

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT
MEMORANDUM

August 1, 2022

TO: FRAQMD BOARD OF DIRECTORS
FROM: Christopher D. Brown, AICP, APCO
SUBJECT: Burn Program Summary and Investigative Process

RECOMMENDATION:

This is an "Informational Only" Item

BACKGROUND:

The Open Burn Program is one of many programs the Compliance Division manages and administers. There are several state and local regulations setting the requirements and standards that open burning is allowed and prohibited. It is the air districts jurisdiction and authority to regulate and enforce the air quality regulations contained in the California Health & Safety Code (HSC) and the local regulations.

Local regulations are contained in Rule 2.0 for open burning. The regulations contain provisions for agricultural burning, non-agricultural burning, and residential burning. No other burning is allowed except as provided in the regulation.

The HSC provides that all documented emission violations of any air district rule must be associated with a penalty. The HSC establishes the maximum dollar and jail time penalties for types of violations. All air quality violations are environmental crimes.

DISCUSSION

The District is a complaint driven regulatory government agency. We act on complaints received by the public. All complaints related to air pollution are investigated by staff specialists trained in the investigatory process. Specialists verify facts and determine if there is reasonable and sufficient evidence to demonstrate a violation occurred. Only then does the district act for enforcement.

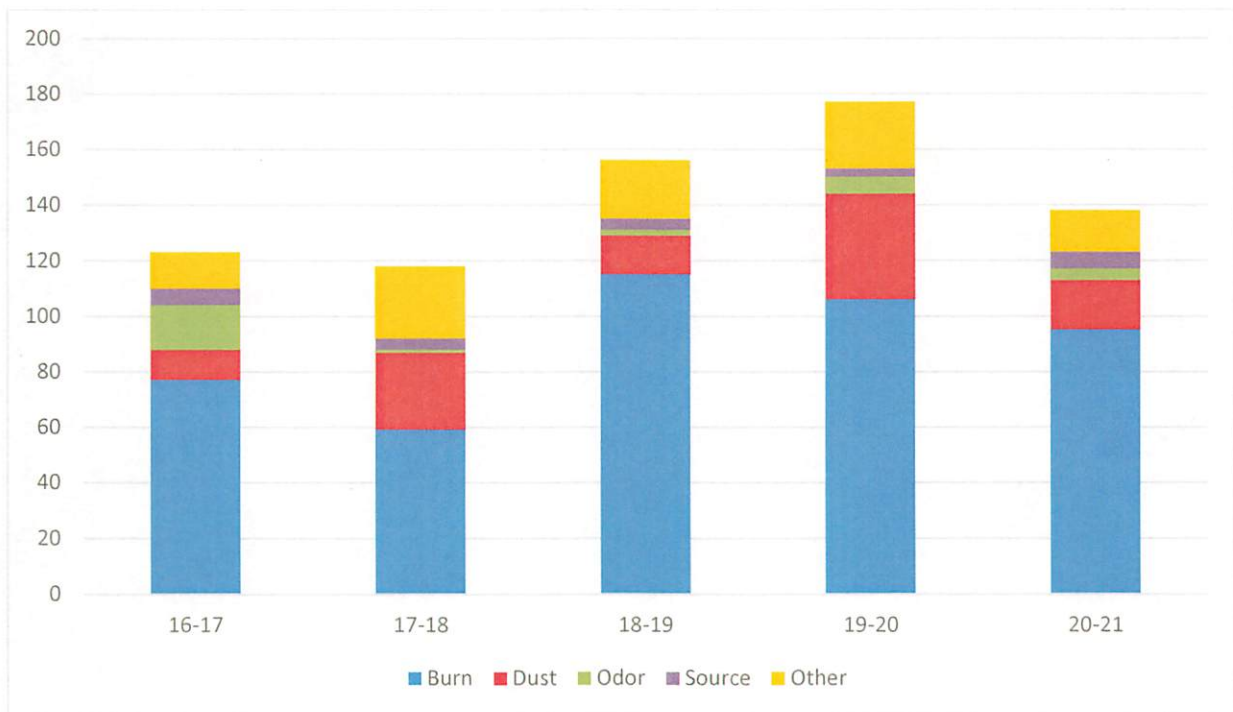
The enforcement of air quality regulations must concentrate first on obtaining compliance and second providing an effective deterrence for non-compliance. We are committed to fair, reasonable, and equitable treatment of regulated sources.

