



# CITY OF MILPITAS

455 East Calaveras Boulevard, Milpitas, California 95035-5479 • www.ci.milpitas.ca.gov

June 6, 2012

John Davidson  
Department of Planning, Building & Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113-1905

RE: Final EIR for the Newby Island Rezoning Project – PDC07-071

Dear Mr. Davidson:

The City of Milpitas has reviewed your Final EIR (EIR) document and find the discussion and conclusions regarding Odor Impacts to be inadequate for the following reasons:

- The EIR essentially concludes that there is no odor problem due to the low number of confirmed complaints resulting from the Bay Area Air Quality Management District (BAAQMD) odor investigation process. This logic is flawed because, according to State Public Resources Code Sections 43200-43222 (See Attachment 1), BAAQMD is not responsible for investigating all odor complaints to their final conclusion. BAAQMD instead only performs an initial investigation of odor complaints. If the source is suspected to be or determined to be compost, BAAQMD is required to refer the odor complaint to the Local Enforcement Agency (LEA). The LEA is required to perform the full investigation and take enforcement actions. If this process is rigorously followed, BAAQMD itself is likely to issue very few confirmed complaints for compost odors. A copy of the BAAQMD Complaint Guidelines clearly describing the referral to the LEA is also attached. (See Attachment 2.)

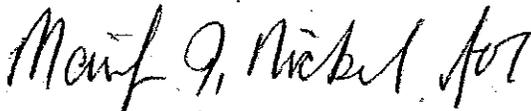
Furthermore, even if BAAQMD were to fully investigate these odor complaints, odors are transitory and are affected by changes in wind speed and direction. It is very difficult for an inspector to respond quickly enough to experience the odor before the wind has changed and the odor is affecting another neighborhood. If the inspector is unable to experience the odor with the complainant, then the investigation process is halted and the complaint is deemed unconfirmed. If the inspector and complainant are able to smell the odor, there is another time delay while the inspector tracks the odor to the source. If the winds have shifted again, or the source has stopped the odor-generating process, the investigation is halted and the complaint is deemed unconfirmed. Due to these factors, a confirmed complaint is a rare achievement and is not an accurate indication of the quantity of odors inflicted upon the community.

The City of San Jose has regulatory authority as the LEA for compost operations at the Newby Island facility. The process for investigating and enforcing odor complaints from the Newby Island facility is included as Figure 1 in the Milpitas Odor Action Plan. (See Attachment 3.) The referral to the LEA is not timely, thus rendering the possibility of a confirmed complaint to be nearly impossible. Information on LEA inspections, odor investigations, and enforcement actions are missing and must be included in the EIR. There is therefore a gap in the regulatory coverage. Reliance on current oversight and enforcement procedures is therefore inadequate to reduce odor problems to levels of less than significant.

- In addition, the newly added text on page 252 implies that BAAQMD was performing the entire investigation and enforcement process, which is not correct. The City of San Jose LEA is required to investigate compost odors that are referred by the BAAQMD. The text goes on to state that BAAQMD eventually notified Milpitas that there was no longer a need for the extraordinary commitment of BAAQMD staff time because the odor complaints had dropped to insignificant numbers. BAAQMD has never made this statement and continues to respond in accordance with its procedures. Furthermore, there is a long history of odor complaints to both BAAQMD and the City that continues to this day. (See Attachment 4.)
- Impact AIR-4 states that the proposed project (including the implementation of the Initial Compost Area Line), with the continued implementation of the current Odor Control Measures and Odor Impact Minimization Plan, would not increase odors compared to existing operations (Less Than Significant Impact). However, the Milpitas community continues to be subjected to frequent odors and has deemed the current level of odors as unacceptable. For example, there were 124 odor complaints for 2010 and 171 for 2011. For every formal complaint, there are likely to be several additional unvoiced complaints as many community members have concluded that filing complaints over the last 20 years has not led to improvement. The assumption that the currently employed odor control measures are effective and can serve as a baseline is false.
- Newly added text on page 252 of the EIR states that status reports to the Milpitas City Council were reduced from quarterly to annually in 2007. This text is inaccurate, as the City of Milpitas instated a monthly odor reporting requirement in January 2011, which continues to this day.
- Newly added text on page 252 of the EIR focuses on complaints for the Newby Island Sanitary Landfill and actions to be taken by the landfill operator. The EIR fails to include complaints for the Recycling and actions taken by its operator.
- The food waste program is the likely source of many complaints, as pointed out by several commenters. There is regional support for expanding food compost programs, which is expected to increase the frequency of odor complaints. The conclusion that odors will therefore not increase is faulty for this reason, as well.
- Newly added text on page 251 describes selected components of the City of Milpitas Odor Action Plan. To be complete, the section would need to describe the role and responsibilities of the LEA, as well.

- Newly added text in the first paragraph of Section 1.4.3.12 on page 235 has revised the EIR text to delete the phrase "in-vessel composting has occurred on site in the past" and replaced it with the phrase "in-vessel composting currently occurs on the southern boundary of the landfill east of the compost windrows (refer to Revised Figure 1.0-7)." This text raises several questions. Is in-vessel composting an optional process? If so, what criteria does the operator employ when determining whether to use this process or windrows? What is the capacity of the in-vessel system? What is the correlation of the in-vessel process and the number of odor complaints versus windrows and the number of complaints? What is the effectiveness of this process as an Odor Control Measure? Such additional information would be needed for an adequate assessment. Furthermore, in-vessel composting processes would need to be added to the List of Odor Control Measures employed at the landfill and Recyclery as shown on page 253.
  
- Biosolids loading and hauling cause a substantial number of complaints. The current odor control measure is described on page 253 to be "Prohibit the load or transport of any biosolids into the landfill any time such loading and transporting results in actual odor complaints correlated to biosolids from off-site properties." What is the definition of "actual odor complaint?" This control measure is not effective, and furthermore, may not be practical. Atmospheric conditions may not be favorable for hauling activities for several days in a row. Trucks, drivers, and loaders are scheduled in advance to perform this work and it is not believable that the landfill operator simply ceases this operation until atmospheric conditions improve. Additional odor control measures are necessary and must be implemented. Furthermore, the EIR is incomplete without a discussion regarding odors resulting from biosolids handling.

Sincerely,



Kathleen Phalen, Milpitas Acting Public Works Director/City Engineer

cc: Thomas Williams, City Manager  
Mike Ogaz, City Attorney

ATTACHMENT 1 Public Resources Code Sections 43200-43222

CALIFORNIA CODES  
PUBLIC RESOURCES CODE  
SECTION 43200-43222

43200. (a) The board shall prepare and adopt certification regulations for local enforcement agencies. The regulations shall specify requirements that a local agency shall meet before being designated as an enforcement agency. The regulations shall include, but are not limited to, all of the following:

(1) Technical expertise.

(2) (A) Adequacy of staff resources.

(B) For the purposes of this paragraph, the board shall adopt regulations for specified enforcement agencies, as defined in subparagraph (C), which meet all of the following requirements:

(i) The regulations shall not require a specific number of person-hours or staff resources for the performance of duties as a specified enforcement agency.

(ii) The regulations shall establish performance standards for specified enforcement agencies which will provide a comparable level of public health and safety and environmental protection to that required of other local agencies certified pursuant to this article.

(iii) The regulations shall establish procedures to ensure that all duties required of specified enforcement agencies pursuant to this article are actually performed.

(iv) The regulations shall require specified enforcement agency personnel to receive a comparable level of training to that required of personnel employed by other local agencies certified pursuant to this article.

(C) For the purposes of subparagraph (B), "specified enforcement agency" means a local enforcement agency which has a population of less than 50,000 persons.

(3) Adequacy of budget resources.

(4) Training requirements.

(5) The existence of at least one permitted solid waste facility within the jurisdiction of the local agency. For the purposes of this paragraph, "permitted solid waste facility" includes a proposed solid waste facility for which an environmental impact report or negative declaration has been prepared and certified pursuant to Division 13 (commencing with Section 21000) or for which a conditional use permit has been issued by a city or county.

(b) The regulations adopted pursuant to subdivision (a) shall specify four separate types of certifications for which an enforcement agency may be designated, as follows:

(1) Permitting, inspection, and enforcement of regulations at solid waste landfills.

(2) Permitting, inspection, and enforcement of solid waste incinerators.

(3) Permitting, inspection, and enforcement of transfer and processing stations.

(4) Inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

43201. After August 1, 1992, no enforcement agency shall be designated pursuant to this article unless the board determines that the agency fully complies with one or more of the certification types

specified in Section 43200. No enforcement agency shall, after August 1, 1992, exercise the powers of an enforcement agency pursuant to this chapter unless the agency has been certified by the board.

43202. An enforcement agency may be designated by the local governing body and certified by the board to act to carry out this chapter within each jurisdiction. If an enforcement agency is not designated and certified, the board, in addition to its other powers and duties, shall be the enforcement agency within the jurisdiction, subject to the agreement required pursuant to Section 43212.1 or 43310.1.

43203. The designation of the enforcement agency shall be made by any one of the following procedures:

(a) The board of supervisors of the county may designate the enforcement agency to carry out this chapter in the county. The designation is subject to the approval by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which have only two cities, in which case the designation shall be subject to approval by the city which contains the majority of the population of the incorporated area of the county.

(b) The county and the cities within the county may enter into a joint exercise of powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for the purpose of establishing an enforcement agency to carry out this chapter in the jurisdiction of the joint powers agency.

