



AIR POLLUTION CONTROL DISTRICT

POLICY: Access to the Facility

EFFECTIVE: April 04, 1994
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POLICY NUMBER: 24

GENERAL:

This policy and procedure document provides direction to field personnel for gaining legal access to facilities for the purpose of conducting inspections. All APCD personnel will use the procedures outlined in this document whenever they enter private property on APCD business.

POLICY:

The policy of the APCD is that all personnel will gain legal access to facilities when conducting inspections for the purpose of determining compliance with APCD rules.

AUTHORITY:

For the purpose of enforcing or administering any delegated federal, state, or local law, order, regulation, or rule relating to air pollution, APCD personnel have the right of entry to any premises on which an air pollution source is located, to conduct an inspection or secure samples or records. This entry may be made upon presentation of credentials and obtaining consent or after obtaining an inspection warrant pursuant to Title 13, Part 3 of the Code of Civil Procedure. California Health and Safety Code (H&SC) Section 41510 states "For the purpose of enforcing or administering any state or local law, order, regulation, or rule relating to air pollution, the executive officer of the state board or any air pollution control officer having jurisdiction, or an authorized representative of such officer, upon presentation of his credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50), Part 3 of the Code of Civil Procedures, shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, including securing samples of emissions therefrom, or any records required to be maintained in connection therewith by the state board of any district."

CONSENT:

In most cases entry can be made legally with consent and cooperation of the owner or authorized persons at the facility. The inspector must present credentials and make a clear statement of intent to conduct an inspection. The consent must be freely given by either the owner of the facility or by someone authorized by the owner to offer the

inspector consent to enter. Consent may be withdrawn at any time during the inspection. If the consent is withdrawn, the inspection must cease immediately and may not resume until consent is restored or a warrant is obtained.

CONSENT PROCEDURE:

1. Upon arrival at the facility, proceed directly to the administrative office or ask the first person you see to direct you to a person in charge of operations.
2. Introduce yourself to the person in charge of operations, present your credentials, and clearly state your intent.
3. Request consent to conduct the inspection.
4. Begin the inspection after receiving consent. Do not sign any waiver of liability presented to you by anyone at the facility. If requested to sign a waiver, politely refuse to do so and explain that the APCD policy does not allow the forfeiting of the APCD's right to seek damages for injuries incurred by APCD staff if those injuries result from negligence by source operators. If still required to sign the waiver, withdraw and proceed as if access has been denied.

ACCESS TO THE FACILITY DENIED:

1. If a source denies the inspector entry to conduct an inspection, the inspector should politely explain the APCD's inspection policy and give the source another opportunity to grant entry. If entry is denied because a key person is unavailable, the inspector should offer to conduct the inspection accompanied by alternate facility representative(s) and then return when that key person is available to discuss the findings.
2. If the inspector believes the key person must accompany him/her on the inspection or if there is an emergency or other valid reason not to conduct the inspection at that time, then he/she may postpone the inspection to a later date. The inspector must be reasonably certain the facility is not stalling or trying to conceal anything. The inspector should NOT make an appointment for the return visit. Instead, the inspector should inform the source that the inspection will be conducted at another unannounced time. The inspector shall notify their supervisor of the postponement.
3. If access has been denied and the inspector does not believe that there is a valid reason to postpone the inspection, the inspector shall contact their supervisor for guidance.
4. If all attempts to gain entry fail, the applicable supervisor shall instruct the inspector to issue an NOV for violating H&SC 41510, and the inspector should contact his/her supervisor to discuss additional measures that may be taken.
5. The APCO shall contact the source and explain the purpose of the inspection and the APCD's authority to inspect.

6. The APCO may consult with District Counsel and determine if an inspection warrant is needed. A source's denial of inspector entry to conduct an inspection is a violation of Section 41510 of the California Health and Safety Code. If a source is found in violation of this Section, then Section 1822.50 of the California Code of Civil Procedure (Code) establishes the conditions under which an inspection warrant may be properly issued by the court. An authorized APCD employee must present the court with an affidavit which shows that the requirements of Section 1822.52 of the Code have been satisfied. To satisfy the requirements of Sections 1822.51 and 1822.53 of the Code, the court examines the applicant under oath concerning the grounds for granting this application. Once these requirements have been satisfied, the District Attorney will request from the court that the warrant be issued.
7. The APCO may consider to suspend the source's permit using H&SC Section 42304.

WARRANT PROCEDURE:

Where consent cannot be obtained, an inspection warrant must be obtained to gain entry. The procedure and standards for obtaining and executing an inspection warrant are set forth in the California Code of Civil Procedures (Code) Sections 1822.50-1822.57, and are expressly authorized for use by the Air Pollution Control Officer. There are two distinct grounds for issuance of an inspection warrant under Section 1822.52 of the Code:

1. "There is a reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle" (i.e., you have reason to believe based on facts known to you or an informant that a violation exists).
2. "Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle" (i.e., the conduct of the inspection will satisfy the requirements of meeting a neutral administrative inspection scheme [quarterly, semiannual, annual, or grid surveillance]).