Complaints

In FFY 20-21, the District received and investigated 138 complaints. Of those, 95 complaints were regarding smoke and/or illegal burning, 18 from dust, four from odors, and 15 from other emission, combination complaints, and/or non-emission sources. Most complaints investigated by the district are related to open burning.

Table 1 summarizes complaint response for the last five years.

Table 1 – Complaints over Last Five Years



Investigatory Process

A full and complete investigation determines the who, what, where, when, how and why of an incident. Once the facts are gathered, staff determines if a reasonable person would conclude that a violation occurred. Then the appropriate enforcement action is pursued in accordance with guidance.

Not every complaint results in verified violations and subsequent enforcement action. Of the 95 complaints received last year related to open burning, the District issued only 18 Notices of Violation for alleged open burning violations. All 18 alleged strict liability, meaning the violation occurred on a property and the property owner or land manager was held responsible.

Strict liability derives from established court law in most codes and ordinances. A person cannot contract around strict liability. It is matched by fire codes, building codes, electrical codes, toxics, hazardous wastes, animal codes, water codes, and all environmental codes including water, wastes, soil, and air.

If the investigation reveals other agency violations, then we include the actions the landowner took. If they allege someone came on their property and lit a fire, we will look at the arson fire report or trespassing police report. If there is no evidence of these actions, then we cannot defer the incident to another agency and we must work with the facts and information we have.

Each case is evaluated on its own facts and merits. There is no preferential treatment of any class, race, gender, or any other considerations. The investigatory phase is carried out with strictly fact gathering.

From that point, the appropriate enforcement action is taken, and the District attempts to settle according to the board adopted MSP, refers to counsel, or refers to another regulatory agency. If you would like more information regarding enforcement actions or resolution, I would be happy to discuss with you or if the chair requests, provide additional presentations.



Open Burn Program Summary and Investigative Process

FRAQMD Board

August 1, 2022

Karla Sanders – ksanders@fracmd.org



Open Burn Program Summary and Investigative Process

FRAQMD Board

August 1, 2022

Karla Sanders – ksanders@fracmd.org



Burn Rules

- California Health & Safety Code Section 41850 gives general authorization to regulate burning.
- California Health & Safety Code Section 41855 requires ARB to determine and designate dates when burning is allowed or prohibited.
- Title 17 of the California Code of Regulations provides Smoke Management Guidelines for Agricultural and Prescribed Burning. Locally, the Sacramento Valley Air Basin (SVAB) developed the Sacramento Valley Smoke Management Program.
- Locally, open burning is governed by Air District Regulation II – Open Burning, Rule 2.0. The regulations contain provisions for agricultural burning, non-agricultural burning, and residential burning.
- California Health & Safety Code Sections 42400 et. seq. gives the provisions for enforcing local air district rules and sets penalty maximums. Any violation of an air district rule is an environmental crime.



Types of Open Burning

- **Residential**

- Applicable to dwellings by one or two families. Typically, a normal accumulation is from properties less than 2 acres.
- Authorizes the APCO to require permits and has provisions for the APCO to determine that permits are not required. Currently, permits are not required.
- Typical burn days on the valley floor are Monday, Wednesday, and Saturday between 9:00 a.m. and 4:00 p.m. if allowed by CARB.
- Only dry vegetation grown on the property
- No burn barrels, no prohibited materials, 10 feet clearance, 25 feet from any occupied dwelling, and attended at all times

- **Non-Agricultural**

- Fires set by a public officer or public entity for the prevention of a fire hazard, the instruction of public employees, or disease or pest protection
- Industrial Site Fire Training
- Land clearing for single family residential property development
- The disposal of Russian Thistle
- Permits generally required, all agricultural burn rules followed
- Prohibits the burning for land clearing for commercial and multi unit dwelling developments and at solid waste disposal sites



Types of Open Burning

- **Agricultural**

- agricultural operations in the growing of crops or raising of fowl or animals, including burning empty paper containers of approved agricultural chemicals.
- forest management, range improvement, or the improvement of land for wildlife and game habitat, or disease or pest prevention.
- operation or maintenance of a system for the delivery of water for the purposes specified above.
- wildland vegetation management burning. Wildland vegetation management burning is the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral, trees, grass, or standing brush.
- Prescribed burning is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may also include natural or accidental ignition (wildfires).
- Permits always required.
- A Smoke Management Plan may also be required.