(c) A city council may, at any time, designate an enforcement agency to carry out this chapter in the city.

(d) The board of supervisors of the county may designate an enforcement agency to carry out this chapter in the unincorporated area of the county.

43204. No enforcement agency may exercise the powers and duties of an enforcement agency until the designation is approved by the board. After August 1, 1992, the board shall not approve a designation unless it finds that the designated enforcement agency is capable of fulfilling its responsibilities under the enforcement program and meets the certification requirements adopted by the board pursuant to Section 43200.

43205. (a) Except as provided in subdivision (b), if no enforcement agency is designated and certified, the board shall be the enforcement agency and shall assume all the powers and duties of an enforcement agency pursuant to this chapter, subject to the agreement required pursuant to Section 43212.1 or 43310.1. If the board is the enforcement agency and an enforcement agency is then designated and certified by the board, the board shall continue to act as the enforcement agency for the remainder of the fiscal year, with those responsibilities terminating as of June 30, unless otherwise specified by the board.

(b) Notwithstanding subdivision (a), if no enforcement agency is designated and certified for Stanislaus County or Santa Cruz County, the board shall be the enforcement agency, and shall assume all of the powers and duties of an enforcement agency for that county, but shall not be required to enter into the agreement required pursuant to Sections 43212.1 or 43310.1.

(c) The board and the enforcement agency shall not, at any time, impose duplicative fees or charges on the owner or operator of a solid waste facility.

43206. A designation made pursuant to this article may be withdrawn in the same manner in which it was made.

43207. No local governmental department or agency, or any employee thereof, which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency, or an employee thereof, for the types of solid waste handling or disposal operation it conducts unless authorized by the board to act in that capacity.

43208. Notwithstanding any other provision of law, except as provided in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and Section 731 of the Code of Civil Procedure, no local governing body may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to a facility that accepts both hazardous wastes and other solid wastes and which meets any of the criteria enumerated in subdivision (a) of Section 25148 of the Health and Safety Code, and was operating as of May 1, 1981, pursuant to a valid solid waste facility permit, so as to prohibit or unreasonably regulate the operation of, or the disposal, treatment, or recovery of resources from solid wastes at any such facility. However, nothing in this section authorizes an operator of such a facility to violate any term or condition of a local land use or facility permit or any other provision of law not in conflict with this section.

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) (1) Establish and maintain an enforcement program consistent with regulations adopted by the board to implement this chapter, the standards adopted pursuant to this chapter, and the terms and

conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(2) The enforcement agency may establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body, by resolution or ordinance.

(3) A standard established pursuant to this subdivision shall be consistent with this division and all regulations adopted by the board.

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) (1) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards.

(2) The consultation required by this subdivision shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

(h) Establish and maintain an inspection program.

(1) The inspection program required by this subdivision shall be designed to determine whether any solid waste facility is operating under any of the following:

(A) The facility is operating without a permit.

(B) The facility is operating in violation of state minimum standards.

(C) The facility is operating in violation of the terms and conditions of its solid waste facilities permit.

(D) The facility may pose a significant threat to public health and safety or to the environment, based on any relevant information.

(2) The inspection program established pursuant to this subdivision shall also ensure frequent inspections of solid waste facilities that have an established pattern of noncompliance with this division, regulations adopted pursuant to this division, or the terms and conditions of a solid waste facilities permit. The inspection program may include public awareness activities, enforcement to prevent the illegal dumping of solid waste, and the abatement of the illegal dumping of solid waste.

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) On or before April 1, 2003, the board shall adopt and submit

to the Office of Administrative Law, pursuant to Section 11346.2 of the Government Code, regulations governing the operation of organic composting sites that include, but are not limited to, any of the following:

- (1) Odor management and threshold levels.
- (2) Complaint investigation and response procedures.
- (3) Enforcement tools.

(d) This section shall become inoperative on April 1, 2003, unless the board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) on or prior to that date.

43210. For those facilities that accept only hazardous wastes, or accept only low-level radioactive wastes, or facilities that accept only both, and to which Chapter 6.5 (commencing with Section 25100) of Division 20 or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code applies, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes shall be performed by the Department of Toxic Substances Control pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code; and all enforcement activities relative to the control of low-level radioactive waste shall be performed by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

43211. (a) For those facilities that accept both hazardous wastes and other solid wastes, the Department of Toxic Substances Control shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board and the enforcement agency shall, at solid waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes and asbestos-containing waste, as provided in Section 44820.

(b) For purposes of this section, "asbestos containing waste" means waste that contains more than 1 percent by weight, of asbestos that is either friable or nonfriable.

43212. (a) If the board is the enforcement agency, the board may impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction of the enforcement agency, and shall collect those fees in a manner determined by the board and developed in consultation with the local governing body. Any fees imposed pursuant to this section shall bear a direct relationship to the reasonable and necessary costs, as determined by the board, of providing for the efficient operation of the activities or programs for which the fee is imposed.

(b) If the board is the enforcement agency for a county and all of the cities within that county, the local governing body shall be the county board of supervisors for purposes of this section.

43212.1. If the board is the enforcement agency, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board.

43213. The enforcement agency may, upon a majority vote of its local governing body, prescribe, revise, and collect fees or other charges from each operator of a solid waste facility or from any person who conducts solid waste handling if the local governing body having ratesetting authority has approved rate adjustments to compensate the solid waste hauler or solid waste facility operator for the amount of the fee or charges imposed pursuant to this section. The fee or other charge shall be based on the weight, volume, or type of solid waste which is received or handled by any such operator or person or on any other appropriate basis or any combination of the foregoing. In no case shall the fee or other charge imposed by the enforcement agency under this section exceed the actual cost of the solid waste enforcement authorized under this title.

43214. (a) The board shall develop performance standards for evaluating certified local enforcement agencies and shall periodically review each certified enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities and disposal sites within the jurisdiction of each enforcement agency for the purpose of evaluating whether the enforcement agency is appropriately applying and enforcing state minimum standards within its jurisdiction.

(b) Following initial certification of an enforcement agency by the board, the board shall conduct a performance review of the enforcement agency every three years, or more frequently as determined by the board.

(c) In conducting performance reviews of enforcement agencies, the board shall, based on the performance standards developed pursuant to subdivision (a), determine whether each enforcement agency is in compliance with the requirements of this article and the regulations adopted to implement this article. If the board finds that an enforcement agency is not fulfilling its responsibilities pursuant to this article and if the board also finds that this lack of compliance has contributed to significant noncompliance with state minimum standards at solid waste facilities or disposal sites within the jurisdiction of the enforcement agency, the board shall withdraw its approval of designation pursuant to Sections 43215 and 43216. Notwithstanding Sections 43215 and 43216, if the board finds that conditions at solid waste facilities or disposal sites within the jurisdiction of the enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the enforcement agency, become the enforcement agency until another enforcement agency is designated locally and certified by the board.

(d) The board shall find that an enforcement agency is not fulfilling its responsibilities pursuant to this article, and may

take action as prescribed by subdivision (c), if the board, in conducting its performance review, makes one or more of the following findings with regard to compliance with this part and Part 5 (commencing with Section 45000):

(1) The enforcement agency has failed to exercise due diligence in the inspection of solid waste facilities and disposal sites.

(2) The enforcement agency has intentionally misrepresented the results of inspections.

(3) The enforcement agency has failed to prepare, or cause to be prepared, permits, permit revisions, or closure and postclosure maintenance plans.

(4) The enforcement agency has approved permits, permit revisions, or closure and postclosure maintenance plans that are not consistent with this part and Part 5 (commencing with Section 45000).

(5) The enforcement agency has failed to take appropriate enforcement actions.

(6) The enforcement agency has failed to comply with, or has taken actions that are inconsistent with, or that are not authorized by, this division or the regulations adopted by the board pursuant to this division. However, nothing in this paragraph is intended to affect the authority of enforcement agencies pursuant to subdivision (e) of Section 43209.

43215. (a) If the board, in conducting the inspection and performance review required pursuant to Section 43214 or this section, finds that the enforcement agency is not fulfilling one or more of its responsibilities, the board shall notify the enforcement agency of the particular reasons for finding that the enforcement agency is not fulfilling its responsibilities and of the board's intention to withdraw its approval of the designation if, within a time to be specified in that notification, but in no event less than 30 days, the enforcement agency does not take the corrective action specified by the board.

(b) The board shall adopt regulations that establish a process for notice, public hearing, the admission of evidence, and final action by the board for partial or full withdrawal of the approval of designation pursuant to this chapter.

43215.1. The board may, upon the written request of an enforcement agency, provide legal counsel for purposes of compliance with this part.

43216. If the board withdraws its approval of the designation of an enforcement agency, another enforcement agency shall be designated pursuant to Section 43203 within 90 days and approved by the board. If no designation is made within 90 days, the board shall become the enforcement agency within the jurisdiction of the former enforcement agency.

43216.5. In addition to the procedures for board withdrawal of its approval of a local enforcement agency's designation pursuant to Sections 43214, 43215, and 43216, the board may take any actions which are determined by the board to be necessary to ensure that local enforcement agencies fulfill their obligations under this

chapter. To ensure that a local enforcement agency is appropriately fulfilling its obligations under this chapter and implementing regulations, the board may conduct more frequent inspections and evaluations within a local enforcement agency's jurisdiction, establish a schedule and probationary period for improved performance by a local enforcement agency, assume partial responsibility for specified local enforcement agency duties, and implement any other measures which may be determined by the board to be necessary to improve local enforcement agency compliance.

