



SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT POLICIES AND PROCEDURES

| | | | |
|----------------|----------------------------------|--------|-------------------|
| Policy No: | <u>3100.002.2019</u> | Draft: | <u> </u> |
| Supersedes No: | <u>3100.I.B</u> | Final: | <u> x </u> |
| Date: | <u>June 28, 2019</u> | Pages: | <u> 2 </u> |
| Topic: | <u>Access to the Facility</u> | | |
| Distribution: | <u>Compliance Division Staff</u> | | |

This policy and procedure provides direction to field staff for gaining legal access to facilities, or private property on District business, including conducting inspections.

Authority

For the purpose of enforcing or administering any delegated federal, state, or local law, order, regulation or rule relating to air pollution, District staff 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. This authority is contained in Section 41510 of the California Health and Safety Code.

Consent

In most cases entry can be made legally with consent and cooperation of the owner or authorized persons at the facility. Staff should 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. Consent may be withdrawn at any time during the inspection. If consent is withdrawn, the inspection must cease immediately and may not resume until consent is restored or a warrant is obtained.

An inspector may enter, without express consent and without warrant, any part of any premises open to the public. This is considered consensual entry since an open, unguarded gate or public place is an implied invitation to enter.

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.

Policies and Procedures Memoranda are intended to provide agency staff, applicants and the public guidance relative to standardized District procedures. These policies and procedures shall not be interpreted in conflict with District Rules and Regulations or administrative policies, and may be modified or updated periodically without advance notice.

3. Request consent to conduct the inspection, take photos, and any other consent necessary (e.g. take samples).
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 District policy does not allow the forfeiting of the District's right to seek damages for injuries incurred by District 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

If a source denies District staff entry to conduct an inspection, this 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 District employee must present the court with an affidavit which shows 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 requests from the court that the warrant be issued. District staff should follow the procedures outlined in Compliance Policy & Procedure I.B.2 *When and How to Obtain an Inspection Warrant*.

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 conducting 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 or property. In such rare circumstances District staff should take all reasonable precautions to protect themselves and consult immediately with a District supervisor. The supervisor will contact emergency response personnel, if necessary.