

Minor Violation Implementation Guidance

Background

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). A [summary of major provisions](#) provides an overview of the changes that took effect on January 1, 2009. 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. (AB 2679 provides that, for purposes of enforcement, a solid waste facility also includes a solid waste operation under an EA notification [see PRC 40194].) The new enforcement tool for citing “minor violation” was created by PRC 45003. In essence, PRC 45003 provides that EAs who observe minor violations to undertake enforcement only by means of a [Notice To Comply](#), rather than using any of the other enforcement options set out in the Integrated Waste Management Act and the EA’s Enforcement Program Plan (EPP). The purpose of this guidance is to alert EAs to the new enforcement tool and to explain how EAs might implement it in their jurisdictions.

The guidance was presented and discussed at the February/March 2009 [Roundtables](#) throughout the State and March 2009 [Enforcement Advisory Council](#) (EAC) meeting. Based on the discussions during the round tables, EAC meeting and written comments received, it has been determined that a working group should be formed to further evaluate the questions and concerns raised regarding the need, adequacy and requirements of PRC 45003. Board staff will discuss the formation of a working group at a future EAC meeting. The working group will consider issues raised such as, but not limited to, potential legislative cleanup language, legislative changes, the use of an area of concern, and use of an inspection report as a notice to comply.

Board staff did incorporate comments received where applicable. However, many of the comments and suggestions could not be incorporated in the guidance at this time due to inconsistencies with the statutory requirements of PRC 45003. A [flow chart illustrating the minor violation process](#) has been developed.

The Board is providing the below guidance document to assist LEAs in the use of this tool. Many of the items in the guidance are specified in the PRC. However, for the

portion of the guidance that are procedural, such as the NTC form, the LEA may use its own method to administer the law.

Please send any additional questions or comments to CEED@calrecycle.ca.gov.

Applicability

The following guidance is provided to EAs who cite a minor violation, as defined, during an inspection of a solid waste facility. Please note that the use of this provision in law is at the discretion of the EA, since it is the EA who decides whether the violation observed at the facility is a minor violation (as defined), a regular violation, an area of concern, or something else. However, if an EA cites a minor violation at an operation or facility, the law specifies how it should be handled. The guidance and related [frequently asked questions](#) are provided to assist you in complying with the law if an EA determines a minor violation exists.

Definition of Minor Violation

A minor violation, as defined in PRC 40150.2, means the failure of a person to comply with a requirement or condition of an applicable law, regulation, permit, information request, order, variance, or other requirement that an EA or the Board is authorized to implement or enforce, but does not include any of the following:

1. A violation that results in injury to persons or property or that presents a significant threat to human health or the environment;
2. A knowing, willful, or intentional violation;
3. A violation that is a chronic violation or that is committed by a recalcitrant violator;
4. A violation that results in an emergency response from a public safety agency;
or
5. A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

If the EA determines that a violation meets any of the aforementioned criteria, then the violation is not a minor violation and must be resolved through the EA's regular inspection notice and enforcement procedures as outlined in its EPP. In other words, if the violation(s) is not determined to be a minor violation as defined, then the process below cannot be utilized. However, if an EA, or the Board when it is acting as an EA,

determines that the violation observed during an inspection meets the definition of a minor violation, the requirements provided in PRC 45003 must be followed. The process below can be utilized to meet the requirements of PRC 45003. Alternatively, an EA may develop its own procedures to ensure the requirements of PRC 45003 are met.

Minor Violation Process:

1. An EA observes a minor violation at a solid waste facility, operation, or disposal site. The minor violation should not be cited as a violation in the inspection report, but a note should be included in the inspection report indicating the presence of a minor violation and referring to the notice to comply (NTC). PRC 45003(b) indicates that a minor violation can only be cited in a NTC. The current Board inspection report forms are not considered to be NTC.
2. EA serves a NTC to the owner or operator (the cited owner or operator), either at the time of the inspection or via mail, specifying all of the minor violations observed and the manner in which they may be corrected. If mailed, it is recommended that the NTC be sent by certified mail, to provide evidence that the cited owner or operator received it. The NTC should include the following:
 - name of owner or operator to whom the NTC is directed (i.e., the cited owner or operator);
 - facility name and facility number (identifiers);
 - minor violation(s);
 - manner in which the minor violation(s) may be corrected;
 - notice of the timeframe to correct the minor violation(s): the maximum that can be allowed to correct the minor violation is 30 days, but the EA can require a shorter timeframe;
 - place for the cited owner or operator to sign certifying that the minor violation(s) was corrected; and
 - statement that if the cited owner or operator disagrees with one or more of the alleged minor violation(s), he or she may submit a Notice of Disagreement to the EA.

Attached is a [sample NTC](#) and [transmittal letter](#) that the Board may utilize where it is serving as the EA. The EA may utilize the sample NTC and/or transmittal letter or

develop their own NTC which is consistent with the requirements of PRC 45003. Use of the sample NTC and transmittal letter is not required by statute.

3. The cited owner or operator must correct any minor violation(s) cited in the NTC by the date specified in the NTC (but not more than 30 days from the date of the NTC).
4. Within five working days of correcting the minor violation(s), the cited owner or operator, or their authorized representative, must sign and return the NTC to the EA, certifying that any undisputed minor violation(s) has been corrected.
5. If the cited owner or operator does not agree with one or more of the minor violation(s) stated in the NTC, he or she must submit a written notice of disagreement to the EA specifying the allegations with which he/she disagrees by the compliance date specified in the NTC, but not more than 30 days from the date of the NTC.
6. The EA may note a violation on an inspection report and take appropriate enforcement actions as described in their EPP if the cited owner or operator: (1) fails to correct the minor violation(s) by the date specified in the NTC; (2) has not corrected the minor violation(s) and returned the signed NTC certifying that the undisputed violation(s) was corrected; or (3) fails to submit a written notice of disagreement to the EA within 30 days from the date of the NTC.
7. A NTC cannot be appealed to the hearing panel or hearing officer under Section 44307, since that would be contrary to the intent of Section 45003, which is to provide a means for quick correction of minor violations. In addition, the language of Section 45003(e) indicates that an appeal under PRC Section 44307 is appropriate only when an enforcement action is taken when an owner or operator fails to timely correct a minor violation. However, if the EA takes enforcement action for failure of the cited owner or operator to correct a minor violation that is being disputed, the cited owner or operator may appeal that enforcement action in accordance with PRC 44307. In the event of such an appeal of an enforcement action, the EA would follow the appeal and hearing panel/officer procedures as described in their EPP.

8. A copy of the NTC shall be sent to the Board following issuance pursuant to PRC 43209(c), which provides that the EA file with the Board, upon its request, information the Board determines to be necessary.

EA Options When Utilizing PRC 45003

Option 1: [Sample notice to comply form](#): Sample NTC can be served to operator at the time of inspection.

Option 2: [Sample notice to comply transmittal letter](#): This option would be mailed after the inspection along with a notice to comply.

Option 3: EA uses its own format/process that meets the statutory requirements.

Resources

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