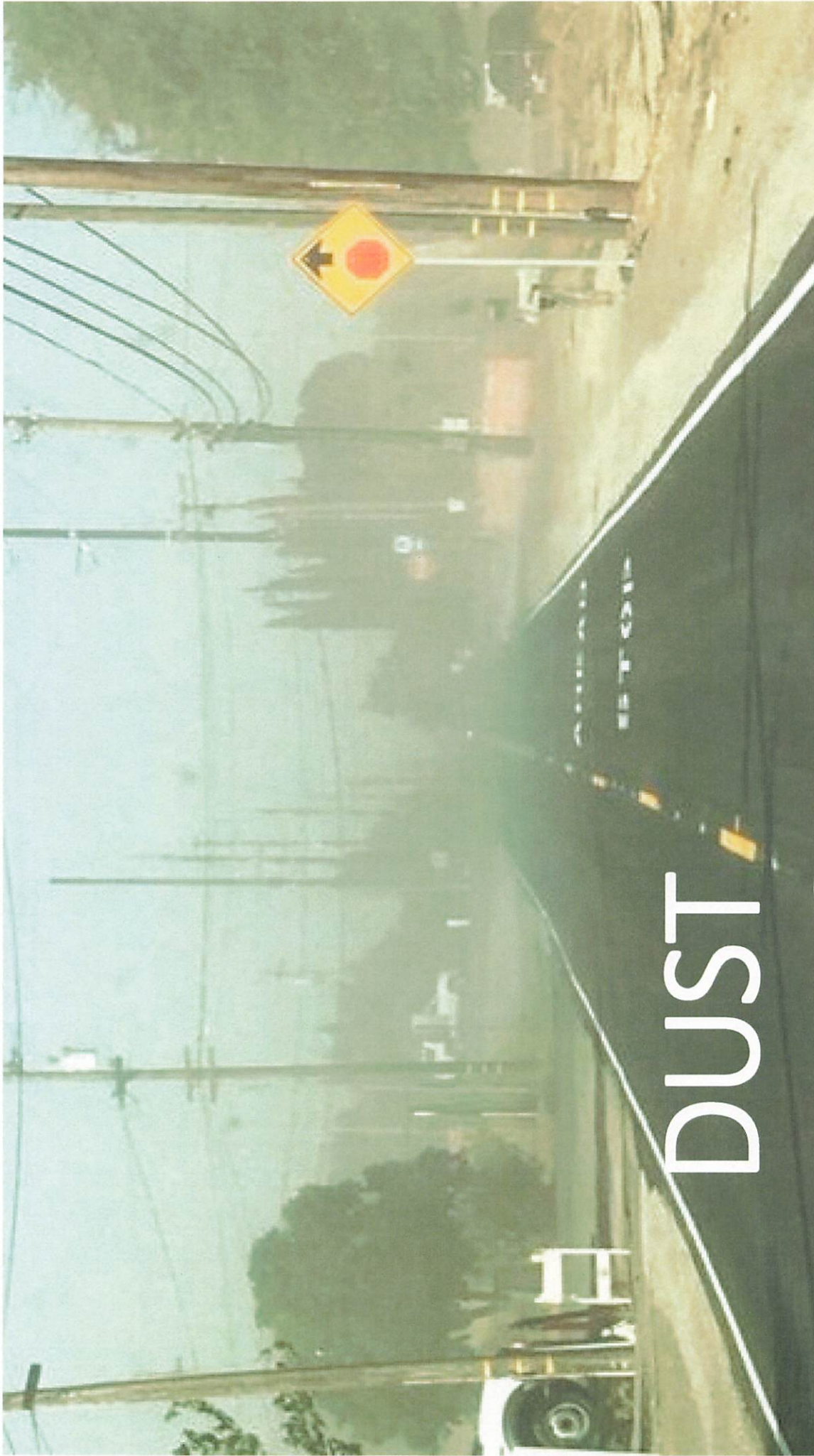


Complaints & Investigatory Process

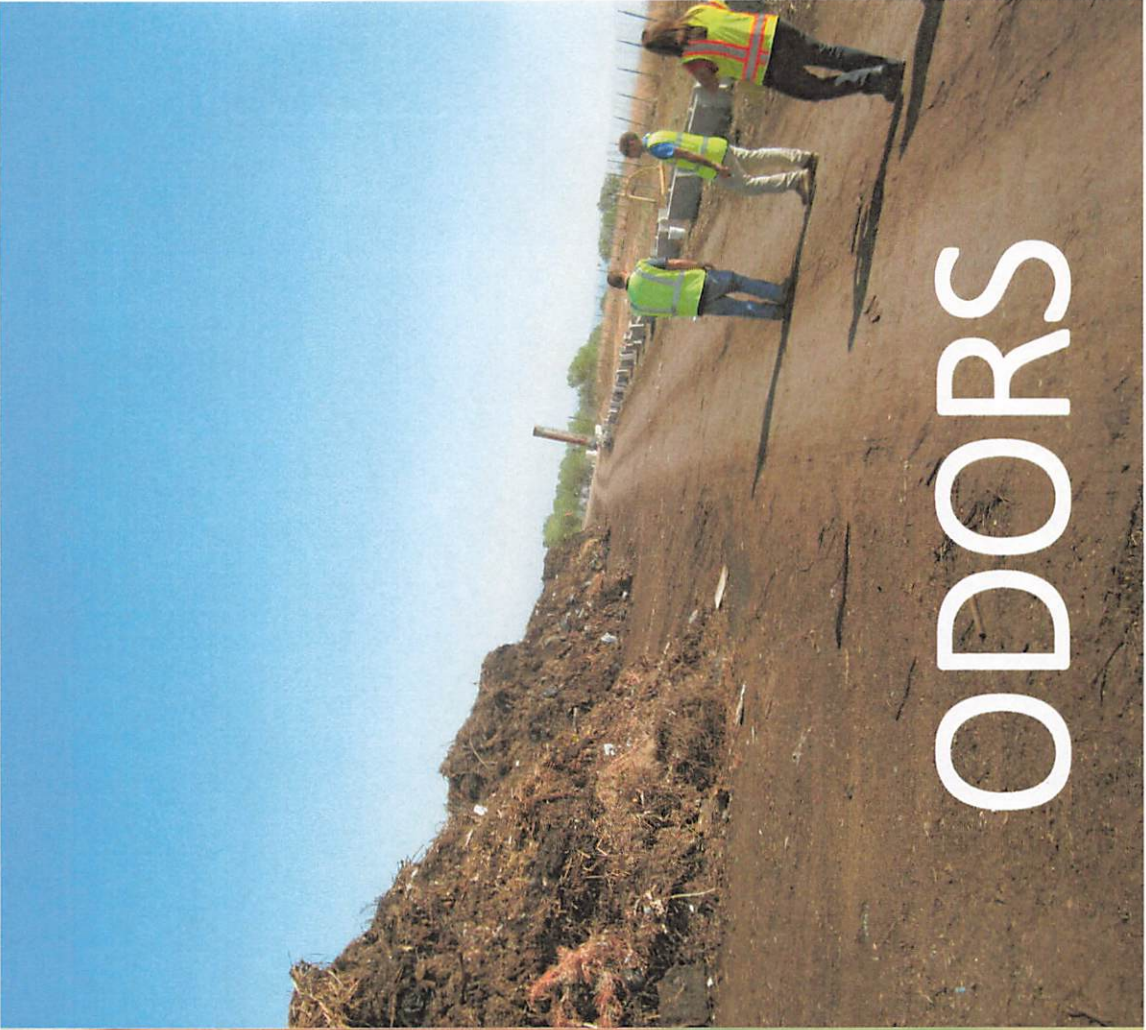


Complaints

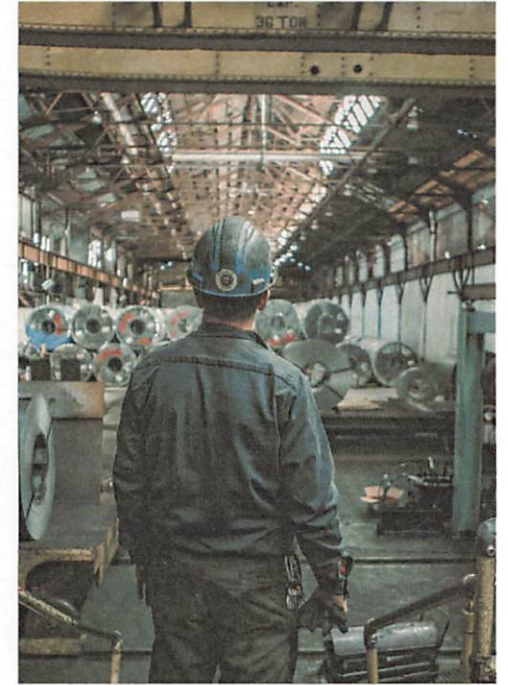
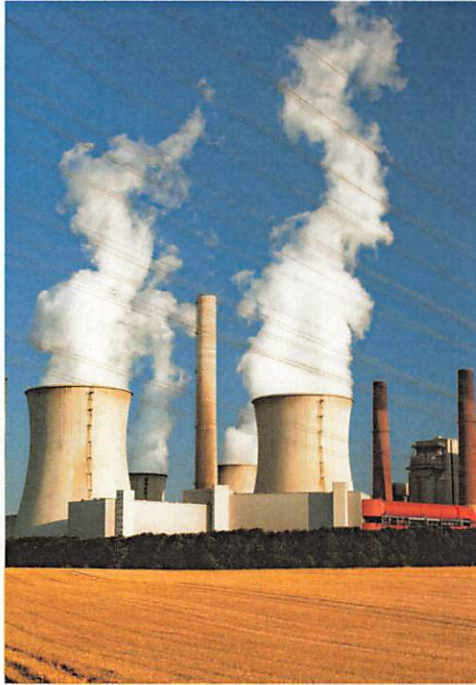
- How we get them
 - Phone calls
 - Emails
 - Friends and family
 - Other agencies
 - Social media
 - Coming Soon – Webpage Submittals at complaints@fragmd.org