43217. The board shall provide ongoing training, technical assistance, and guidance to local enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

- (a) Technical studies and reports.
- (b) Copies of innovative solid waste facility operation plans.
- (c) Investigative findings and analyses of new solid waste management practices and procedures.
- (d) A program for loaning technical and scientific equipment, to the extent that funds are available to the board to purchase that equipment.

43218. Each enforcement agency shall inspect each solid waste facility within its jurisdiction at least one time each month and shall file, within 30 days of the inspection, a written report in a format prescribed by the board.

43219. (a) The board may, at its discretion, conduct inspections and investigations of solid waste facilities in order to evaluate the local enforcement agency and to ensure that state minimum standards are met.

(b) Except as otherwise provided by Section 43220, the board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct inspections of solid waste facilities within the jurisdiction of each local enforcement agency. The board shall inspect the types and number of solid waste facilities which are determined by the board to be necessary to adequately evaluate whether the local enforcement agency is ensuring compliance by solid waste facilities with state minimum standards. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency.

(c) If the board identifies any significant violation of state minimum standards that were not identified and resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5.

(d) Notwithstanding any other provision of this section and Sections 43215 and 43216, if, as a result of a facility inspection conducted pursuant to subdivision (b), the board finds that conditions at a solid waste facility within the jurisdiction of a local enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the local enforcement agency, become the enforcement agency until another local enforcement agency is designated locally and certified by the board.

43220. The board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct at least one inspection every 18 months of each solid waste landfill and transformation facility in the state. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency. If the board identifies any significant violation of state minimum standards that was not resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5 and subdivision (d) of Section 43219.

43222. Any fees or charges imposed pursuant to this part by any enforcement agency shall bear a direct relationship to the reasonable and necessary cost, as determined by the enforcement agency, of providing the efficient operation of the activities or programs for which the fee is assessed.

## ATTACHMENT 2 BAAQMD Complaint Guidelines



**COMPLIANCE & ENFORCEMENT  
DIVISION**

*Policies &  
Procedures*

**COMPLAINT GUIDELINES  
Adopted July 14, 1990  
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BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**COMPLIANCE & ENFORCEMENT  
DIVISION***Policies &  
Procedures***COMPLAINT GUIDELINES**

For purposes of this policy, an air quality complaint is a concern that is communicated to the District alleging a realized or potential injury, detriment, annoyance or nuisance occurring as a result of the release or potential release of air contaminants or other materials, including, but not limited to, smoke, odors, dust and other particulate matter.

Community members are often the first to be aware of an emission release, and the community can be considered the "eyes and noses" of the District. In response to legitimate civic concerns, District staff will endeavor to investigate every complaint in order to achieve early intervention on potential problems and allow the District to be proactive in protecting public health. District staff will maintain the cooperative, but objective, attitude of an investigator. Informal complaints will also be investigated where the person may otherwise feel uncomfortable filing a formal complaint.

These Complaint Guidelines are intended to handle air pollution complaints that have impacts on individuals, and which may result in District enforcement actions against public nuisance, visible emissions, particulate emissions, odorous substances emissions, etc. Referrals, or "tips," from other agencies or individuals, which do not involve impacts on individual persons, are not covered under these guidelines.

Air pollution complaints are an important part of the daily workload of an inspector. It is essential that complaint investigation and complaint processing be handled in a prompt, efficient and professional manner.

**1. COMPLAINT RECEIPT AND DISPATCH****A. Public Outreach – How to Start the Complaint Investigation Process**

The following methods are used by the District to inform the public about how to report a complaint:

- Telephone directory listings for the District's toll-free Complaint Line at 1-800-334-ODOR (6367) can be found in any local white page directory under the "California, State of" listing, under any of the following subheadings:

"Bay Area Air Quality Management District"

"Air Pollution"

"Environmental"

"Odor Complaints"

These listings are in both the blue-bordered government and red-bordered business white pages.

- Members of the public wishing to register a complaint who do not speak English can receive Over-the-Phone-Interpretation in 150 languages from a third party translator once they reach the District's toll-free Complaint Line at 1-800-334-ODOR (6367).
- Complaint Cards entitled "*To Register a Complaint*" (colored 3 x 5" cards) with instructions on how to call are distributed at public events.
- District brochures covering complaint-related topics on the following subjects are circulated at public events:
  - Complaint Procedures
  - Odors
  - Residential Woodstoves and Fireplaces
  - Requirements for Building Permits and Industrial Facilities Near Schools and Hospitals

Air quality complaints are sometimes made to other agencies or organizations that may take them but not act upon them. In order to correctly receive such complaints, the District will maintain an outreach program to communicate with and educate other possible agencies of these complaints and refer them to the District.

#### **B. Received During Staffed Office Hours (Core Hours)**

Complaints called in on the District's toll-free complaint line are normally received by telephone in the District's Communication Center (ComCenter) during core hours of 7:30 a.m. to 6:00 p.m. on Monday through Friday. Core hours for Saturday and Sunday are 8:30 a.m. to 5:00 p.m.

The complaint is entered into a District computer program. This entry creates a complaint record and reference number (C#) that automatically assigns the complaint to the area inspector or an alternate inspector. The C# will be provided to the complainant and can be used to track the progress, actions taken, and final resolution of the complaint.

Complaints will be dispatched as soon as possible according to a priority system that allows the District to respond more quickly to urgent complaint situations.

### C. Received By the Answering Service

The District contracts with an answering service to take complaints during non-core hours. If a complaint is taken by the answering service at night or over the weekend, the complaint information is telephoned/faxed to the ComCenter the following morning and will be entered into the computer, assigned a C# and dispatched at that time.

During non-core hours, when the answering service receives three (3) or more complaints alleging a single company they will refer the complaints to a supervising inspector with the complaint information. If the caller is a public official acting in an official capacity, *only one call* is needed for the answering service to call the assigned supervising inspector or manager.

Each complaint will be evaluated on a case-by-case basis and a determination made whether an investigation by an inspector is warranted. If a possible public nuisance situation is developing, an inspector will be called back to work to conduct an investigation.

### D. Received by the Inspector

When a complaint is received in the field, the inspector will obtain pertinent information from the complainant and begin completing a "Complaint Report" form (see Exhibit 1 and Section 7(A) below).

If a large number of people wish to make complaints at the same time, the "Complaint Declaration" form (see Exhibit 2 and Section 7(B) below) may be distributed in order to accommodate the information collection process, if the inspector has detected the air contaminant within the previous 60 minutes. The "Complaint Declaration" form can be collected by the Inspector later and the process completed, as below. However, if a complaint can be confirmed immediately, a "Complaint Declaration" form may be circulated to assist solely in information gathering.

When time permits, the inspector will contact the ComCenter to submit the complaint information and obtain a C#. All complaints must be assigned a C# and this can only be done by contacting the ComCenter. The inspector will give the C# to the complainant at the time received, or will call the complainant later if that person is no longer available, provided the complainant wants the C#.

### E. Complaints Received by Petition

Petitions are written complaints signed by more than one complainant, usually generated in response to an ongoing problem that is airborne in nature. However, because some petitions are initiated to *prevent* certain actions from taking place (based upon an assumption of *future* airborne problems), the following information should be verified for each petitioner contacted:

1. Date(s) on which alleged air emission took or is anticipated to take place
2. Description of harm, injury, annoyance, etc. (real or potential) suffered
3. Source of air emission (real or potential)

A petition will be assigned only one C# for tracking purposes, but all petitioners may be considered as individual complainants, based on the outcome of the investigation.

#### **F. Complaints Received as an Area-wide Event**

Area-wide complaint events are generally the result of an unusual occurrence such as a large accidental fire or an industrial incident resulting in the emission of air contaminants that are detected by the public.

Following any air pollution incident, whether or not it resulted in an area-wide complaint event, the supervising inspector responsible for the area in which the event is occurring shall arrange for the preparation of an "Incident Report" (see "Incident Response and Investigation Plan" Guidelines of this Manual).

#### **G. Cancellation**

Complaints are sometimes received which are duplicates of an already existing, or Primary, complaint. These complaints warrant investigation but not the creation of a separate reference number (C#). The information that is generated by the investigation of such complaints is always incorporated into the report for the Primary complaint, but the inadvertent creation of a separate reference number (C#) will result in cancellation, as indicated in the following cases:

- When a duplicate complaint is received on the same day (any calendar day) for the same source, from the same person. The original complaint for this person is referred to as the primary complaint.
- When a duplicate complaint is received on the same day from a person related to someone living in the same household (dwelling), where the related other party has already filed a complaint against the same source.

For these cases, if an existing Primary complaint has not yet been confirmed, but a subsequent duplicate complaint is received, that subsequent complaint is treated as a message to continue the investigation. If the follow-up investigation results in confirmation, then the Primary complaint will be confirmed.

Also for these cases, the person may be given an "Odor Log" form (see Exhibit 3 and Section 7(C) below) to use for detailed tracking purposes by the same person or a person in the same household. Inspectors will collect and attach such documents to their Primary complaint report in order to support the complaint investigation and/or for additional case development.