The first ground listed previously for obtaining an inspection warrant under Section 1822.52 of the Code requires a "reasonable suspicion" that a violation of a state or local law or regulation has occurred, and, if it existed, would be an immediate threat to health or safety. This is a form of what is known as "probable cause". Where there is evidence or belief that a felony has been committed (something beyond the provisions of the Health & Safety Code dealing with air pollution), the District Attorney should be contacted to determine if a search warrant pursuant to Penal Code Sections 1523-1542 should be obtained either in conjunction with or instead of the inspection warrant.

The second ground for an inspection warrant does not require probable cause, but rather can be issued where administrative standards for conducting a routine or area inspection are satisfied. Care should be taken not to obtain an inspection warrant based on this ground where there is reasonable suspicion that a violation of a state or local law or regulation has occurred and the District Attorney or County Counsel have indicated that a criminal prosecution may be considered based on the evidence obtained from the inspection. If an inspection warrant is obtained based upon legislative or

administrative standards, (i.e., without a demonstration that a reasonable suspicion of a violation exists), the evidence may be excluded from any criminal prosecution. When in doubt, it is preferable to obtain a warrant based on probable cause.

HOW TO OBTAIN A WARRANT:

1. When refused entry, the inspector will avoid arguments, be tactful, and attempt to defuse any confrontation. The inspector will explain APCD's reasons for requesting the inspection.
2. If after reasonable efforts the inspector fails to obtain entry, he/she should leave the premises and contact his/her supervisor to explain the circumstances of the denial.
3. The inspector should submit a completed inspection warrant request to his/her supervisor. The inspector's role in preparing this request is very important as all the information required for the issuance of an inspection warrant must come from a declaration (affidavit) stating specific facts reported by the inspector.
4. Upon review and approval of the inspection warrant request, the supervisor will, in consultation with County Counsel, assist the District Attorney's office in preparing the inspector's affidavit of request and the inspection warrant.
5. The inspector will sign the affidavit of request and proceed to court with the District Attorney or County Counsel, whereupon the judge will examine the applicant in person, under oath, concerning the existence of the grounds for an inspection warrant. The inspector should have their credentials in their possession at the time of examination.
6. If the judge is satisfied that the cause for the inspection exists, she/he will sign the inspection warrant, and return a copy to the applicant.

EXECUTING THE INSPECTION WARRANT:

1. Once the warrant has been obtained, the inspector is required to provide 24 hour notice to the source prior to inspection. Notice must be served personally by directly contacting the owner/operators of the facility. Unless otherwise authorized in the warrant, the owner or occupant of the particular place, dwelling, structure, premises or vehicle must be present during the inspection.
2. The inspector shall execute the warrant (appear on premises and conduct the authorized inspection) during the time specified on the warrant, usually between the hours of 8:00 a.m. and 5:00 p.m., unless these time requirements are unreasonable in light of the particular circumstances and will unfairly interfere with the purpose of the inspection (e.g., the violations only occur at night). In this case, the judge may, in accordance with Section 1822.56 of the Code, provide exception to these requirements in the inspection warrant. The warrant is ordinarily effective for not more than 14 days after issuance.
3. The inspector will not conduct an inspection authorized by inspection warrant by means of forcible entry unless expressly authorized by the judge. The judge may authorize such an entry if the applicant (APCD) shows the existence of one or both

of two sets of circumstances as provided in Section 1822.56 of the Code: (1) there is a reasonable suspicion that a violation is occurring which, if it existed, would be an "immediate threat" to health and safety, or (2) where facts show that reasonable attempts to serve a previous warrant have been unsuccessful. All such entries shall be made in presence of a trained peace officer (deputy sheriff of city police officer). A supervisor will accompany the inspector on any such inspection.

4. Upon completion of the inspection, the inspection warrant must be returned to the superior court clerk. This will be done by the attorney who obtained the warrant.

If the provisions for obtaining and executing an inspection warrant are not followed correctly or if the inspection is improperly conducted, the information obtained from the inspection may not be allowed into future legal actions that may result from the violation(s). In addition, an inspector who conducts an illegal search can be liable for civil damages. Inspectors should therefore make every effort to properly obtain and execute an inspection warrant. If any questions arise, contact your supervisor or County Counsel.

EMERGENCY INSPECTION PROCEDURE:

1. If the inspector observes a violation prior to gaining consent to enter and the evidence of the violation may disappear during the delay involved in obtaining consent, the inspector should document observations, obtain evidence, and then proceed directly to the person in charge of operations prior to conduct an inspection.
2. In an emergency, when there is an imminent threat to life, health, or property and there is no time to obtain a warrant, a warrantless, non-consensual inspection is permitted. An emergency situation includes potential imminent hazard to life, health of property. If before or during an inspection the inspector feels that a situation is unsafe or if they lack the proper safety equipment or training, the inspection shall be terminated until such a time that the proper safety conditions can be established. In such rare circumstances, APCD staff should take all reasonable precautions to protect themselves and consult immediately with an APCD supervisor. The inspector should contact emergency response personnel if necessary.


Belen Lopez
Air Pollution Control Officer