Appendix III
Air District Model Rule

(Adopted _____)

CAPCOA
Model Notice to Comply Rule
10/20/97

(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 violation and establish guidelines for issuing a Notice to Comply.

(b) Applicability

This rule applies to any person subject to state requirements, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by a district.

(c) Definitions

(1) **CHRONIC VIOLATION:** A violation that reflects a pattern of neglect or disregard that results in the same or similar violation at the same source or facility or same piece of equipment.

(2) **INFORMATION:** Data, records, photographs, maintenance records, analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which a permit was issued or applied or which is subject to state or federal requirements, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by a district.

(3) (A) **MINOR VIOLATION:** The failure of any person to comply with administrative or procedural requirements of applicable state requirements, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the district which meets the following criteria:

(i) Does not result in an increase of emissions of air contaminants;

(ii) Does not endanger the health, safety, or welfare of any person or persons;

(iii) Does not endanger the environment;

(iv) Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;

(v) Does not preclude or hinder the district's ability to determine compliance with other applicable state or federal requirements, district rules and regulations, administrative or procedural plan or permit conditions, or requests for information or records.

(B) Notwithstanding subparagraph (c)(3)(A) above, no violation of an applicable state or federal requirement, district rule or regulation, administrative or procedural plan or permit condition, or request for information or records shall be considered a minor violation if:

(i) The violation involves failure to comply with the emission standards in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material limitations, and other rule provisions directly associated with emissions; or

(ii) The violation is knowing, willful, or intentional; or

(iii) The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or

(iv) The violation is chronic; or

(v) The violation is committed by a recalcitrant violator; or

(vi) The violation results in a nuisance.

(4) **NOTICE TO COMPLY:** A written method of alleging a minor violation that meets the requirements of Health and Safety Code section 39151.

(5) **PROCEDURAL REQUIREMENT:** A provision of a rule or regulation that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.

(6) **RECALCITRANT VIOLATOR:** A person or facility where there is evidence indicating 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 or federal law or regulations.

(d) Requirements

(1) Except as otherwise provided in paragraph (d), a Notice to Comply shall be the only means by which the APCO/Executive Officer shall cite a minor violation. The APCO/Executive Officer shall not take any other enforcement action specified in this division 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 section.

(2) Any person who receives a Notice to Comply pursuant to this subparagraph 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 (5) working days of achieving compliance, the person who received the Notice to Comply shall sign and return it to the Executive Officer, stating that the person has complied with the Notice to Comply. The return shall also include a written statement describing when and how compliance was achieved. Failure to respond or a false statement that compliance has been achieved is a violation subject to further legal action pursuant to the Health and Safety Code, section 42400, et seq.

(3) 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.

(4) 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 or other district documents, but the person or facility shall not be subject to any further action by the district's representative or an authorized or designated officer. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator.

(5) Testing

(A) 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 APCO/Executive Officer shall have a reasonable period of time to conduct the required testing.

(B) If, after the test results are available, the APCO/Executive Officer determines that the issuance of a Notice to Comply is warranted, the APCO/Executive Officer shall immediately notify the person or facility owner or operator in writing. If off site testing is required pursuant to subdivision (d)(5)(A), a copy of the Notice to Comply may be mailed to the person or owner or operator of the facility.

(6) Notwithstanding any other provision of paragraph (d), if a person or facility fails to comply with a Notice to Comply within the prescribed period, or if the APCO/Executive 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 APCO/Executive Officer may take any needed enforcement action authorized by law.

(7) Nothing in this rule shall be construed as preventing the reinspection of a site or facility to ensure compliance or to ensure that minor violations cited in a Notice to Comply have been corrected.

(8) Nothing in this rule shall be construed as preventing the APCO/Executive Officer, on a case-by-case basis, from requiring a person or facility subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance by the person or facility.

(9) The issuance of a Notice to Comply for a violation of state law will not interfere with an agency's ability to enforce all federal requirements or laws.

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

(e) Appeals

Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the APCO/Executive Officer within (district specified #) days of receipt of the Notice. The appeal shall state the grounds and basis for the appeal and include any evidence as to why the Notice to Comply should not have been issued. The APCO/ Executive Officer shall grant or deny the appeal within (# of days). If the APCO/Executive Officer fails to respond, the appeal shall be deemed denied. The APCO/Executive Officer's decision shall be final.

(f) Penalty for failure to comply

Any person or facility who fails to comply by the date specified on the Notice to Comply shall be subject to further enforcement action pursuant to the Health and Safety Code, section 42400, et seq., or any other applicable law.

(f) Expiration

This rule shall remain in effect only until January 1, 2001, and as of that date is repealed unless a later enacted rule, which is enacted on or before January 1, 2001, deletes or extends that date, or unless Health and Safety Code sections 39150 - 39153 are extended beyond that date by an act of the Legislature which is signed into law by the governor.