

**SAN JOAQUIN VALLEY UNIFIED
AIR POLLUTION CONTROL DISTRICT
COMPLIANCE DEPARTMENT**

COM 1140

APPROVED: _____ **SIGNED** _____ **Date:** **February 8, 2007**

Jon Adams
Director of Compliance

TITLE: **COMPLAINT RESPONSE GUIDELINES**

SUBJECT: **INVESTIGATION OF COMPLAINTS**

OBJECTIVE:

The purpose of this policy is to establish uniform criteria for the investigation and documentation of complaints and public nuisances.

PURPOSE:

Rule 4102 (Nuisance) of the Rules and Regulations of the San Joaquin Valley APCD and California Health and Safety Code Section 41700 provides for the protection of the public from nuisances caused by air contaminants. It is the purpose of this policy to ensure (1) complaints are investigated in a prompt and professional manner; (2) ensure that staff properly documents their observations; and (3) ensure that any necessary corrective actions are implemented expeditiously. The district will investigate complaints and enforce Rule 4102 in accordance with these procedures and policies. The rule provides for the mitigation of public nuisances resulting from the emission of air contaminants.

POLICY STATEMENT:

I. COMPLAINT ASSIGNMENT

A. COMPLAINTS RECEIVED DURING NORMAL OFFICE HOURS

1. The clerical staff normally receives complaints. Personnel receiving the complaint initiate a complaint form.
2. The complaint is entered into the computer database and assigned to the Area Inspector. Supervising inspector or clerical staff shall phone/page/text message the inspector for assignment.
3. Complaints will be assigned as soon as possible. If no inspector can be reached

within 20 minutes the supervisor or manager should be contacted.

B. COMPLAINTS RECEIVED AFTER NORMAL OFFICE HOURS

1. The District telephone system records complaints that are received after normal office hours and pages the group page number when a complaint is recorded.
2. The on-call inspector is to call in and listen to the recorded message when paged and immediately call the complainant to personally interview them concerning the nature of the complaint.
3. The on-call inspector shall enter all complaints that he/she receives into the complaint database. At that time the voice mail messages may be erased or forwarded to the assigned inspector. If the on-call inspector is unable to enter all the complaints in the database while on-call, clerical staff may be asked to enter the complaints into the database on the next working day.
4. Complaints regarding a violation in progress should receive immediate response. Minor violations that can be easily verified at a later date may be investigated the next working day, if necessary.
5. Requests for assistance by a fire agency should receive immediate response unless fire agency personnel are able to document a violation without our assistance.
6. Complaints identified by a supervisor as an on-going problem that requires special treatment should receive immediate response.
7. Odor or other potential nuisance type complaints should be investigated as soon as possible when more than one complaint is received or if after talking to the complainant there is a possibility that there might be a public health threat then the inspector should respond as soon as possible.
8. Always call the complainant as soon as possible after receiving a page.
9. For complaints that will require a response after dark, no field response will be initiated unless it is believed that a public health or safety hazard is in progress and supervisor or manager approval has been given.
10. Inspector safety should always be considered. If you encounter unsafe conditions, exit quickly and report the situation to your supervisor. In some cases it may be necessary to request the assistance of law enforcement.
11. When it is questionable if a complaint requires immediate response, contact a supervisor or manager for assistance.

12. Complaints received by the on-call staff that require prompt investigation, but are not immediately investigated due to nightfall or other extenuating circumstances, shall be investigated by the end of the next day. Complaints that are not investigated before the next working day shall be assigned to the appropriate supervisor for reassignment to another inspector. The supervisor shall be notified by voicemail of the pending complaint assignment.
13. Any time the inspector spends answering pages, listening to voicemail complaint messages, talking to complainants, or entering information into the database should be reported as hours worked.
14. All time the inspector spends driving to the field, investigating the complaint, and returning home should be reported as callback.

C. COMPLAINTS RECEIVED BY THE INSPECTOR

When a complaint is received by an inspector in the field, the inspector shall enter the complaint into the computer database while in the field or when he/she returns to the office.

D. AREA WIDE COMPLAINT EPISODES

1. Area-wide complaint episodes are generally the result of an unusual occurrence such as a large accidental fire or an industrial incident resulting in emissions of air contaminants that are readily detected by the public.
2. When a complaint episode occurs which is of such magnitude that it cannot be handled by the area inspector, compliance division staff should immediately alert the compliance manager and the appropriate supervising inspector in order to assign the additional personnel within the area to handle the situation.

