

		West Virginia Department of Health and Human Resources			
		MANUAL OF ENVIRONMENTAL HEALTH PROCEDURES			
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Subject	Anonymous Nuisance Complaints			Page	1 of 1

A question has arisen as to whether or not a sanitarian may reject anonymous complaints from the public and refuse to conduct an investigation until the complainant signs an official complaint form or letter of complaint. This Department's Office of General Counsel has provided the following response.

The Director of the Division of Health is charged by Code § 16-1-10(2) to "enforce all laws of this state concerning public health," and local boards of health are charged by Code Chapter 16, Articles 2 and 2A, to enforce such laws within their jurisdictions.

In the situation when resources are limited, however, discretion must be exercised in determining the extent to which the laws will be enforced. In such situation, whether a complaint is signed or unsigned should not be the determining factor for enforcement, although it could be taken into consideration. The question thus is: "When can complaints, signed or unsigned, not be investigated?"

Whether complaints are investigated or not should be based upon their seriousness and detail, the credibility of the complainant and the resources available. Taking those factors into consideration, some complaints may be thoroughly investigated, some may be less than thoroughly investigated, some may be delayed, and some may not be investigated, regardless of whether they are signed or unsigned. Nevertheless, the advantage of not investigating a complaint, in order to work on more serious matters, may disappear if political pressure or detrimental publicity results.

In a case where a court issues a writ of mandamus to compel the Department to enforce the law by conducting an investigation, the Department will have to do so, if not appealed. In a mandamus proceeding, a lack of funds is not a defense as long as the Department has funds which it could transfer to perform the investigation, or the Department has non-investigative staff which it could lay off in order to provide funds to perform the investigation.

References

History

Attachments