



Air Pollution Control Board
Greg Cox District 1
Dianne Jacob District 2
Pam Slater District 3
Ron Roberts District 4
Bill Horn District 5
Air Pollution Control District
R. J. Sommerville Director

DATE: June 20, 2001

TO: San Diego County Air Pollution Control Board

SUBJECT: ADOPTION OF AMENDMENTS TO RULE 177 – INSPECTION OF
PUBLIC RECORDS (District: All)

SUMMARY:

Overview

As mandated by state law, Rule 177 specifies the requirements and obligations of the District and the public regarding inspection of public records. The proposed revisions reflect amended law. Specifically, the amended rule will allow 10 rather than 5 working days to determine if requested records can be made available and an additional 14 days, if necessary, to complete this determination. Provisions have also been added requiring the requestor to be notified as soon as possible as to when they may inspect the records, or if the requested records cannot be made available, the specific reason must be provided to the requestor in writing with the names and titles of each person responsible for making the determination.

Rule 177 also specifies the administrative procedures that apply when public records contain materials identified as "trade secret." Trade secret materials may include procedures, formulas, production data or other information which is not patented, if it allows the user to maintain a business advantage over competitors who do not know or use it. While material usage and production data may be classified as trade secret, the resulting air pollution emission data may not be classified as such. The criteria and procedures for classifying submitted materials as "trade secret" are specified in Rules 175 - General and Rule 176 - Information Supplied to District. Recent revisions in state law pertaining to public records contained no substantive changes regarding records designated as "trade secret." Accordingly, sections of Rule 177 addressing public review of records labeled trade secret contain only minor administrative changes for clarification.

A public workshop was held on May 23, 2001. There were no comments.

Recommendation(s)

AIR POLLUTION CONTROL OFFICER

Adopt the resolution adopting amendments to Rule 177 – Inspection of Public Records of the District Rules and Regulations and make appropriate findings:

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- (i) of necessity, authority, clarity, consistency, non-duplication and reference as required by Section 40727 of the State Health and Safety Code;
- (ii) that pursuant to Health and Safety Code section 40001 the adoption of the amendments will make the rule consistent with state law, and that the rule amendments will not interfere with the attainment of ambient air quality standards; and
- (iii) that an assessment of the socioeconomic impact of the proposed amendments is not required by Section 40728.5 of the State Health and Safety Code because the proposed amendments will not affect air quality or emission limitations.

Fiscal Impact

The recommended action will have no fiscal impact on the District.

Business Impact Statement

Not Applicable

Advisory Board Statement

The Air Pollution Control Advisory Committee recommended adoption of amended Rule 177 at its May 23, 2001, meeting.

BACKGROUND:

Socioeconomic Impact Assessment

Section 40728.5 of the State Health and Safety Code requires the District to perform a socioeconomic impact assessment for new and revised rules and regulations significantly affecting air quality or emission limitations. The adoption of amendments to Rule 177 will not affect air quality or emissions limitations. Therefore, a socioeconomic impact assessment is not required.

Compliance with Board Policy on Adopting New Rules

On February 2, 1993, the Board directed that, with the exception of a regulation requested by business or a regulation for which a socioeconomic impact assessment is not required, no new or revised regulation shall be implemented unless specifically required by federal or state law. The adoption of amendments to Rule 177 is consistent with this Board directive.

Additional Information:

Attachment I contains the Resolution amending Rule 177 of the District's Rules and Regulations and the Change Copy.

Respectfully submitted,

ROBERT R. COPPER
Deputy Chief Administrative Officer


R. J. SOMMERVILLE
Air Pollution Control Officer

SUBJECT: ADOPTION OF AMENDMENTS TO RULE 177 – INSPECTION OF PUBLIC RECORDS (District: All)

AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

COUNTY COUNSEL REVIEW	<input checked="" type="checkbox"/>	Yes	<i>12 6/5/01</i>
Written disclosure per County Charter Section 1000.1 required	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY FINANCE DIRECTOR	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> N/A
CHIEF FINANCIAL OFFICER	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> N/A
Requires Four Votes	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY INFORMATION TECHNOLOGY DIRECTOR	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> N/A
CHIEF TECHNOLOGY OFFICER	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> N/A
DEPARTMENT OF HUMAN RESOURCES	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> N/A

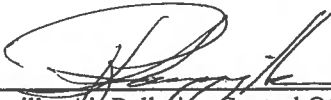
Other Concurrence(s): N/A

ORIGINATING DEPARTMENT: Air Pollution Control District, County of San Diego

CONTACT PERSON(S):

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AUTHORIZED REPRESENTATIVE:



R. J. Sommerville, Air Pollution Control Officer

SUBJECT ADOPTION OF AMENDMENTS TO RULE 177 – INSPECTION OF PUBLIC RECORDS (District: All)

AGENDA ITEM INFORMATION SHEET
(continued)

PREVIOUS RELEVANT BOARD ACTIONS:
May 22, 1974 (1) Approved adoption of Rule 177.

