

Guidance for Unified Program Agencies for the Development of a Dispute Resolution Procedure for the California Accidental Release Prevention Program

OVERVIEW

A dispute resolution process is a structured method to resolve conflicts or disagreements between the owner or operator of a stationary source and the Unified Program Agency (UPA). A dispute may include but is not limited to inspections, evaluations, audits, and/or document review of the stationary source. The California Code of Regulations (CCR) Title 19, Division 5, Chapter 2, Section 5150.1 requires that an UPA establish procedures to implement a dispute resolution process.

The goal of a dispute resolution is to reach a fair and legal resolution without resorting to prolonged and costly litigation. Below are some common types of dispute resolution processes:

- **Negotiation:** a direct discussion with both parties involved.
- **Mediation:** a neutral third-party will assist in communication between both parties to find a mutually acceptable solution.
- **Arbitration:** a neutral third-party hears both sides and makes a decision that is binding.

PURPOSE

This document is intended to provide guidance to UPAs regarding the dispute resolution procedures that are required to be developed and maintained. This document is intended for use as a reference guide for applicable regulations and is not a rule or regulation and does not replace or supersede applicable statutes or regulations.

This document serves to outline circumstances and conditions for UPAs to consider while developing or updating their dispute resolutions process (see “Consideration for UPAs” below) . Attachment A provides a template that may be utilized by UPAs in developing a dispute resolution procedure, which should be customized to reflect the unique circumstances of each UPA.

Air Resources Board • Department of Pesticide Regulation • Department of Resources Recycling and Recovery
Department of Toxic Substances Control • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards

CONSIDERATIONS FOR UPAs

In conjunction with Attachment A, in developing a dispute resolution procedure and a process that meets the requirements of CCR Section 5150.1, the UPA should consider the following items below.

(a) **Written Initiation of Dispute to UPA:** An owner or operator of a stationary source may initiate the dispute resolution process by serving the UPA with prompt, written notice of a dispute. Consider the following:

(1) **Written forms and supplemental information:**

- i. Acceptable written forms of the initiation process such as certified mail or email. The method of service may vary among jurisdictions and UPAs may utilize either or both methods. If mail service is used, the UPA may need to account for a delay in receipt.
- ii. Consider items to be included in the dispute such as the issue(s) disputed, reasons for why the complainant believes the UPA is incorrect, recommendations, or any applicable citation(s) from law, regulations, or policy and procedures.

(2) **Mediators and Timelines:**

- i. **Mediators:** Identify the official(s) or other employee(s) of the UPA who will resolve disputes. Consider the following:
 1. Include different levels of management as a part of an escalation path. Early stages of a dispute can often be resolved at the supervisory level. Unresolved disputes can be escalated to a higher level of management.
 - a. First-Level Management: The dispute may be resolved with the supervisor or team leader.
 - b. Mid-Level Management: Unresolved disputes can be escalated with direct manager.
 - c. Senior-Level Management: Upper-level management may be involved with complex or high-risk disputes.



2. Please note that in the event that both parties cannot come into agreement, an appeal can be made to the California Environmental Protection Agency.
- ii. **Timeline for Case Review:** Set procedures and timetables for providing argument and supporting materials to the UPA. Consider the following:
 1. Determine how much time is needed to review the complainants dispute and the supporting materials to render a written decision within 120 days.
 2. Opportunity to conduct a hearing with the owner or operator of the stationary source and the identified officials or other employees of the UPA.
- (3) **Final Rendered Decision:** UPA must render a written decision within 120 days after the owner or operator of a stationary source initiates the dispute resolution process.
 - i. Consider the following:
 1. Determine how much time is needed to review the complainants dispute and the supporting materials to render a written decision within 120 days.

Attachment A:

CalARP Dispute Resolution Template Example

BACKGROUND

The [Unified Program Agency (UPA)] is the CalARP Program implementing for stationary sources in [jurisdiction]. The dispute resolution process is required by the California Code of Regulations (CCR) Title 19, Division 5, Chapter 2, Section 5150.1.

PURPOSE

The purpose of the CalARP dispute resolution process is to resolve disputes between owners and operators of stationary sources and the [UPA]. A dispute of the CalARP program may include, but is not limited to inspections, evaluations, audits, and/or document review of the stationary source.

AUTHORITY

California Health and Safety Code, Chapter 6.95, Section 25531 et seq.

PROCESS/REQUIREMENTS

It is suggested that a complainant should first attempt to resolve the dispute with the inspector. If the complainant cannot resolve the dispute, then the complainant shall state the disputed issue in writing to the [UPA].

(a) Written Initiation of Dispute to UPA

- (1) To initiate a dispute, an owner or operator of a stationary source must serve a written notice to the [UPA].

This notice must be addressed and sent by certified mail to: (Option 1)
[UPA department name]
[Mailing address]



This notice dispute must be emailed to the following address: (Option 2)
[insert email address].

The notice must provide a concise statement in their notice of dispute and any supporting materials disputing the decision of the [UPA].

- (2) The [UPA] will review the dispute and supporting materials.
- i. The [Supervisor] or their designee will review the notice and supporting materials within [x] days.
 1. *(Optional) The [Supervisor] or their designee will arrange for a hearing and be scheduled within [x] days. The hearing will include the [Supervisor] or their designee. The stationary source may invite others to support their dispute.*
 - ii. The [Supervisor] or their designee will render a written decision within 120 days after the initiation of the dispute.
 1. If the decision is in favor of the stationary source, the dispute is resolved.
 2. *(Optional) If the decision is not in favor of the stationary source, they may withdraw the dispute or appeal to a higher level of management within the [UPA] and has [x] days to provide a written response to the [Manager] by certified mail or email.*
 - a. *The stationary source must provide a concise statement in the notice of appeal of the [Supervisor] decision and any supporting materials appealing that decision.*
 - b. *The [Manager] will schedule a hearing within [x] days of receiving the appeal. The hearing will include the [Manager] and may include the [Supervisor] or their designee. The stationary source may invite others to support their dispute.*
 - c. *The [Manager] will issue a written decision to the stationary source within [x] days of the hearing. If the*

decision is in favor of the stationary source, the dispute is resolved.

3. If the dispute is not resolved with the [UPA], the stationary source may appeal the decision to CalEPA by serving a written notice of appeal.

(b) Appeal of Dispute to CalEPA

- (1) The owner or operator of a stationary source may appeal the decision of an [UPA] to the CalEPA by serving a notice of appeal. This notice must be served no later than 30 days after the [UPA] renders its decision or if the [UPA] fails to render a timely decision, no later than 150 days after the stationary source initiates the dispute with the [UPA].

The notice must be addressed and sent by certified mail to:

Agency Secretary
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

- (2) After receipt of the notice of appeal and accompanying materials, CalEPA shall provide a written acknowledgment of such receipt to the appealing party and the UPA.
- (3) CalEPA may request further materials, information or briefing from the stationary source or the [UPA], and may set schedules for the submission of such materials, information or briefing. CalEPA shall also provide the opportunity for public comment on the dispute, and allow the stationary source and the UPA the opportunity to respond to any comments submitted by the public.

(c) Final Binding Resolution

- (1) CalEPA shall issue a decision within 120 days after the service of the notice of the appeal.



- (2) CalEPA may extend the time if additional time is required to deal with the submission of materials, information, briefing, public comments or responses to public comments.
- (3) The dispute shall be resolved according to the discretion of CalEPA and the decision shall be binding on all parties.