

San Joaquin County Grand Jury



San Joaquin County Mosquito and Vector Control District

2011/12 Case No. 0311

Summary

The Grand Jury investigated a complaint alleging several issues at the San Joaquin County Mosquito and Vector Control District (District). The complaint alleges verbal sexual harassment, hostile work environment, management retaliation and nepotism. During the investigation other issues were alleged relating to the secret and illegal spraying of a toxic chemical in the mosquito fish ponds, and failure to report the spraying to the proper reporting agencies.

Glossary

EEO - Equal Employment Opportunity is the right of all persons to work and advance on the basis of merit, ability and potential. Managers and supervisors must lead by example and monitor the workplace to ensure that the environment is free from discrimination, hostility, intimidation, reprisal,

and harassment. The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

ERMA - Employment Risk Management Authority is a joint powers agency that provides for employment liability coverage for various California public entities and provides custom solutions for affirmative action EEO plans the agency needs. Training is provided by ERMA to assist the members in dealing with today's current economic issues and for the prevention of sexual harassment, discrimination and retaliation.

MVCAC - Mosquito Vector Control Association of California provides quality public information, comprehensive mosquito and vector-borne disease surveillance, training to high professional standards, and effective legislative advocacy on behalf of California mosquito and vector control districts.

Background

The San Joaquin County Mosquito and Vector Control District is an independent special district that provides many vital programs in the county. The District manages the mosquito population levels that help reduce the spread of viruses to humans and animals. According to the California Health and Safety Code, §2002(K), "Vector" means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitos, flies, mites, ticks, other arthropods, rodents, and other vertebrates.

The governing body of the District is composed of eleven (11) Board of Trustee members; seven (7) members represent each incorporated city and four (4) members representing the county at large. The Board employs a manager who oversees program functions, hires and supervises staff. The major funding source to the district comes from property taxes. The District continues to experience a downward trend in revenues from taxes due to declining property values and the ongoing real estate foreclosure crisis. This has resulted in an increased workload of neglected properties for the District to maintain.

Issues

A complaint was made against the District by an employee alleging several issues; sexual harassment, a hostile work environment, nepotism, and being subjected to rude, abusive language by a supervisor. The complaint was reported by the complainant to supervisors, management, ERMA and the Board of Trustees as stated in district policy.

During the investigation, an allegation was made the District was performing illegal spraying of a carcinogenic chemical on the mosquito fish in the ponds at the District Fish Hatchery located at White Slough. The complaint further alleged the District was not reporting the spraying of the pesticide to the proper authorities as was required. Because the allegation was of an illegal nature, the Grand Jury referred this to the San Joaquin County District Attorney's office for review.

Method of Investigation

The Grand Jury reviewed numerous documents, made site visits, attended Board Meetings and conducted interviews as stated below.

Materials Reviewed

- District Policy and Procedures Manuals
- Board Minutes/Agendas
- Pesticide Regulations

- Pesticide Spraying Records
- Department of Agriculture Reporting Requirements
- Employee Manuals
- Documentation relevant to this investigation

Interviews Conducted

- All Managers and Supervisors
- Employees
- Board of Trustees Members

Sites Visited

- District Headquarters, Stockton
- Mosquito Fish Hatchery at White Slough, Lodi

Discussion, Findings and Recommendations

1.0 Sexual Harassment

The claims of sexual harassment were based on more than one employee describing rude, vulgar and otherwise lewd remarks being made by a singular offender in the employee break room. The conduct was not isolated but rather well known and consistent. The comments were clearly sexual in nature and some employees avoided the break room altogether.

The District has a Sexual Harassment Policy # 2210, which in part states: *“It is the policy of the San Joaquin County Mosquito Abatement District that sexual harassment is unacceptable conduct in the work place and will not be tolerated. The management of the district shall implement a program to educate employees and supervisors on what conduct can be considered sexual harassment and that such behavior will not be tolerated by the district. It is the policy of the district that any employee who feels that they are the victim of sexual harassment or that*

they are bothered by an offensive or hostile work place, may report their complaint to either their immediate supervisor, the assistant manager or President of the Board of Trustees....” See Appendix A

Testimony revealed management and supervisors were informed of the offending behavior on at least two occasions by more than one employee. Management recalled one of the sexual harassment complaints and also quoted the relevant District policies on how this should be handled, what action should be taken, and how it should be documented. However, management could not produce documentation on action taken on the sexual harassment complaint.

