

AIR POLLUTION CONTROL DISTRICT
REGULATORY COMPLIANCE DIVISION

POLICIES AND PROCEDURES

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Topic: When And How To Obtain An Inspection Warrant

Distribution: All Policy Holders

This policy and procedure document provides guidance to inspectors on when to obtain an inspection warrant and the procedures and standards for obtaining and executing the warrant.

California Health and Safety Code Section 41510 authorizes the Air Pollution Control Officer or his representative to enter the premises of any emission source for inspection, sampling and obtaining records. The entry, authorized by Section 41510, may be made after the inspector presents his or her credentials and obtains consensual entry to the facility (refer to RCD P&P #I.B. - Access to the Facility) or, if necessary when access has been denied, after obtaining an inspection warrant.

WHEN A WARRANT IS REQUIRED

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 Procedure (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 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 above 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 a 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 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, s/he 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 inspectors 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, s/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 hours notice to the source prior to inspection. Notice must be served personally by directly contacting the owners/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 6:00 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 an 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 or 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.

INSPECTION WARRANT REQUEST

1. INSPECTOR NAME, TITLE: _____

2. SECTION SUPERVISOR NAME, TITLE: _____

3. COMPANY NAME: _____

4. COMPANY OWNER/OPERATORS, TITLE: _____

5. COMPANY ADDRESS (if more than one, document all possible): _____

6. DATE OF REQUESTED AND REFUSED ENTRY:

a. Date: _____ Time: _____ In Person _____
On Phone _____
At Site _____

b. Name and Title of Person Refusing Entry: _____

c. Reason for Refusal According to Company (if available): _____

7a. DISTRICT, STATE, AND DELEGATED FEDERAL RULES, REGULATIONS, AND LAWS THOUGHT TO BE VIOLATED:

7b. COMPANY PERMIT NUMBER AND INSPECTION SCHEME (e.g., quarterly, semiannual, annual, grid surveillance):