E. ARB, EPA REFERRAL

Complaints referred by the ARB or EPA are normally received by telephone, with written notification to follow. These complaints will be entered into the computer database and assigned as soon as possible. Inspectors will be sent a copy of ARB and EPA's written complaint as soon as it is received.

F. CANCELLATION

Complaints may be cancelled for the following reasons:

1. A second complaint is received on the same day for the same source from the same person.
2. A second complaint is received on the same day from a related person in the same household.
3. The source of the complaint is located outside the District.
4. The source of the complaint is not within the scope of the District authority.

In all cases, the complainant should be contacted and advised of District actions.

G. COMPLAINTS FROM SCHOOLS (WATERS BILL – AB 3205)

If the principal of a school contacts the District to request an investigation of odors or possible air pollution sources as the cause of illness among school children, the District must respond and notify the city or county office responsible for administering hazardous materials policies and the fire department having jurisdiction as soon as possible.

The inspector who receives this complaint is responsible for notification.

H. GASOLINE DISPENSING FACILITY COMPLAINTS

Gasoline dispensing facility complaints should be entered into the computer database and forwarded to the appropriate District inspector.

II. FIELD INVESTIGATION

A. GENERAL

1. Complaint responses will take precedence over all other assignments with the exception of violations in progress.
2. When the area inspector is unavailable, an alternate inspector will be assigned the complaint.
3. After a complaint has been assigned, the inspector should first call and talk to the complainant and then decide whether to investigate the source or contact the complainant in person.
4. If there is a possibility that a violation is in progress and the inspector is confident that the complainant has accurately identified the source, the complaint response should begin with the investigation of the suspected source of the complaint. With odor complaints it is best to verify the odor before

investigating the suspected source.

5. Upon arrival at the scene, every effort will be made to avoid obvious identification of the complainant (do not park in front of the complainant's home when the complaint source is in the vicinity). The complainant will not be identified to anyone who is not an employee of the District.
6. If the complainant is not at home, the inspector will leave a message.

B. CUSTOMER SERVICE

The following guidelines will be followed when conferring with the complainant:

1. Inspectors will identify themselves by name and agency in a friendly manner.
2. Inspectors will be courteous and objective.
3. The complainant will be allowed to tell their story without unnecessary interruptions. When facts appear, the inspector should repeat them aloud for verification and write them down.
4. After the complainants have expressed themselves, the inspector should proceed with a line of questioning which will determine the cause, nature, and source of the air pollution problem cited in the complaint.
5. Ask the complainant how he expects the complaint to be resolved.
6. Inspectors will explain the laws involved and evidence necessary to proceed with enforcement action.
7. Do not promise any legal action nor commit the District to any course of action.
8. Always try to deliver your message in a positive manner, even if the message may be unwelcome.
9. Do not solicit complaints.

C. COMPLAINT INTERVIEW

In order to obtain the necessary data, the following should be obtained:

1. Name and location of the suspected source;

2. Description of the problem and its frequency;
3. Time of day the problem was first noticed;
4. Duration of problem at each occurrence;
5. Names and addresses of affected persons.
6. Location and extent of property damage, if any.
7. Description and frequency of any illness or symptoms alleged to have resulted from exposure to air contaminants. Report any observed or reported symptoms such as nausea, vomiting, headache, sore throat, cough, eye irritation.
8. Description of odors, if any.
9. Any other information the complainant may have that will relate the problem to a specific source.
10. If soiling or other property damage is reported, the inspector should examine the citizen's property. The pattern of fall-out may indicate their origin.
11. If an odor, fall-out, or other pollutant is detected at the complainant's property, the wind direction must be determined for the purpose identifying the source.

D. INSPECTION OF THE ALLEGED SOURCE

To establish a nuisance, the source responsible for the offending emission must be identified.

When investigating the source the inspector should:

1. Identify him/herself and explain that he/she is investigating a complaint.
2. Ask pertinent questions based on information acquired from the investigation.
3. Inspect the equipment and compare actual operating conditions, cycles, and times of operation with the times and frequencies of complaints.
4. Obtain wind data from a nearby facility, e.g. airport, air monitoring station, or industry.