BOARD POLICIES APPLICABLE: N/A

BOARD POLICY STATEMENTS: N/A

CONTRACT NUMBER(S): N/A

Re Rules and Regulations of the
Air Pollution Control District . .)
of San Diego County)

Resolution No. 01-178

**RESOLUTION AMENDING RULE 177
OF REGULATION IX OF THE RULES AND
REGULATIONS OF THE SAN DIEGO COUNTY
AIR POLLUTION CONTROL DISTRICT**

On motion of Member Jacob , seconded by Member
 Slater , the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

Proposed amended Rule 177 is to read as follows:

RULE 177. INSPECTION OF PUBLIC RECORDS

(a) It is the policy of the Air Pollution Control District that all records not exempted from disclosure by state law shall be open for public inspection with the least possible delay and expense to the requesting party.

(b) A request to inspect public records in the custody of the District must be submitted in writing and describe the records requested with sufficient specificity to enable the District to identify the information sought.

(c) A request to inspect public records should be addressed to Public Records Review, San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

(d) The District shall determine if the records requested can be made available within ten (10) days after receipt of the request. If, under unusual circumstances as defined in Section 6253(c) of the Government Code, this determination cannot be made within ten (10) days, the District will notify the requesting person of the reasons for the delay and when the determination is expected to be completed. (This extension is limited to an additional 14 days). Records labeled as "trade secret" shall be governed by the procedure set forth in Section (f) of this rule.

If the records cannot be made available, the District shall state the specific reason. Reasons for unavailability may be, but are not limited to, the following: the records are exempt from disclosure by state law; the records cannot be identified from the information contained in the request; the records do not exist; the District has determined pursuant to Section 6255 of the Government Code that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the records; or the records in question are not in custody of the District. In the latter situation the District shall, if possible, notify the requesting party of the entity most likely to have custody of the records requested. If the District determines the requested records cannot be made available, the District will also provide the requestor with the name and title of each person responsible for the determination.

(e) As soon as possible after the District has determined if the records can be made available, the District shall advise the requesting person of the following facts:

(1) The location at which the public records in question may be inspected, and the date and office hours during which they may be inspected.

(2) If copies of the public records are requested, the cost of providing such copies.

(3) Which of the records requested, if any, have been labeled as "trade secret" and are not public records. In such a case, the District shall give the notice required by Section (g) of this rule.

(f) Only those portions of records in the custody of the District which are not emission data and (1) were labeled "trade secret" prior to May 22, 1974, (2) are hereafter specifically labeled as "trade secret" pursuant to Rule 176(b), or (3) are received from a state or other local agency, including an air pollution control district, with a "trade secret" designation, shall be subject to the procedure set forth in the following Section (g) of this rule. All other portions of such records shall be made available pursuant to Sections (a) through (e) of this rule.

(g) When the District receives a request to inspect any records labeled with a "trade secret" designation which is not emission data, it shall promptly notify the requesting party that such record is designated a trade secret under Rule 176(b), and, if such is the case, under law it cannot be made available. The notification shall contain a copy of the justification of the request for confidentiality, and if the party requesting the record considers the justification inadequate, he may so advise the District in writing, setting forth his reasons.

Upon receipt of such advice, the Air Pollution Control Officer shall (1) promptly review in detail the justification, the challenge to the justification, and the record; (2) determine if the record is in its entirety a trade secret; and (3) promptly notify those persons affected of its

decision in writing. If the Air Pollution Control Officer withholds the record from inspection, the person requesting it may seek judicial relief under Section 6258 of the Government Code. If the District determines that the record is in any significant part not a trade secret, the District shall send notice by certified mail, return receipt requested, to the person designating the information as a trade secret, with an additional notice that the record in question shall be released for inspection to the requesting party twenty-one days after receipt of the notice, unless the District is restrained from so doing by a court of competent jurisdiction.

Should the person designating the record as a trade secret seek protection in a court of law, the requesting party may be made a party to the litigation to justify his challenge to the designation.

IT IS FURTHER RESOLVED AND ORDERED that the subject amendments to Rule 177 of Regulation IX shall take effect upon adoption.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY Dutton
SENIOR DEPUTY

PASSED AND ADOPTED by the Members of the Air Pollution Control Board of San Diego County, State of California, this 20th day of June, 2001, by the following vote:

AYES: Cox, Jacob, Slater, Horn

NOES: None

ABSENT: Roberts

I hereby certify that the foregoing is a full, true and correct copy of the Original Resolution which is now on file in my office.

