

Agricultural Pollution Abatement – Complaint Response

OAC 1501:15-5-15, SWCD SOP for Handling Complaints and the Agricultural Pollution Abatement Program MOU all describe how pollution complaints are to be handled. There are, however, instances where SWCD staff is required to interpret portions of these procedures/protocols for application to specific situations in the field.

Per recent discussions held with representatives from Mercer, Darke, Shelby and Auglaize Soil & Water Conservation Districts along with ODNR-DSWR staff, the following subjects were addressed.

1. Can pollution complaints be anonymous even when you know who the complainant is?

If the complainant asks to remain anonymous, regardless of whether or not the staff knows who the complainant is, the staff shall complete the P.I.R. as an anonymous complaint. However, by remaining anonymous, the complainant sacrifices any routine follow-up contact from the District related to results of the investigation. The complainant could make a public records request for a copy of the P.I.R. after the complaint/allegation is reviewed and approved by the SWCD Board. It is worth noting that the public records request itself becomes a public record.

2. Is there a difference between a Pollution Complaint and an Allegation of Improper Application?

The simple answer is yes but this may not apply to all areas of the state. Pollution complaints refer to agricultural run-off that has entered waters of the state. Allegations of improper application refer to agricultural nutrients applied without following recommendations outlined in NRCS Standard 590. These recommendations relate to ground conditions (frozen or snow-covered) and setbacks that should be followed to minimize the chance of run-off. Depending on the situation, allegations of improper application can become pollution complaints in the case of a run-off event. In the Grand Lake St. Marys and Western Lake Erie Basin (after SB 1 takes effect) Watersheds, producers may be found in violation of pollution abatement rules if nutrients are applied on frozen or snow-covered ground. When pollution complaints AND allegations of improper application are found to be valid, a N.O.V. should be sent to the producer.

3. Is the SWCD required to contact landowners who are named by the complainant? At what point are other agencies (EPA, DERR, DOW, etc.) notified of a complaint/allegation?

If there is an allegation of improper application or a complaint of pollution to waters of the state, it is recommended that the SWCD first investigate the complaint prior to notifying other agencies or any responsible party. Experience has taught us that often these allegations and complaints are invalid; thus, it is best not to notify landowners or other agencies before verification of an infraction. This can save a great deal of time and resources in the long run. Once verified that the complaint is valid and the landowner is identified, follow the Standard Operating Procedure. If there clearly is a violation of pollution abatement rule and waters of the state have been significantly impacted, the District staff should call the Spill Hotline and possibly the Wildlife Officer and EMA when appropriate.

4. Is the SWCD staff required to disclose the name of the complainant to the farmer/landowner at the time of the initial investigation?

The staff is not required to disclose the name of the complainant at the time of the initial investigation; however, the technician must decide if it is best for complaint resolution to disclose this information. If the complaint is not anonymous and the staff does not feel it is best to provide the name of the complainant at the time of investigation, the SWCD has the right to require the landowner in question to make a public records request to obtain this information. The complainant's name (if not anonymous) will be included on the P.I.R. Once the pollution complaint

or allegation of improper application is received and reviewed by the Board, that report becomes a public record, whether it is a valid or invalid complaint/allegation, and is subject to release upon request. It is advised to never release a P.I.R. until the Board has received and reviewed the complaint/allegation. Districts have a reasonable amount of time to respond to public records requests so the Board will have an opportunity to review the complaint/allegation within a month of the investigation.

5. Do you send a copy of the completed P.I.R. to the landowner who has been named in a complaint or determined to be the responsible party upon investigation?

Some Districts send a complete copy of the P.I.R. with maps, conservation/investigation notes, photos and all related information to the affected landowner for his/her records. This is done regardless of the validity of the complaint/allegation. By providing the completed report to the producer, the SWCD is arming him/her with important information that can be used in their defense should legal issues or regulatory infractions result. The completed P.I.R. provides a clear understanding as to what steps the landowner and the District did to resolve the incident.

6. Should copies of conservation/investigation notes be included in the P.I.R.?

Some Districts are including the notes and some are not. It is recommended that this decision is made after careful consideration by the Board and staff. It could be worth securing an opinion from the county's Prosecuting Attorney as he/she is ultimately the defender of the SWCD in litigation related to public records requests or other legal matters. Please note that if using the NRCS produced and approved Conservation Assistance Notes or "Six Notes" form, these may not be allowed to be released upon a public records request because of federal privacy laws outlined in the Freedom of Information Act.

7. What are some things to remember when dealing with questions from the media or members of the public?

- *Always be prepared to answer questions following pollution investigations.*
- *Know what you are legally allowed to say and what is not public information.*
- *Don't elaborate when answering questions – awkward silence is OK!*
- *Ask for a list of questions and then take time to develop your responses after consultation with the Board, technical staff (District and ODNR), and Prosecuting Attorney. "No Comment" might be a reasonable answer while taking time to develop a response to a difficult situation.*

8. How do the Board and staff address pollution complaints/allegations when contacted by members of the media and/or general public?

It is recommended that your monthly Board meeting agenda include "Allegations of Improper Application" and "Pollution Complaints" whether or not there are any to review. The technical staff should prepare a description of each allegation and complaint to be passed out at the Board meeting to the supervisors, staff, media and public present. This description includes the date, general location, investigator's name, nature of the complaint, and the findings of the investigation. If the complaint/allegation is found to be invalid, a landowner name is not attached to it on this summary; however, if the complaint/allegation is proven to be valid, the name of the producer is released via the summary to the media, public, supervisors and staff through this brief description of the incident. The Board chairman will sign the P.I.R. during the Board meeting after a motion has been passed that "the Board has accepted and reviewed the allegations of improper application/pollution complaints". Pictures attached to the report are passed around for view during the meeting.