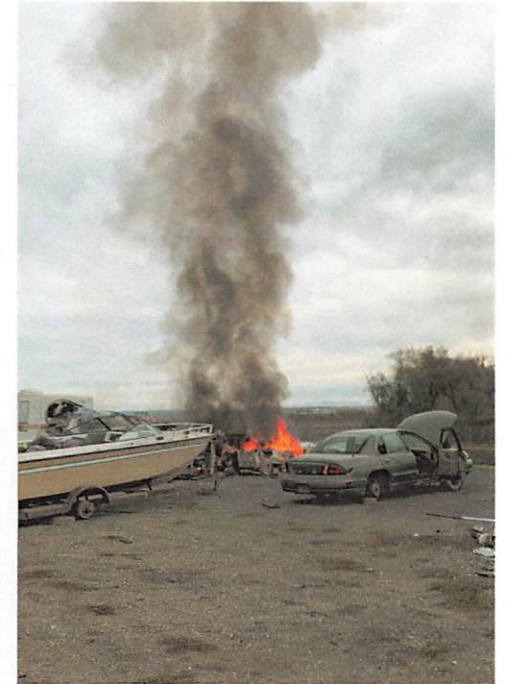
DUST



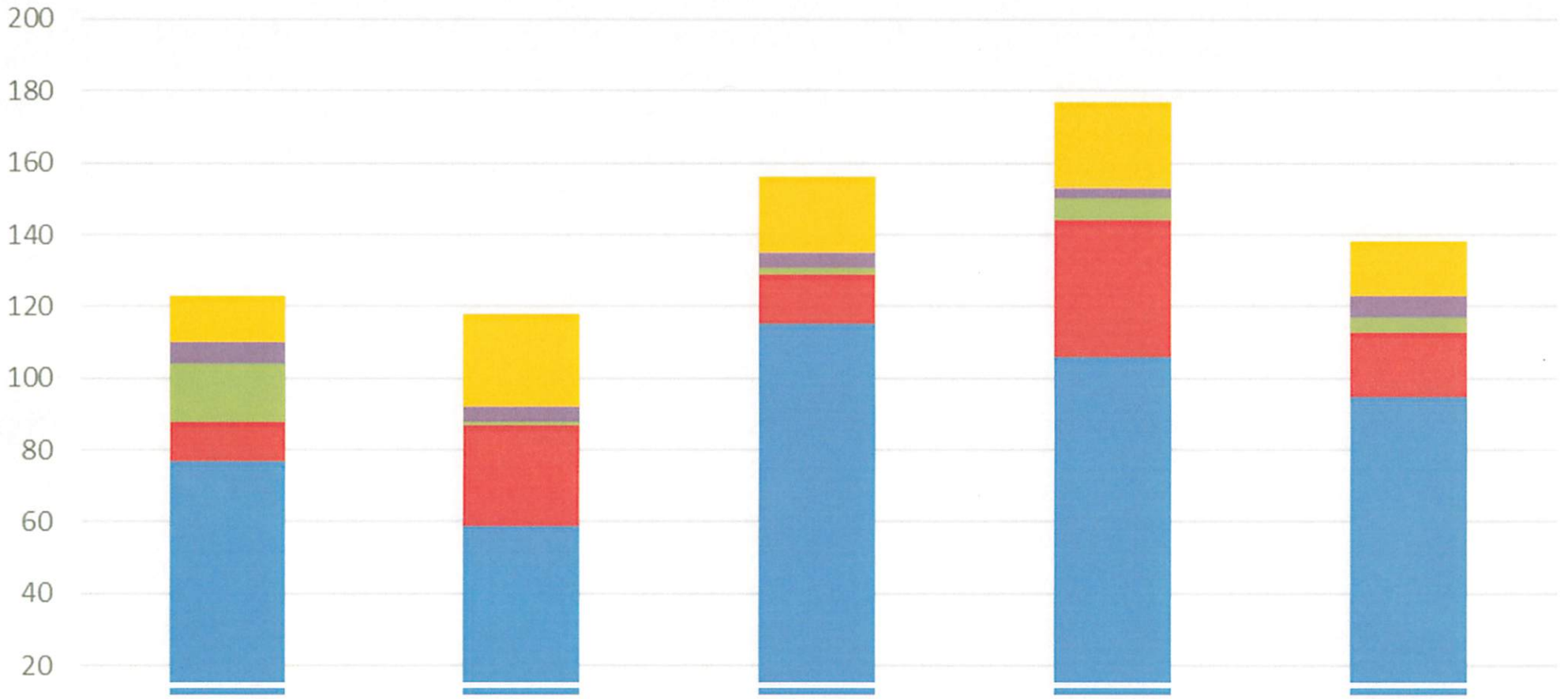
ODORS



SOURCES



BURN



Complaints

■ Burn ■ Dust ■ Odor ■ Source ■ Other

Complaints

- Each day we have an on-duty compliance specialist dedicated to complaint response
- Each specialist is trained in investigative methods, evidence gathering and report writing
- Each case is investigated thoroughly to establish:
 - Did a violation occur
 - Who is responsible
 - Where did it occur
 - How did it occur
 - What are the circumstances and what happened
 - When did the violation occur
 - Why did it occur
 - Would a reasonable person think a violation occurred

Burn Complaints Resulting in an NOV

- Once the District determines a violation occurred
- Determine responsible party
 - District rules state “Except as provided in these Rules and Regulations, no person or land manager shall conduct, allow, or use open fires for the purpose of disposal of any waste or other material.”
 - The District does not evaluate who lit a fire, rather, who is responsible for the land or disposal pile and starts with strict liability to that person
 - If there is additional parties determined in the investigation, they are added to the action.
 - In most cases, the land manager is the property owner or leasee, if there is a signed application, it may be the signee for the permit.
- Owner responsibility is consistent with California State and local laws in most medias like fire codes, building codes, electrical codes, toxics, pets.
 - A person cannot contract around that liability



Example #1

Code Violated: HSC 41800 and DR 2.0

