

# Frequently Asked Questions on Minor Violation Implementation Guidance

Assembly Bill (AB) 2679 (Stats. 2008, Chapter 500), effective January 1, 2009, modifies sections of the Public Resources Code (PRC) to enhance enforcement for solid waste enforcement agencies (EA) and the California Integrated Waste Management Board (Board). One of the major changes is a new enforcement tool for EAs and the Board to use to address minor violations observed during an inspection of a solid waste facility or disposal site. The page includes frequently asked questions on the implementation of this new legislation.

## 1. **What qualifies as a minor violation?**

The statute does not definitively describe what constitutes a minor violation, only what does not qualify as a minor violation. Violations that do not qualify as minor violations are ones that result in injury to persons or property or that present a significant threat to human health or the environment, or ones in which the owner and/or operator knowingly, willfully, or intentionally committed the violation or a chronic violation, or the owner and/or operator is a recalcitrant violator indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements. In addition, a minor violation cannot be one that results in an emergency response from a public safety agency or one that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

## 1. **When does an EA have to implement the provisions in PRC 45003?**

Only when an EA observes a minor violation, as defined, in the course of conducting an inspection.

## 2. **Is a minor violation the same as an area of concern?**

No. A minor violation is defined in PRC 40150.2 and is considered a violation, whereas an area of concern is not a violation and is used to document concerns

or issues the EA observes during an inspection that need to be addressed to reduce the potential for a future violation.

- 3. What if the cited owner or operator does not correct a minor violation or return a signed [notice to comply](#) or submit a notice of disagreement within the specified timeframes?**

The EA should note a violation in an inspection report and implement enforcement action as described in their EPP.

- 4. What if the EA determines during a reinspection that the cited owner or operator did not correct the minor violation(s) in the time specified in the notice to comply?**

The EA should note a violation in an inspection report and implement enforcement action as described in their EPP. Also, a false certification that a violation has been corrected is punishable as a misdemeanor (45003(c)(3)).

- 5. If the owner or operator submits a notice of disagreement, what steps should the EA follow?**

Follow the steps provided in the EPP to resolve the disagreement like any other violation contested by the owner or operator. For example, the EA may coordinate a compliance meeting with the cited owner or operator to consider their contention (e.g., statement of facts) that the violation(s) is not a minor violation. Depending on the determination made during the compliance meeting, the EA may rescind the notice to comply (and issue an amended inspection report), modify the notice to comply, or uphold the notice to comply. If the EA upholds the notice to comply and the operator has not corrected the minor violation, the EA may cite a violation in an inspection report and implement enforcement action as described in their EPP.

- 6. Will this process circumvent the Inventory process (Title 14, California Code of Regulations, Sections 18360 through 18368)?**

No. If the same violation of a state minimum standard is documented in an inspection report during two consecutive months, the Board will initiate the inventory process. Please see the [flow chart that diagrams how the minor violation process and the Inventory process work.](#)

**7. What if more than one minor violation is observed during an inspection?**

A single notice to comply would be issued listing all the minor violations and the manner in which each minor violation may be brought into compliance.

**8. Is a notice to comply considered an enforcement action?**

Yes. PRC 45003 requires an enforcement action in the form of a notice to comply. However, it is an enforcement action that is limited by the terms of PRC 45003 and cannot be appealed to the hearing officer or hearing panel provided in PRC 44307.

**9. Can a notice to comply be appealed by the owner or operator?**

No. A notice to comply cannot be appealed to the hearing officer or hearing panel provided in PRC 44307. However, if the cited owner or operator fails to correct the minor violation, the EA may note a violation on an inspection report and take appropriate enforcement action. An enforcement action issued for a disputed minor violation is subject to appeal pursuant to PRC 44307.

**10. Can the recipient of a notice to comply request a hearing in accordance with PRC 44307?**

No. However, an owner or operator who is subject to an enforcement action (e.g., issuance of a notice and order, cease and desist order, etc.) that arises from a minor violation the owner or operator fails to correct or fails to certify, in a timely manner, as having been corrected, as provided in PRC 45002(b) may appeal, as provided by PRC 44307.

**11. How does the process of serving a notice to comply affect the hearing panel process?**

This process will not affect the hearing panel process. Although the notice to comply cannot be appealed, the owner or operator may appeal any enforcement action that is issued by the EA on the basis of any disputed minor violation(s) and any subsequent appeals of that enforcement action would be handled pursuant to PRC 44307 et. seq.

**12. Can the EA conduct a reinspection of the solid waste facility or disposal site to verify that the minor violation was corrected?**

Yes. The EA can verify the status of the minor violation at any time regardless of the inspection frequency (e.g., monthly, quarterly, etc.). It is at the EA's discretion to follow up and verify if a cited minor violation was corrected, which can be part of their next periodic monthly, quarterly, or annual inspection or as a focused inspection.

**13. Will updates to the EPP be required to reflect this new process?**

Yes. PRC 45003 states that an EA shall only take enforcement action to correct a minor violation in the manner specified in PRC 45003. EAs must add the process in their EPP at the next update due date. At that time, there are two options for the EA to address this: 1) incorporate this Board guidance document by reference or in full as part of the EPP update; or 2) submit an alternate procedure which complies with the statutory requirements for Board approval.

**14. What does the minor violation restrict the EA from doing?**

The only restriction is for the minor violation process to be completed before the EA takes any additional enforcement action. The EA is not restricted in conducting reinspections, requiring submittal of documentation to support claims of correction of a minor violation, or working cooperatively with legal counsel (city attorney, county counsel, district attorney, or Attorney General) in any actions they may be considering.

## Resources

- [LEA Central](#)
- [Proposed Regulations](#)
- [Rulemaking Archives](#)
- [Current Regulations](#)
- [Regulations Implementation](#)
- [Legislation and Regulations](#)
- [Legislation Implementation](#)
- [Solid Waste Facilities Home](#)