



San Joaquin Valley

AIR POLLUTION CONTROL DISTRICT

November 18, 2008

Chelly Reesman
JR Simplot Company
PO BOX 27
Boise, ID 83707

RE: Response to comments on the draft inspection policy COM 2035

Dear Ms. Reesman:

The San Joaquin Valley Air Pollution Control District (District) would like to thank you for taking the time to comment on the District's Compliance Department Policy. Your letter, dated June 17, 2008, commented on Draft Policy COM 2035. COM 2035 is the policy that Compliance Department Staff uses to interpret/apply/enforce *Rule 1100 – Equipment Breakdown*.

District Policy Section II.A. begins with: "Incidents involving any of the following characteristics shall be inspected as a priority:..." Section IV.A.5 states to: "Verify photos of the defective equipment have been attached..."

Simplot comments:

In order to quickly respond to a breakdown, facilities may find it necessary to perform repair work before the inspector arrives to review and photograph the breakdown condition. In some situations, there may be nothing to photograph. A weekend repair where the affected part has been re-insulated may be an example of this type of situation. Please clarify that the agency's need to observe and photograph should not interfere with the facilities ability to quickly make repairs, minimize excess emissions, and avoid unnecessary plant downtime.

District reply:

Section II.B. adequately addresses the situation you describe in your comments above. Furthermore, the District requires that sources remedy the breakdown situation as quickly as possible and should not wait for District staff to arrive before attempting such repairs. It is up to the source to provide the burden of

proof when requesting breakdown relief and as such, should provide as much information about the breakdown as possible, which could include the source's own photographs of the broken equipment and if possible, the broken parts should be kept on hand to allow for inspection by District staff.

District Policy III.B.5 states: "Request that the failed equipment parts be identified and photographed; establish the "root cause" of the breakdown, if known at the time of inspection."

Simplot comments:

Some photographs may contain proprietary information. We suggest that the inspector be instructed to allow the facility to make a claim of confidentiality for any proprietary information photographed. In addition, the policy should remind the inspector to treat all proprietary information accordingly.

District Reply:

The District concurs with you and will address dealing with proprietary photographs. The District has a confidentiality rule in place and has administrative policies and procedures in place for the handling and securing of confidential and proprietary information.

District Policy III.B.9 has in the body to: "...request that the representative determine what the manufacturer recommends for routine maintenance..." and III.B.10: "...manufacturer's recommended replacement rate..."

Simplot comments:

Manufacturers recommend maintenance to a variety of customers when their equipment can be utilized for a variety of purposes. In some instances, facility experience may be a better indicator. Relying solely on manufacturer recommendations for the purpose of determining whether a facility qualifies for relief under District Rule 1100 is not always appropriate. The inspector should consider facility knowledge in addition to manufacturer recommendations.

District reply:

The District does not believe that this section requires our inspectors to rely solely on the manufacturers recommendations and, in fact, does allow for the use of facility in-place practices and maintenance procedures.

District Policy IV.A.3.f states that: "Recurrent is defined as breakdown of a component that has had three breakdown events within the last three years."

Simplot comments:

Recurrent is not defined in Rule 1100. Request the District provide the basis and justification for the new defined definition of recurrent.

District reply:

Rule 1100 does not provide a definition of recurrent. Webster's Dictionary describes it as "happening time after time." The District believes an appropriate interpretation of "recurrent" exists in the policy as it is written. The District has used the terms in the policy for many years and does not regard the definition in the policy to be new.

District Policy IV.A.4 states: "Steps must be taken to avoid future occurrences or breakdown relief may not be granted."

Simplot comments:

Rule 1100 does not make this distinction.

District reply:

Rule 1100 prohibits recurrent breakdowns.

District Policy, Appendix A.8 states to deny breakdown relief for: "Failure to replace parts according to the manufacturer's recommended lifespan."

Simplot comments:

Consideration of facility knowledge and equipment history should be included in the determination.

District reply:

The District believes that maintenance activities such as replenishing lubrication, cleaning equipment, tuning equipment, etc. is much different than replacing parts based on manufacturers recommendations. As a regulatory agency, there cannot be open-ended discussion on the replacement of parts with each facility on each part, at each breakdown. The line has to be drawn somewhere and that line will stand at the manufacturers recommendations.

District Policy, Appendix A states to: "Grant relief regardless of recurrence for Utility Power Outages."

Simplot comments:

This relief should be extended to other types of utility outages beyond the control of the facility, such as, properly operating phone lines. Facilities are not notified when other customer lines are not operating properly, such as phone lines used for polling CEMS. In addition, the phone company is under no obligation to respond to pressure from a facility regarding a phone line that belongs to another entity.

District reply:

The District agrees and will add phone line outages to the list.

In addition to the above, you had commented that the policy appears to narrowly define and modify how Rule 1100 is applied, and in doing so it should be subject to the rule-making provisions of the Administrative Procedure Act (APA). The APA deals with rule-making guidelines for state agencies. The District is not a state agency and is therefore, not subject to its provisions.

In closing, the District would like point out that at this time, the District will make the changes to the policy that have been directly stated in this letter and will review the policy in its entirety to determine if any changes can be made to further clarify the Districts position on breakdowns. At this time, the District has no plans to reopen Rule 1100 to add the interpretations that are addressed in the policy.

Should you have any further questions or comments, please send them to my attention.

Sincerely,

Patrick Houlihan
Senior Air Quality Specialist