THOMAS J. PASTUSZKA
Clerk of the San Diego County
Air Pollution Control Board

By Rosie Pecina
Rosie Pecina, Deputy



SAN DIEGO AIR POLLUTION CONTROL DISTRICT

PROPOSED AMENDMENTS TO RULE 177

CHANGE COPY

Amendments are to read as follows:

RULE 177. INSPECTION OF PUBLIC RECORDS

(a) It is the policy of the Air Pollution Control District that all records not exempted from disclosure by state law shall be open for public inspection with the least possible delay and expense to the requesting party.

(b) A request to inspect public records in the custody of the District ~~need not be in any particular form, but it~~ must be submitted in writing and describe the records requested with sufficient specificity to enable the District to identify the information sought. ~~The District may require that a request to inspect be in writing.~~

(c) A request to inspect public records should be addressed to ~~the Air Pollution Control Officer,~~ Public Records Review, San Diego County Air Pollution Control District of San Diego County, 9150 Chesapeake Drive, San Diego, CA 92123.

(d) The District shall ~~make available~~ determine if the records requested ~~are~~ can be made available, with the exception of those records specifically exempted from disclosure by state law and those records labeled as "trade secret" which are not emission data, within ten (10) working days ~~of the date of~~ after receipt of the request ~~therefor.~~ If, for good cause, ~~the information this determination~~ cannot be made available within ten (10) working days, the District will notify the requesting person of the reasons for the delay and when ~~the information will be available~~ determination is expected to be completed. (This extension is limited to an additional 14 days). ~~Those r~~ Records labeled as "trade secret" shall be governed by the procedure set forth in Subdivision Section (f) of this rule.

(4) ~~The specific reason why~~ If the records cannot be made available, ~~if such is the case~~ the District shall state the specific reason. Reasons for unavailability may be, but are not limited to, the following: the records are exempt from disclosure by state law; the records cannot be identified from the information contained in the request; ~~status not determined;~~ the records do not exist; the District has determined pursuant to Section 6255 of the Government Code that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the records; or the records in question are not in custody of the District. In the latter situation the District shall, if possible, notify the requesting party of the entity most likely to have custody of the records requested. If the District determines the requested records cannot be made available, the District will also provide the requestor with the name and title of each person responsible for the determination.

(e) ~~Within five (5) working days of receipt of a request to inspect public records~~ As soon as possible after the District has determined if the records can be made available, the District shall advise the requesting person of the following facts ~~when appropriate:~~

(1) The location at which the public records in question may be inspected, and the date and office hours during which they may be inspected.

(2) If copies of the public records are requested, the cost of providing such copies, if any.

(3) Which of the records requested, if any, have been labeled as "trade secret" and are not public records. In such a case, the District shall give the notice required by Subdivision Section (g) of this rule.

~~(4) (Moved to section (d).) The specific reason why the records cannot be made available, if such is the case. Reasons for unavailability may be, but are not limited to, the following: the records are exempt from disclosure by state law; the records cannot be identified from the information contained in the request; status not determined; the records do not exist; the District has determined pursuant to Section 6255 of the Government Code that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the records; or the records in question are not in custody of the District. In the latter situation the District shall, if possible, notify the requesting party of the entity most likely to have custody of the records requested.~~

(f) Only those portions of records in the custody of the District which are not emission data and (1) were labeled "trade secret" prior to May 22, 1974, the adoption of this regulation, (2) are hereafter specifically labeled as "trade secret" pursuant to Rule 176(b), or (3) are received from a state or other local agency, including an air pollution control district, with a "trade secret" designation, shall be subject to the procedure set forth in the following Subdivision Section (g) of this rule. All other portions of such records shall be made available pursuant to Subdivisions Sections (a) through (e) of this rule.

(g) When the District receives a request to inspect any records labeled with a "trade secret" designation which is not emission data, it shall promptly notify the requesting party that such record is designated a trade secret under Rule 176(b), and, if such is the case, under law it cannot be made available. The notification shall contain a copy of the justification of the request for confidentiality, and if the party requesting the record considers the justification inadequate, he may so advise the District in writing, setting forth his reasons.

Upon receipt of such advice, the Air Pollution Control Officer shall (1) promptly review in detail the justification, the challenge to the justification, and the record; (2) determine if the record is in its entirety a trade secret; and (3) promptly notify those persons affected of its decision in writing. If the Air Pollution Control Officer withholds the record from inspection, the person requesting it may seek judicial relief under Section-6528 6258 of the Government Code. If the District determines that the record is in any significant part not a trade secret, the District shall send notice by certified mail, return receipt requested, to the person designating the information as a trade secret, with an additional notice that the record in question shall be released for inspection to the requesting party twenty-one days after receipt of the notice, unless the District is restrained from so doing by a court of competent jurisdiction.

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