E. COMPLAINT CONFIRMATION

A confirmed complaint means either an inspector, another employee of the District, or a reliable complainant is able to testify that a particular operation or combination of operations is the source of the air contaminants. Confirmation may be accomplished through in the following ways:

1. Personal observation by an inspector or another District employee with the complainant (face-to-face confirmation). This would require that the inspector trace the air contaminant from the complainant's residence or place of business to the alleged source.
2. A reliable complainant makes confirmation. A reliable complainant is a person that has previously had a complaint confirmed that meets all the requirements listed in number 1 above.
3. The identification of a source of air contaminants that is supported by data such as: operational records, wind charts, and monitoring devices that show a correlation between complaints and source activities.

F. NON-SPECIFIC COMPLAINT

The cause of the complaint may not always involve air pollution. Although most complaints are related to air pollution, some will concern problems over which the agency has little or no control because they are not related to air pollution; e.g. backyard feuds and naturally occurring contaminants, resentment towards a nearby source.

Although the District may not have jurisdiction in certain cases the inspector should refer the complaint to an appropriate agency. Additionally, the complainant must be informed of the District's actions.

If complaints are unsubstantiated, the inspector will document that fact.

III. VIOLATION NOTICE OF CRITERIA

A. GENERAL

If during a complaint investigation the inspector observes a violation of a District regulation, a Notice of Violation shall be issued.

B. PUBLIC NUISANCE

A NOV for a nuisance **shall not** be issued until the incident has reviewed by the Director of Compliance.

C. Public Emergency

District management may authorize issuance of a NOV in the case of an obvious public emergency even though complaints have not been received, e.g., when forced evacuation is instituted or major transportation arteries are impacted.

IV. NUISANCE

Rule 4102

California Health and Safety Code Section 41700

"No person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which cause, or have a natural tendency to cause injury or damage to business or property."

A. EXEMPTIONS

Rule 4102 and Health and Safety Code, Section 41700, do not apply to odors from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

B. CRITERIA

A nuisance can occur under a variety of conditions and circumstances. The following criteria are general guidelines to be considered in determining whether a nuisance has occurred, but the final determination of the occurrence of a nuisance is the responsibility of District management.

1. When five (5) complaints from different individuals have been confirmed in a 24-hour period. One household represents one complaint.
2. When less than five (5) complaints have been confirmed but special circumstances are present, such as when there are a limited number of affected people in the vicinity of an offending source, or a representative of a school complains on behalf of the students or staff.
3. The receipt of one or more confirmed complaints that a source is discharging air contaminants that cause injury to a person or damage to a business or property.

C. CHRONIC, ONGOING NUISANCES

For those sources of emissions which have been determined by the Director of Compliance to be responsible for chronic, on-going nuisance situations in a given community, the regular procedure for confirmation of odor complaints will not be required in all cases. Confirmations can be allowed when all of the following conditions are met:

1. An inspector detects the emissions within a reasonable distance of the complainant's address within 2 hours of the time of the complaint.
2. The inspector confirms that the emissions in the community on the day in question are attributable to the given source's operations.
3. The inspector confirms at least one other complaint against the source on a face-to-face basis in the general vicinity of the given complainants' address.

D. Civil Injunction, Abatement Order, Permit Revocation, and Additional Remedies

Persistent public nuisance cases will be initially handled through an office conference and, when appropriate, also under CH&SC Section 42402.

When the problem cannot be resolved at the office conference level, an Abatement Order may be sought under CH&SC Section 42451 or a Civil Injunction under CH&SC Section 41513.

In all actions brought before the Hearing Board for the abatement of a nuisance, the complainants must be notified of the Hearing.

V. COMPLAINT REPORT

The District Complaint database shall be used to enter all findings and conclusions related to the complaint. If a NOV is issued, an NOV report shall be generated.

1. If hard copy attachments or photographs related to the complaint are received or generated as a result of the investigation, a hard copy of the complaint report shall be printed when the complaint investigation is completed. All attachments shall be filed with the report in the complaints file.
2. If no attachments or photographs are generated as a result of the investigation, a complaint report does not need to be printed or filed.
3. Always immediately alert your supervisor of any public health hazards or issues of a controversial nature.