Other cases where District staff can investigate complaints received, but cannot take any enforcement action is where:

- the source of an air emission is affecting an individual located inside the District's boundary, but itself is located outside the District's boundary; or
- the complaint is for a non-air-pollution contaminant, e.g., noise.

For these cases, the inspector will conduct all appropriate investigation and will work with or refer the complaint to any adjacent district or applicable public agency to resolve the problem. The inspector will recommend cancellation of any associated complaint reference number (C#).

In a final cancellation category, if, after contact by District staff, a complainant wishes to withdraw his/her name from the record, the complaint can be converted to "Anonymous" or can be cancelled entirely. This action is entirely at the complainant's discretion (see "Complaint Confidentiality" at Section 3(E) below).

For cancellation of a complaint under any of the categories listed above, approval by the Air Quality Program Manager is required.

## **2. COMPLAINT TYPES REQUIRING SPECIALIZED PROCESSING**

### **A. Received from Schools (H&SC 42301.8)**

If the principal, or an authorized representative thereof, of a school contacts the District to request an investigation of odors or possible air pollution sources from new and modified sources (as of January 1, 1989) as the cause of impact on persons at a school, the District must respond and investigate.

The inspector who receives this complaint for investigation is also responsible for notification within 24 hours of the complaint to the following agencies:

- The city or county office responsible for administering hazardous materials policy, and
- The fire department having jurisdiction over the school.

**B. Regarding Compost Operations (H&SC 41705)**

Compost operations are exempt from the public nuisance provision of Regulation 1 and from the complaint applicability of Regulation 7.

A compost operation is described in the Public Resources Code (PRC), Section 40116, in the following manner:

*"Compost" means the product resulting from the "controlled" biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility. Compost includes vegetable, yard, and wood wastes which are not a hazardous waste.*

"Controlled" is defined as having the ability to aerate the material at will, regulate the water content and control temperature in such a manner that would result in a product legally marketable as compost under the rules of the California Integrated Waste Management Board (CIWMB) of Cal/EPA.

Activities which do not constitute compostable material handling operations are listed in Section 17855 "Excluded Activities" of the California Code of Regulations (CCR), Title 14, Division 7, Chapter 3.1.

All odor complaints that allege or are determined to be compost related shall be reported to a "Local Enforcement Agency" (LEA) designated and certified pursuant to PRC Section 43200. The inspector receiving the complaint will notify, within 24 hours or by the next working day, the LEA having jurisdiction over the alleged source. In the event that the CIWMB has decertified the LEA having jurisdiction, the complaint(s) will be reported to the enforcement section of the CIWMB (PRC Section 43205).

Where the alleged source or location is known or suspected to have odor sources, ***other than compost***, that are under District jurisdiction, the inspector will investigate all complaints at the site. In the event that ***co-mingling of odors from compost and sources under District jurisdiction*** results in a sufficient number of complaints to document a public nuisance, the case will be submitted to the Manager for determination on whether an NOV is to be issued.

The inspector will advise the complainant(s) of the LEA's jurisdiction regarding compost operations. The inspector will also advise complainants that the inspector will contact the LEA and provide all applicable complaint information, unless the complaint is canceled. Additionally, complainants will be advised to contact the LEA for future complaint handling.

**C. Regarding Idling Trucks at Certain California Ports (H&SC 40720)**

Assembly Bill 2650 (AB 2650) was originally introduced into legislation by Assemblyman Alan Lowenthal (Long Beach). AB 2650 required each Marine Terminal Operator (MTO) in certain ports (within District jurisdiction only the Port of Oakland is subject to these provisions) to operate in a manner that does not cause the engines on trucks to idle or queue for more than 30 minutes while waiting to enter the terminal. The bill required that citations for violations be issued to the MTO by the applicable district. AB 2650 was implemented as Health and Safety Code Section 40720 on July 1, 2003.

If a complainant calls specifically regarding trucks idling at a terminal at the Port of Oakland, thus making them subject to enforcement by the District, then ComCenter staff will take and dispatch complaints of "Idling Port Truck." For complaints regarding any idling trucks outside of this scope, the complaint will be taken as "Other."

In order to confirm idling port truck complaints, the inspector must determine if a violation of 40720(a) has occurred.

**D. Regarding Idling Bus Emissions (H&SC 42403.5)**

Any idling diesel-powered bus shall be subject to the provisions of H&SC Section 41700 (public nuisance), unless the operator can show that the harm caused by the emissions does not exceed the benefit accrued to bus passengers as a result of idling, e.g., heating or cooling.

**E. Alleging Health Effects**

District staff does not have the medical expertise to determine whether or not complaints of physical symptoms are caused by exposure to specific air contaminants. The county Health Officer affiliated with the appropriate county health department is equipped to evaluate such cases.

When a complainant verbally alleges health effect(s) (nausea, eye or throat irritation, asthma attacks, etc.) associated with an air contaminant that the inspector is investigating, the inspector will carefully record any alleged symptoms and any visible signs, as offered by the complainant (see Section 3(D)5 below).

In addition to conducting the complaint investigation, the inspector will also direct the complainant to contact the appropriate county health department. The inspector may also suggest the complainant may also wish to contact his/her own health care provider regarding the alleged health effect(s). The inspector will note all the circumstances of any referral to the county health office.

#### **F. Regarding Indoor Air Quality**

Complaints are sometimes received and dispatched for sources of air contaminants that are not directly emitted to the atmosphere. The H&SC Section 39002 sets forth the jurisdiction for each district to regulate only the "air pollution from all sources other than vehicular sources." Section 39013 states that an "air pollutant" means any discharge...into the atmosphere...." This restricts inspectors from citing sources that do not emit air contaminants into the outdoor air environment, but does not prevent response and investigation.

In order to be under District jurisdiction, the air contaminant must enter the complainant's site from the ambient air, not through interior vents or walls. Asbestos demolition and renovation operations are an exception in that the asbestos air contaminants may possibly not leave an interior building, but are still subject to District jurisdiction. For indoor air contaminants, either the Cal OSHA or local health department is the appropriate agency for referral.

#### **G. Potential Nuisance Sites**

The Director of Enforcement, or an Air Quality Program Manager, may designate any company/facility to be a potential public nuisance source when sufficient complaint activity alleges air emissions from that site. The Director may then consider enhanced response, which may include, but not necessarily be limited to, assignment of overtime coverage or shift work for field inspectors and support staff as needed to address the specifics of the situation. The Director may also send the company/facility a letter notifying them that they are being designated a potential public nuisance.

#### **H. Regarding Gasoline Dispensing Facility**

See "Gasoline Dispensing Facilities" Guidelines of this Manual.

#### **I. Regarding Residential Woodsmoke**

If a complaint is received for woodburning smoke coming from a residential fireplace or woodstove, the occupant at the residence address identified will be sent a package of informational material concerning the air pollution impacts of woodsmoke. If complaints become numerous within one day, an inspector will be dispatched for investigation.

**3. FIELD INVESTIGATION**

**A. Assignment of Priority**

Complaints will be dispatched according to the Priority (P#) ranking listed in the table below. Not all "Types" of specialized complaints are designated in the table. If a Type is not listed, then the current status (ongoing vs. not ongoing) will be used as the screening factor.

P#	CURRENT STATUS OR TYPE	DISPATCH RESPONSE	INSPECTOR RESPONSE
1	Ongoing, Potential Nuisance Sites	15 minutes	30 min
2	Ongoing, non-Nuisance	First Available; up to 30 minutes	30 min
3	Not Ongoing, Asbestos	When inspector is first available (but no later than 2 pm)	1 hr/2 hr for Asbestos
4	Service station nozzle	When inspector is first available (but no later than 2 pm)	24 hr
N/A	Residential wood smoke	Wood smoke information materials to be sent by mail	N/A

After a complaint has been dispatched the inspector must decide which of the following to do first:

1. Go directly to the alleged or suspected source, or
2. Contact the complainant via telephone or
3. Contact the complainant in person.

If there is any possibility that a violation is in progress, then the complaint response should begin with a visit to the suspected source of the contaminant.

**B. Inspector Safety**

Inspection staff must conduct themselves in accordance with the District Safety Policy which promotes "a safe work environment that will allow employees to perform their work without fear of possible harm to their lives and/or health...it is BAAQMD's intent to provide a safe workplace, safe equipment, proper materials and to establish and insist upon safe work methods and practices at all times." At the first sign of danger or threat to safety, inspection staff should remove themselves from harm's way as quickly and safely as possible. Any inspection staff member who believes

that he/she has been endangered is to immediately report the incident to his/her supervisor.

There may be cases during an inspector's normal activities where circumstances require a judgment call on the part of the inspector as to whether his/her safety may be compromised. In such cases where the inspector elects not to conduct the inspection activity due to safety concerns, the inspector will notify his/her supervisor to obtain guidance on how to proceed.

### C. Inspector Procedures

The District investigates air pollution complaints as an impartial party to determine facts and circumstances surrounding an alleged release of an air contaminant to the atmosphere. Therefore, the inspector needs to remain objective, impartial and neutral as he/she conducts the investigation. Soliciting complaints, taking sides (with any party), leading or influencing anyone is inappropriate. The Inspector is there to document his/her observations, gather evidence and, if necessary, take appropriate enforcement action.

