteria set forth in the regulation. Corrective action may be taken if the Executive Officer (EO) determines that immediate enforcement is warranted or is otherwise required by law. This regulation does not restrict local or federal authorities from pursuing criminal proceedings authorized by law, or prevents the Executive Officer from participating in such a proceeding.

This regulation only applies to areas where ARB has direct enforcement authority. These areas include motor vehicle fuels content, consumer products, and cargo tank inspections. This regulatory action does not apply to local air district minor violation programs.

Comparable Federal Regulations

U. S. EPA has authority under the federal Clean Air Act to implement a field citation program for violations which are minor in nature. This authority expanded EPA's range of enforcement tools by allowing the agency to administratively assess civil penalties of up to \$5,000 per day per violation, using field citations for appropriate minor violations. In May 1994, EPA published a notice of proposed rulemaking concerning the Field Citation Program. To date, no final rule has been promulgated.