

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT
MEMORANDUM

June 6, 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.

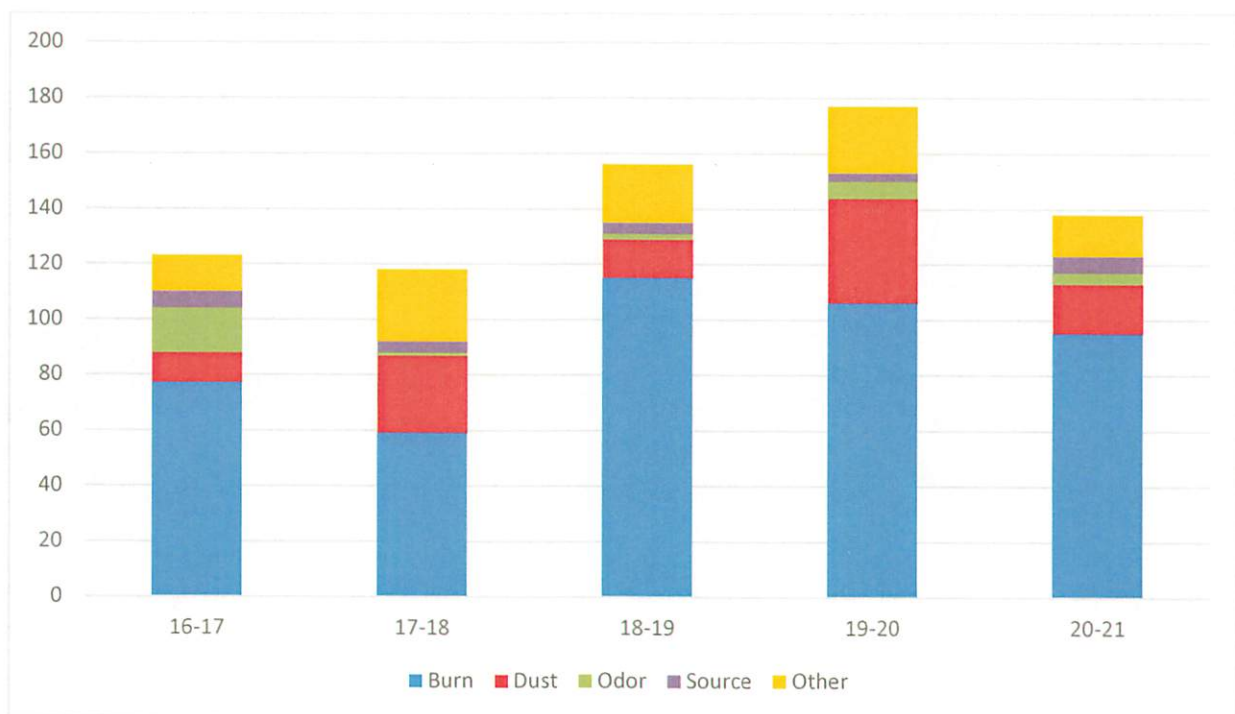
The enforcement of air quality regulations must concentrate first on obtaining compliance and second providing an effective deterrence for non-compliance. We are committed to fair, reasonable, and equitable treatment of regulated sources.

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, such as if the property owner refuses to file a report, then the District must work with the facts and information on the record.

Each case is evaluated on its own facts and merits. The investigatory phase is carried out as strictly a fact gathering effort without any predetermined outcome.

From that point, the appropriate enforcement action is taken, and the District attempts to settle according to the board adopted Mutual Settlement Program (MSP), refers the case to District counsel, the District Attorney, or refers the case to another regulatory agency.

Because District violations are crimes which could be subject to criminal enforcement by the District Attorney or State Attorney General the District staff cannot discuss cases until they are resolved.