The following guidelines will be followed by the Inspector when interviewing the complainant:

1. **Identification:** Identify her/himself by name and by credentials on the "Investigator" badge (see Exhibit 7) in a professional and cooperative manner.
2. **Listening:** Allow the complainant to explain the details of the complaint. When facts appear, the Inspector should repeat them aloud for verification and then write them down.
3. **Explaining:** Explain that:
  - he/she will conduct an investigation, to include
    - an attempt to track the source of the air contaminants
    - contact of possible sources
  - different regulations or laws may be involved and evidence will be necessary to proceed with any enforcement action, if appropriate.
4. **Questioning:** Proceed with a line of questioning, after the complainant has expressed his/herself, which will help determine the cause, nature, and source of the air pollution problem alleged in the complaint.

**Note:** It may be necessary to explain to the complainant that this line of questioning is necessary to establish the nuisance aspect of

their complaint. The inspector may need to explain that he/she is not attempting to discourage or raise barriers, etc. An inspector will NOT ask a complainant if they are willing to testify in court.

5. **Impartiality/Objectiveness:** Attempt to determine the source of the air quality problem that may be revealed by a complaint, but will remain impartial in the conduct of her/his duties, and will not take "sides" during an investigation.
6. **Other Jurisdictions:** Attempt to assist the complainant to the proper agency, if the complaint is not within the District's jurisdiction, and if possible, provide the agency's phone number (see Section 1(G) above). If the complainant requests help in pursuing the complaint with the other jurisdiction, the inspector may offer to facilitate the first contact, just to get the process started.
7. **Other Information:** Advise the complainant that until the investigation is completed no promise of any legal action or commitment to any course of enforcement action can be made. The inspector will also advise the complainant that at the conclusion of the investigation they can choose to receive the following:
  - the written Complaint Report and/or
  - notification of the final disposition of any enforcement action that may result from their complaint.

#### **D. Complaint Interview**

If the inspector meets with a non-English speaking complainant, the inspector should utilize the available over-the-phone translation services or use the card "We Speak Your Language" to have a complainant point to his/her language in order to request the correct translator.

Upon arrival at the scene of the complaint situation (or at an alternative location as prearranged by the inspector and the complainant), every effort will be made to avoid obvious identification of the complainant (i.e., parking in front of the complainant's home when a representative(s) of the alleged source is in the vicinity).

In order to effectively complete the investigation, the following information should be obtained as part of the complaint interview:

1. Description of the problem and its frequency.
2. Time of day the incident or problem was first noticed.
3. Name and location of suspected release of air contaminants
4. Duration of each occurrence.

If the complainant alleges health effects, then document the description and frequency of the air contaminants or how the situation affected the complainant, including any illnesses alleged to have resulted from such incident. The inspector should attempt to document signs and symptoms alleged by the complainant, as explained below:

5. **Signs are observable** - Examples are: tearing eyes, running nose, coughing, sneezing, vomiting, sweating, respiratory distress, scratching, rashes etc.
6. **Symptoms are felt by the person affected and are not observable.** Examples are: nausea, burning eyes, burning throat, burning nose, tightness in chest, stomach ache, tingling sensations, itching etc. These symptoms must be described to the inspector by the complainant.
7. If fall-out or other property impacts are involved, the inspector should also examine the complainant's property, and take photographs, if possible. The pattern of fall-out of contaminants may indicate the direction from which they came. Fall-out is any material that is emitted as liquid or solid particles, or gaseous material, which becomes liquid or solid particles, and has been deposited through an airborne process onto a complainant's personal or real property.
8. Description of odors, if any involved.
9. Record of meteorological observations. The wind direction should be obtained to help determine the source of an alleged odor.
10. Any other information the complainant may have that will relate the complaint or air quality problem to a specific piece of equipment.

If the complainant is not at home the inspector will contact the complainant by voice mail, or leave a card. The doorknob business card holder (see Exhibit 4) should be used if possible.

If information is revealed that the complainant has other reasons for registering a complaint *besides personal impact of air contaminants*, the inspector will note that information in the statements in the written report.

#### **E. Complaint Confidentiality**

At the conclusion of the interview the inspector will inform the complainant of the District confidentiality policy:

*"The District cannot ensure complainant confidentiality with respect to any matter which results in litigation, and which results from and/or relies on the complaint as a basis for the litigation. All such complainant information is discoverable and will, upon formal demand, be made known to the defendant in the action."*

If the complainant wishes to retain confidentiality, then the inspector can either offer to have the complaint changed to "Anonymous" or will notify the ComCenter to cancel the complaint (see Section 1(G) above).

If the inspector feels, upon completion of the investigation, that a complaint is essential to initiating an enforcement action, including the issuance of an NOV, Regulation 7 applicability letter, etc., then the inspector may ask a complainant to reconsider the confidentiality issue. No coercion or pressure will be used.

No enforcement action, including the issuance of an NOV, etc. may be based upon complaints which have been cancelled due to confidentiality issues, nor will any reference to them be made in any other documents associated with such issuance.

All complaints will continue to be confidential in every other manner, and a complainant's identity may not be released without an authorization from the District Counsel's Office.

#### **F. Inspection of the Alleged Source**

To establish a complaint verification (confirmation), the party responsible for the release of an air contaminant, or for failure to follow a regulatory requirement, must be established. When at all possible, the specific source responsible should be identified.

When investigating the source the inspector should:

1. Identify her/himself by name and by credentials on "Investigator" badge (see Exhibit 7) in a professional and cooperative manner.
2. Explain that he/she is investigating a complaint. For verification purposes, the source contact may telephone the District ComCenter (or Answering Service after core hours) at 800-334-6367 to make certain a complaint was received and is being investigated.
3. Ask pertinent questions relating to the facility's activity at the date and time in question, based on information obtained from complainant.
4. Inspect the equipment and compare actual operating conditions, cycles and times of operation, with the times and frequencies of complaints.
5. Obtain wind data, if appropriate, from a nearby facility, e.g. airport, air monitoring station, or by using a wind gauge.
6. Inform the responsible source as early as possible of any complaint confirmation to them; or advise the alleged source of the investigation outcome if they are determined not to be responsible.

## G. Complaint Confirmation Status

A complaint confirmation status must be one of the following:

### 1. Complaint Confirmed

A confirmed complaint means that either an inspector, or another trained employee of the District, or a complainant must be able to establish that a particular operation or combination of operations is the source of the air contaminants. This confirmation includes two elements:

- detecting the odor/air contaminant release, and
- tracing it to its source.

Confirmation may be accomplished in three (3) different ways:

- a. **Face-to-Face:** Personal observation by an inspector or another trained District employee with the complainant. This would require that the Inspector or District employee had traced the air contaminant from the complainant's impacted location to the alleged source. A contaminant can be traced not only from residence or place of business, but from any area where a complainant might typically be for public use, e.g., parks, places of worship, stadiums, museums, recreational facilities, etc.
- b. **Declaration:** The Complainant is unable to meet with the inspector, but, within 60 minutes of the time of the complaint, the inspector is able to detect the alleged contaminant and is reasonably assured, by corroborative evidence, that the contaminant detected is the same as alleged by the complainant, based on at least one prior face-to-face confirmation with the same complainant for the same type of contaminant. The Inspector is also able to trace the alleged contaminant from the complainant's impacted location to the alleged source. The Complainant is subsequently offered and chooses to complete a District "Complaint Declaration" Form.
- c. **Other Evidence:** The identification of an operation as the source of the air contaminants by:
  - i. Analysis of a sample of the air contaminant, and, in some cases, through other supporting data, such as, but not limited to, recording chart data which can be correlated

with the time of complaints; e.g., wind charts, monitoring devices, other public agency observations.

- ii. Smoke emissions that are observed by the inspector and the complainant, and the source can be identified.
- iii. Fall-out that is observed impacting a complainant's property and the source can be identified.

**NOTE:** Although these represent three primary means for confirming a complaint, the District reserves the right to use any means legally available for confirmation.

## 2. Complaint Unconfirmed

An unconfirmed complaint means that either the odor/air contaminant release could not be detected, or the source/facility cannot be determined. A complaint should be deemed unconfirmed in the following situations:

- a. The inspector detected an odor or observed alleged fall-out, smoke or other air contaminant, with the complainant, but could not trace it to a source/facility. In these circumstances the Inspector should offer the complainant the use of an "Odor Log" (see Exhibit 3), which may help the Inspector locate a source/facility.
- b. The Inspector detected an odor downwind, or in close proximity, of the alleged source/facility, but was unable to detect an odor with the complainant.

**NOTE:** If a complainant completes a "Complaint Declaration" form (subject to the conditions specified in Section 1(B) above), an "Unconfirmed Complaint under these circumstances" may be changed to a "Complaint Confirmed."

- c. The Inspector cannot detect the odor/air contaminant.

## H. Non-Specific Complaint

The *cause* of a complaint may not always involve air pollution. Although most complaints are valid, some will concern problems over which the agency has little or no control or in which air pollution plays a minor role.

Inspectors will thoroughly investigate air pollution problems that may be pertinent. This may require alerting other government agencies with more direct jurisdiction.

### **I. Complainant Follow-up**

By the end of the day in which a complaint is received, the inspector will attempt to contact the complainant and inform him/her of the current status of the complaint investigation. If the investigation is still open at the end of the day, the inspector will keep the complainant updated at whatever reasonable time interval the complainant wishes to be advised until the investigation is completed (confirmation status and enforcement action, if any).