- No person shall conduct, allow or use fire for the disposal of any material
- The use of fire to dispose of vehicles is prohibited.

RP – landowner & J. Doe

RP actions, saw smoke, called FD and Sheriff, arson and trespassing report filed. Investigation shows truck was stolen, dumped, and lit by J. Doe.

Misdemeanors of our codes were included in the Sheriffs case for felony arson, theft, and dumping. No air district NOV issued to the landowner

Example #2

Code Violated: HSC 41800 and DR 2.0

- No person shall conduct, allow or use fire for the disposal of any material
- The use of fire to dispose of wood waste is prohibited.

RP – landowner and their employees

RP actions: secured burn permit,
signed knowledge of rules, logged ½
acre prunings



Investigation reveals new shop building present on property, old building demolished. No record of legal disposal of demolished building. Notice of Violation issued to landowner and employee who lit the fire.



Example #3

Code alleged: HSC 41800 and DR 2.0

- Causing black smoke - Opacity
- The use of fire to dispose of something prohibited

RP – landowner and their employees

RP actions: secured burn permit, signed knowledge of rules, logged ditch bank and tules, authorized by BC

Investigation reveals the burn is authorized, appropriately logged and nothing else burning in the fire. No violation occurred as ag smoke is exempt from opacity/Ringleman requirements. No action taken against landowner and employees.



Questions/Comments



For More Information

[Web - www.fraqmd.org](http://www.fraqmd.org) email-fracmd@fracmd.org

Karla Sanders (530) 324-6962

Air Quality Compliance Supervisor

ksanders@fracmd.org