The inspector will ask the complainant whether or not he/she would like a copy of the:

- o written Complaint Report, and/or
- o notification of disposition of any related enforcement action (i.e., NOV Final Disposition) taken as a result of the complaint filing (see Section 3(C)7 and 3(f) above).

### **4. PUBLIC NUISANCE -- REGULATION 1**

"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 endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause injury or damage to business or property.

For the purposes of this section, three or more notice of violations validly issued in a 30-day period to a facility for public nuisance shall give rise to a refutable presumption that the violations resulted from negligent conduct."

Regulation 1, Section 301

#### **A. Exclusions**

1. Regulation 1, Section 301, cannot apply to:

- a. Emissions from engines used to propel motor vehicles, as defined by the California Vehicle Code
- b. Aircraft
- c. Fires used for residential heating or cooking
- d. Open outdoor fires, recreational fires and outdoor cooking fires, except to the extent limited by Regulation 5
- e. Emission points which are unintended openings and from which insignificant quantities of air contaminants are emitted

- f. Air contaminants where purposely emitted for specific beneficial use, e.g., smoke generated for public safety training purposes
- g. Emissions from agricultural operations, except as limited by Regulation 5.

Refer to Regulation 1, Section 110, for specific details. Note: some operations could still be cited under H&SC, Section 41700 with Director of Enforcement/Air Quality Program Manager approval.

2. California H&SC, Section 41700, does not apply to odors emanating from:
  - a. Agricultural operations necessary for the growing of crops or the raising of fowl or animals
  - b. Operations that produce, manufacture, or handle compost, as defined in PRC, Section 40116, if the odors emanate directly from the compost facility or operations (See Section 2(B) above).

Refer to CH&SC Section 41705 for specific details.

#### **B. Public Nuisance Violation Criteria**

When sufficient complaint activity results from air emissions from a company/facility, the Director of Enforcement, or an Air Quality Program Manager, may designate that plant to be a potential public nuisance source (see Section 2(G) above). The District may then allocate staff resources to better address the developing nuisance situation. To enhance the District's response to these complaints, the Director or Air Quality Program Manager may assign overtime coverage or shift work for field inspectors and support staff as needed to address the specifics of the situation. The Director of Enforcement may send the company/facility a letter notifying them that they are being so designated.

In order to make a finding of violation for a specific incident, on a daily basis, the District must establish the following:

##### **1. Discharge of an air contaminant and the responsible party**

Both the air contaminant and the responsible party must be established by: direct observation; or odor/plume survey; or fall out comparison; or evidence from monitors; or other data sources (e.g., FD run reports, CHP & police reports, Hazmat reports).

##### **2. Effect of the contaminant on the public, a considerable number of persons, property or business, under one or more of the following scenarios:**

**a. Causes injury, detriment, nuisance or annoyance to the public or a considerable number of persons.** Information regarding the

actual effect of the air contaminant on person(s) or the public can be obtained from medical facilities, indicating the number of persons treated and the nature of the treatment; **OR** information from the complainants indicating how the contaminant is injurious, detrimental, a nuisance, or annoyance can be obtained.

**NOTE:** A considerable number of persons or the public will be determined by any of the ways listed under *items i, ii, or iii below*.

**b. Endangers the comfort, repose, health or safety of the public or a considerable number of persons.** Information from complainants can be obtained indicating how the contaminant has endangered (threatened) their comfort, repose, health or safety; **OR** information from a public agency or responsible government official that an action was taken to protect the safety of the public can be obtained.

**NOTE:** A considerable number of persons or the public may be determined by any of the ways listed under *items i, ii, or iii below*.

**c. Causes or has a natural tendency to cause injury or damage to business or property.** Document a quantifiable injury or damage to business or property. "Damage" refers to quantifiable dollar losses. To prove a public nuisance based on damage to a business, the District requires documentation or proof of financial loss, such as receipts for the clean up and/or repair costs associated with remedying the alleged nuisance or other documentation of loss of business or revenue. Employee loss of time can be considered where a business owner provides written documentation demonstrating significant loss of business.

A violation can be based on one complaint only, where information from a complainant, as indicated above, must be provided. Or the District can establish "a natural tendency," if injury or damage is real and verifiable, without documentation, based on repeat occurrences. This option can only be utilized if the circumstances surrounding the prior verification can be established to have occurred again with the same degree of confidence. Such factors will be carefully reviewed before issuance of an NOV under this citation.

In order to fulfill the criteria required under subsections 2(1) and 2(b) above, the impact to a considerable number of persons must be established in one of the following ways:

- i. **Daily, Complaint-Based:** A minimum of five (5) confirmed complaints in a day and at least two of which are confirmed in the presence of the Inspector. **NOTE:** An Inspector will not solicit complaints from community members. This means an Inspector will not attempt to encourage or gather complaints in the field unilaterally or act in a prejudicial manner against any facility under investigation.

However, this restriction does not apply to any organizing or soliciting that may take place between members of the public.

- ii. **Public Agency-Based:** The public aspect of a nuisance does not need to rely on any complaints received by the District, if reliable information from a public agency is available documenting the number of persons impacted. Use of any such information will be only of data based on real time activity and not include any projected or modeled activity which might indicate a probability.
- iii. **Other Impact-Based:** The weight of facts and evidence demonstrates that the public has been impacted over time, which may be less than the typical single-day thresholds for public nuisance on any one day. Approval to issue based on this criteria will be determined by the Director of Enforcement.

Once a finding of violation has been established pursuant to the applicable criteria listed above, issuance of any public nuisance Notice of Violation will be only after approval of the Air Quality Program Manager.

#### **C. Further Enforcement Action**

The Compliance and Enforcement Division staff will evaluate cases and confer with the District Counsel's Office to discuss options for further legal action on cases.

#### **D. Complainant Notification of Abatement Hearing**

In all actions brought before the Hearing Board for the abatement of a public nuisance, complainants involved in the nuisance will be notified of the hearing.

### **5. ODOROUS EMISSIONS - REGULATION 7**

#### ***Section 301: General Limit on Odorous Substances***

Non-specific, any odor, at emission point

Sample diluted with odor-free air (Refer to Table I of Regulation 7 for dilution rates).

#### ***Section 302: Limit on Odorous Substances at or Beyond Property Line***

Non-specific, odorous ambient air

Sample diluted with four parts of odor-free air

#### ***Section 303: Limit on Odorous Compounds***

Five specific, chemically identifiable odors at emission point

*Maximum allowable concentrations (Refer to Table II of Reg. 7)*

### **A. Standards Applicability**

The standards of Regulation 7 are not applicable until the District receives odor complaints from ten or more individuals within a 90-day period alleging a specific facility. The complaints must allege that a person has caused odors perceived at or beyond the property line of such person's facility that are deemed to be objectionable by the complainants in the normal course of their work, travel, or residence. This also includes areas where complainants might typically be for public use, e.g., parks, places of worship, stadiums, museums, recreational facilities, etc.

All complaints received against an alleged source are investigated for confirmation, pursuant to the procedures specified at Section 3 above. However, for the purposes of Regulation 7 applicability, complaints need not be confirmed, if, based on facts and the weight of evidence through investigation, such complaints are considered legitimate and provided they are not related to one single event.

The standards remain in effect for any rolling 12 months from the date of the most recent complaint. If 12 months pass and no additional complaints are received, the facility is removed from the Regulation 7 list. However, the limits will become applicable again when the District receives alleged odor complaints from at least five or more complainants within a 90-day period.

### **B. Facility Notification**

Once the requirements of Regulation 7 have been triggered, the facility must be notified in writing by the District that it is now subject to the provisions of Regulation 7.

A letter, which must be signed by the Director of Enforcement (see example at Exhibit 5), advises the persons responsible for the alleged source(s) that Regulation 7 is now in effect and will remain in effect for a period of 12 months from the date of the most recent complaint. A copy of Regulation 7 must accompany the letter.

Only after facility notification is accomplished can an odor bag sample be requested from the District's Technical Services Division.

### **C. Sampling Request**

Once a facility is subject to the provisions of Regulation 7 (10 complaints have been received and proper notification has been made to the facility), upon receipt of any additional complaints, the inspector will proceed to the vicinity of the complaint to determine the viability of requesting a source test unit for the purpose of obtaining a bag sample. Factors that influence the viability of a Regulation 7 odor sampling are: commingling sources, strength of odor, wind stability, etc. The inspector may request an odor

bag sample for up to 72 hours, but should carefully weigh the factors before calling.

If an odor is present, the Inspector shall advise the supervising inspector to request the Technical Division Source Test Section staff to conduct a source test or collect odor bag samples. **All communication surrounding the request for an odor bag and potential odor panelists should be conducted in a secured manner (e.g., not by way of the ComCenter radio system. Nextel devices used in either the phone or direct connect mode are secure).**

#### **D. Determination of Sampling Location**

The inspector will be responsible for selection of an appropriate location for off-property odor sampling. The overriding basis for the selection shall be the assurance, that any sample collected, which may be deemed odorous after dilution at four to one, was emitted from the alleged source. Evaluation, by the inspector, of any odors directly upwind of the selected sampling location shall be conducted immediately prior to and immediately after sampling has been conducted.

If, in the opinion of the inspector on site, there is a potential that an odor directly upwind of the selected location may pose a potential interference to the collected sample, and no other appropriate downwind sampling location can be found to eliminate this potential interference, an upwind sample shall also be collected for evaluation pursuant to Section 404 of Regulation 7. Upon completion of sampling, the Inspector will sign the "Odor Field Data Sheet" (see Exhibit 6) provided by Source Test Section staff, verifying that all the pre-test and post-test upwind inspections were conducted.

#### **E. Odorous Emissions Violation Criteria**

See "Source Test Requests and Results Guidelines" of this Manual for processing of Source Test recommendations for Notice of Violation issuance.

## **6. COMPLAINT REPORTS**

### **A. General**

Verify the correct information was dispatched regarding complaint type and Site#.

Do **NOT** identify the complainant by either first or last name or by address within the body of the report. When referring to the complainant, identify him/her only by the C#.

## B. Major Incident

In some situations, complaints are associated with an accidental release or a major incident. The inspector should follow the "Incident Response and Investigation Plan" Guidelines of this Policies and Procedures Manual and may need to prepare an Incident Report.

## 7. COMPLAINT FORMS

### A. Complaint Report

A complaint report documenting the investigation of a complaint received will be written on the "Complaint Report" form (see Exhibit 1). If the Complainant has indicated a desire to receive a copy of the written report, that process will also be initiated. Copies of complaint reports resulting from ARB or EPA referral are sent to the referring agency.

### B. Complaint Declaration

A "Complaint Declaration" form (see Exhibit 2) should be offered to a Complainant if the inspector and Complainant are unable to meet and identify the contaminant together (face to face), but the inspector is able to accomplish the following:

- Can arrive within 60 minutes of the time of the complaint occurrence at the location specified;
- Can independently detect the contaminant alleged by the complainant and trace it from the Complainant's impacted location back to the alleged source/facility;
- Is reasonably certain the contaminant detected is the same contaminant alleged by the complainant, based upon at least one prior face-to-face confirmation with the same Complainant.

If the above criteria are met, then a "Complaint Declaration" form completed and returned by the Complainant for processing will be deemed to confirm a complaint (see Section 3(G) above).

If the above conditions have already been established for at least one complainant, the "Complaint Declaration" form may also be used in public situations where many people approach an inspector at once. The forms can be distributed, retrieved, and the complainants can be interviewed at a later time.

### C. Odor Log

The "Odor Log" form (see Exhibit 3) is an information-gathering tool to gather correlating information when a source is unknown or to assist in building or strengthening an existing case. It should not be used instead of making a formal complaint (via telephone) or, where applicable,

completing a "Complaint Declaration" form. An "Odor Log" form should be used for the following circumstances:

- Complainants who wish to record daily and hourly observations of an air contaminant for which a complaint has already been called in to the District. This can be used when a Complainant wants to make more than one complaint in any single calendar day (see Section 1(G) above).
- Complainants who are family members of the same household where a Primary complaint has already been received for the same source on the same day (see Section 1(G) above).
- Complainants who have stated they want to assist in the investigation where the source/facility has not been determined.

*These guidelines are intended to provide staff with standardized procedures. District staff may deviate from these guidelines following approval from District management. The guidelines do not modify District regulation or other applicable law, and do not create binding requirements on the APCO or any entity outside the District. In the event of a conflict between these guidelines and District regulation, the latter will govern.*



Complaint Report - page 2

C #

**I. INTRODUCTION**

**II. OBSERVATIONS**

**III. STATEMENTS**

**IV. CONCLUSIONS**

A confirmed complaint does not automatically indicate a violation of the state or Federal law or BAAQMD regulation.

Inspector: # Date of Report:

	BAY AREA AIR QUALITY MANAGEMENT DISTRICT	<b>COMPLIANCE &amp; ENFORCEMENT DIVISION</b>	<b>Complaint Declaration</b>  C# _____
---	---	--	--

*Person Making Complaint*

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Mailing Address, if different: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Alternate Daytime Phone: \_\_\_\_\_ (cell? Yes  No )

*Time of Emission*

Date emission was observed: \_\_\_\_\_

Time when emission was observed: From \_\_\_\_\_ AM/PM To \_\_\_\_\_ AM/PM

Was the emission continuous or intermittent during that time? \_\_\_\_\_

*Location of Emission*

Was this location different from the above home address? Yes  No

Location where the emission was observed if other than above. Give address if possible \_\_\_\_\_

Suspected source Company name, if known: \_\_\_\_\_

Direction the wind was blowing from, if noticed: N- NE- E- SE- S- SW- W- NW-

*Description of Emission*

Odor- Smoke- Dust- Asbestos- Other-

If *Other*, please describe: \_\_\_\_\_

If *Odor*, please describe (see Instructions on reverse) \_\_\_\_\_

Odor Intensity: Very Strong- Strong- Easily Noticeable- Faint- Very Faint-

*Impact of Emission*

How did the emission affect you? \_\_\_\_\_

Other useful information, comments: \_\_\_\_\_

Will you testify in court? Yes  No

*Declaration*

I declare under penalty of perjury that the above information is true and correct.

Executed on: \_\_\_\_\_ 20\_\_ at \_\_\_\_\_, California

\_\_\_\_\_  
Signature of Complainant

See page Two for General Information and Specific Instructions  
Exhibit 2

### General Information

- This form should be obtained from a District Inspector during the course of complaint investigation in order to establish the connection between a complaint and the case being investigated.
- The Inspector will interview the Complainant either at the time of the complaint or when this Complaint Declaration form is collected.

### Instructions

- **ALL:** Every box must be completed. If the information is not known or is not applicable, the Complainant will indicate "not known" or "not applicable" in the space provided.
- **COMPLAINANT INFORMATION:** The Complainant must list a residence location, not a post office box number. At least one of the telephone numbers must allow contact with the Complainant from 8:30 AM to 5:00 PM Monday through Friday.
- **ODOR DESCRIPTION:** If possible, the Complainant can relate the emission to a more familiar odor. Some examples are:
  - skunk, rotten eggs, sewage, tar/asphalt, sulfur
  - solvent, paint, gasoline, petroleum, oil
  - burning, burning wood, burning pot handles, burning brakes/clutch
  - garbage, dead animal, rotten meat, vomit, cooking vegetables
  - chemical, musty, metallic
- **IMPACT OF EMISSIONS:** The Complainant must state the way in which the emissions impacted or had a result/effect on him/her.
- **DECLARATION:** The inspector will check that the signature is the Complainant's legal name.



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

Compliance and  
Enforcement Division

To Report an Air Pollution Complaint, call the  
Toll-Free, Multi-Lingual Complaint Line:

**1-800-334-ODOR [6367]**

To Report a Natural Gas Odor to PG&E:

**1-800-743-5000**

To Report any EMERGENCY: **Dial 9-1-1**

**Odor Log**

Week of: \_\_\_\_\_

through \_\_\_\_\_

C# \_\_\_\_\_

(if applicable)

Name of Alleged Odorous Facility: \_\_\_\_\_  Unknown

Address of Alleged Odorous Facility: \_\_\_\_\_

Address Location for Log: \_\_\_\_\_

Mo/Date	Sun. /	Mon. /	Tues. /	Wed. /	Thurs. /	Fri. /	Sat. /
<b>6 - 9 AM</b>							
Intensity							
Description							
Wind From:							
<b>9 - 12 PM</b>							
Intensity							
Description							
Wind From:							
<b>12 - 3 PM</b>							
Intensity							
Description							
Wind From:							
<b>3 - 6 PM</b>							
Intensity							
Description							
Wind From:							
<b>6 - 9 PM</b>							
Intensity							
Description							
Wind From:							
<b>9 - 12 AM</b>							
Intensity							
Description							
Wind From:							
<b>12 - 3 AM</b>							
Intensity							
Description							
Wind From:							
<b>3 - 6 AM</b>							
Intensity							
Description							
Wind From:							

This form is an information-gathering tool to collect correlating data when a source is unknown or to assist in building or strengthening an existing case. It should not be used instead of making a complaint via telephone.

*See Reverse for Instructions and Completion*

**Exhibit 3**

Comments:	
Name of Person Completing Form:	Keep Confidential? Y ___ N ___
Signed _____	Date _____
Address of Person Completing Form:	

### General Instructions for Completing Odor Log

The form should be filled out by only one adult in the household to insure uniformity. The location can be anywhere the odor is detected, but it must be the location used consistently per log. Each log contains a week's period, with eight 3-hour spaces for recording odors on each 24-hour day. For each log, make entries as follow:

- Under "Week of" enter Sunday's date of the week in which the log was started. Any portion of the week may be recorded or left blank.
- Next to each day of the week, enter the abbreviated month/date.
- In the first row under each time slot, labeled "Intensity," select a number (1) through (5) which indicates the strength of the odor. See **Odor Intensity** below. If you do not detect any odor during any time slot, leave that slot blank.
- In the second row under each time slot, labeled "Character," select a letter (A) through (P) which best describes the type of odor you detected. You may use more than one letter, if necessary. See **Odor Descriptions** below.
- In the third row under each time slot, labeled "Wind From," list the compass point direction from which the wind was blowing, e.g., E or NW.

Under the comments area, add any information you feel may be helpful, such as wind speed, weather conditions, further description of the odor, etc.

Odor Intensity	Odor Descriptions
1 - Very faint	A - Chemical
2 - Faint	B - Paint-like, solvent
3 - Easily noticeable	C - Natural gas, household stove
4 - Strong	D - Sewage, fecal matter, manure
5 - Very strong	E - Gasoline, diesel, kerosene, oily
	F - Tar-like, asphalt
	G - Rotten egg (H <sub>2</sub> S), skunk
	H - Sulfur, lighting match
	I - Vomit, rotten meat, dead animal, putrid
	J - Sour, acid, vinegar
	K - Sweet, acrid, pungent
	L - Musty, metallic
	M - Burning brakes, clutch, pot handle
	N - Burning wood, cardboard, paper
	O - Compost, rotting vegetation
	P - Other, specify in comments area

**Sorry!**  
**I missed you**



**Bay Area Air Quality  
Management District**

939 Ellis Street  
San Francisco CA 94109  
(415) 771-6000

***Please see other side.***

DATE

NAME

While you were out, our Air Quality  
Inspector stopped by to see you

- at your request  
 will call you at:  will stop by to see you at:

TIME

DATE

- message \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- please call our office at the phone number  
listed below during regular business hours  
Mon-Fri 8:30 - 5:00. Ask for the Inspector  
whose name is on the business card.

Exhibit 4

Date \_\_\_\_\_

Facility Name  
Address  
City

Dear \_\_\_\_\_:

This letter is to advise you that the Bay Area air Quality Management District has received a sufficient number of complaints from citizens alleging objectionable odors from your facility during the 90-day period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.

As a result of these complaints, your facility is now subject to the provisions of District Regulation 7, Odorous Substances. A copy of the regulation is enclosed for your review. Your facility will remain subject to this regulation until such time as the District has confirmed no citizen complaint for a period of 12 months from the date of this letter.

The District would be please to discuss with you the nature of the complaints, and assist you in identifying and eliminating or reducing the offending odor from your facility. It is our hope that this matter can be resolved to everyone's satisfaction and that further enforcement action will not be necessary. Please contact \_\_\_\_\_, Supervising Air Quality Inspector, at (415) 749-xxxx to arrange such a discussion, or to obtain additional information.

Thank you for your attention to this matter.

Very truly yours,

Kelly Wee  
Director, Compliance and Enforcement

KW  
Enclosure

Exhibit 5

**Bay Area Air Quality Management District  
Source Test Section**

**Odor Field Data Sheet**

<b>Company Name:</b>	<b>Plant #</b>
<b>Plant Contact:</b>	<b>Title:</b>
<b>Test Date:</b>	<b>Test Times:</b>

<b>Sample Site Location:</b>
<b>Wind Velocity:</b> <b>MPH Out of</b> <b>° Magnetic</b>

**Source Test Section**

I extracted this sample at the above identified time and location. I have followed all pertinent quality assurance procedures with regard to sampling methodology.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

**Inspection Section**

I have verified that other than the company identified above, there are no other odor sources upwind which may have contributed to any violation based on the sample collected during this Source Test.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

**INVESTIGATOR**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
939 Ellis Street, San Francisco, CA 94109

**COMPLIANCE and ENFORCEMENT DIVISION**

The person identified here is an authorized investigator for the Bay Area Air Quality Management District, and shall have the right of entry as provided for by the California Health and Safety Code Section 41510, and Title 13, Part 3, California Code of Civil Procedures.

PHOTO

Name of Investigator

Signature

Date:

*[Signature]*  
Director of Enforcement

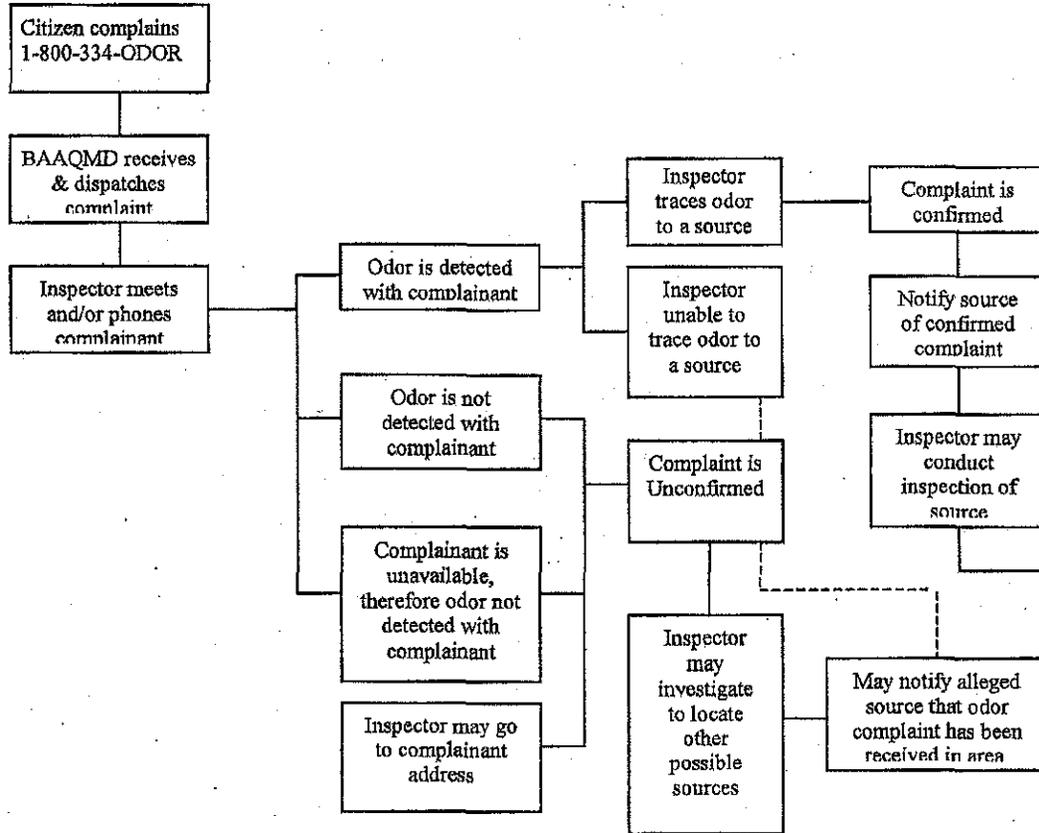
California Health and Safety Code Section 41510 provides that a District investigator, "upon presentation of his/her credentials or, if necessary under the circumstances, after obtaining an inspection warrant...shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting said source including securing samples therefrom, or any records required to be maintained in connection therewith by the state board or any district".

**Exhibit 7**

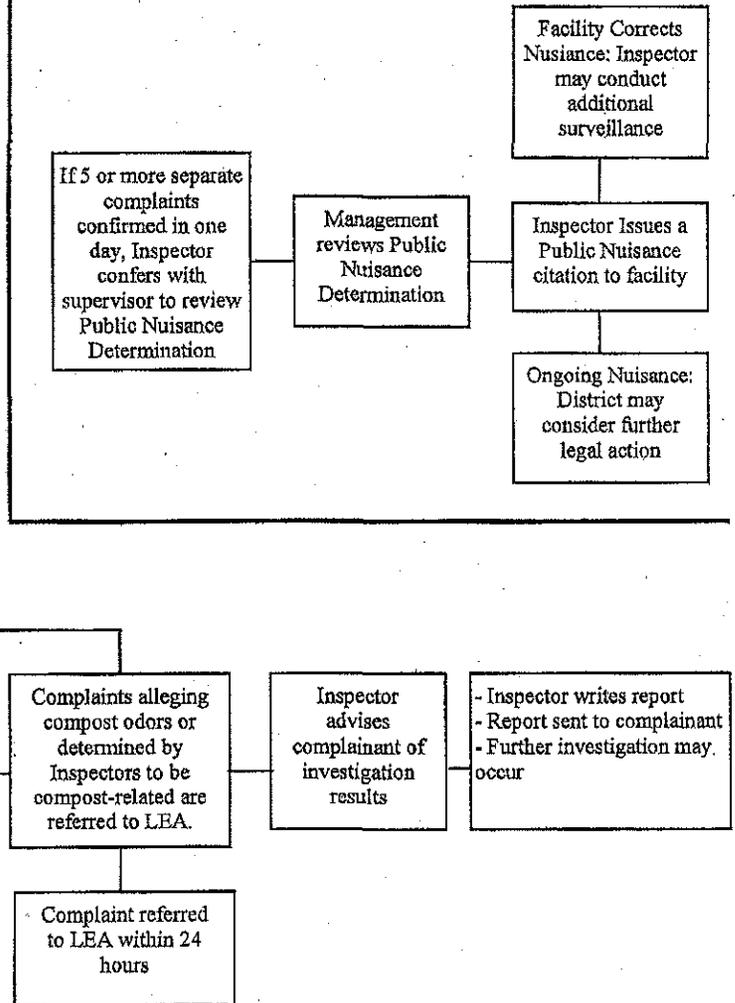
ATTACHMENT 3 BAAQMD/LEA Odor Enforcement Process

**Figure 1**  
BAAQMD Odor Complaint Process

Current, Typical Milpitas Complaint Process



Typical Odor Public Nuisance Process



## ATTACHMENT 4 Odor Complaints

### Summary of Milpitas Odor Complaints by Year Received by BAAQMD

2003 – 169 total complaints  
2004 – 284 total complaints  
2005 – 165 total complaints  
2006 – 147 total complaints  
2007 – 100 total complaints  
2008 – 107 total complaints  
2009 – 52 total complaints  
2010 – 124 total complaints  
2011 – 171 total complaints  
2012 (as of June 5, 2012) – 42 complaints