Review of the training documentation from 2000 through 2011 indicates that Prevention of Sexual Harassment training was included as one of many line items on the agenda at annual all employee meetings. Makeup sessions were scheduled for employees who did not attend the original training. Most employees interviewed could not remember any of the details of the training and did not have a clear idea of what constituted sexual harassment, especially in the area of sexual banter.

Finding

F1. Sexual harassment had been committed in the form of rude, vulgar, and lewd remarks. These remarks were made on several occasions in the presence of several employees and met the criteria as specified in the District Policy #2210.

Recommendations

R1. Review the effectiveness of the District’s current Sexual Harassment Policy and take appropriate steps to improve the training.

R1.2 The District’s annual prevention of Sexual Harassment training be given as a separate program.

2.0 Hostile Work Environment and Management Retaliation

From the time the sexual harassment complaint was made, the complainant stated the work environment had become hostile. The complainant alleged management retaliated by making numerous changes in the work zone, withholding certain chemicals that were given to other employees, as well as keys to locked gates, equipment needed to complete assigned work, and being ostracized by fellow employees.

Testimony revealed job zones had been changed a few times over the course of the complaining period. Job zone relocations were either a result of the complainants request to be relocated, or the District's attempt to improve the working conditions of the complainant. Each time the complainant was relocated other complaints were made. Complainant believed a chemical which was commonly used in the past and was highly effective for controlling mosquitoes, was being distributed to other employees, but denied to complainant. An inquiry into this accusation revealed that certain chemicals were not being used due to District budget constraints. The District made a financial decision that affected all employees to use a less expensive chemical early in the season and reserve the more expensive chemical until later in the season when it would be more effective. There was no evidence that keys or other equipment were purposely withheld. On the contrary, they were made available upon request. Employees cover many properties throughout the county. Properties are serviced according to need, so a newly assigned employee would have to determine equipment and/or keys needed on a daily basis.

The complainant notified the Board of Trustees and ERMA directly, informing them of the harassing behavior in the workplace. ERMA responded to the District to help mediate the concerns. The Board of Trustees referred the complaint to legal counsel of the District. District Counsel notified the complainant an immediate investigation would be conducted into the complaint. Complainant was later notified in writing, the investigation on the working conditions was complete and unfounded.

Finding

F2. The Grand Jury found no evidence to support a claim of retaliation against the complaining employee.

3.0 Violation of District Nepotism Policy #2230

An allegation was made that two employees who had been dating eventually married and violated the nepotism policy. The District's Nepotism Policy #2230 states, "*In order to avoid improprieties and conflicts of interest, no applicant of a position will be employed by the district if a member of the immediate family is already employed.* [emphasis added] *Immediate family means: spouse, brother, sister, mother, father, children, grandparents and corresponding in-law and step relations. The person interviewing will be responsible for informing the applicant of the policy. Individuals working for a temporary employment agency, assigned for a short period of time are exempt. The policy applies to all classes of employees; full time, part-time, temporary and seasonal.*"

The dating employees informed management of their personal relationships. Management conferred with District Counsel and confirmed the employees were not being supervised by their spouse and work in different areas.

Finding

F3. The Nepotism Policy #2230 applies to new applicants only.

4.0 Illegal Spraying at Mosquito Fish Hatchery at White Slough

During the course of the investigation a complaint alleged employees at the District's Mosquito Fish Hatchery were secretly spraying a carcinogenic chemical called Paricide-F on the mosquito fish in the ponds. The complaint alleged the spraying of the chemical was not being recorded and was not reported to the proper authorities as required by law. Because the allegation was

of an illegal nature, the Grand Jury referred this to the San Joaquin County District Attorney's office for review.

Paracide-F is used as a medical treatment for parasites on mosquito fish. The spraying was documented on Inspection Treatment Records and is sprayed once each year usually in March. This annual spraying helps prevent parasitic disease and was not necessary to report to any outside agency because the spraying was used for medical treatment. Our investigation found that the spraying was done openly and with all the necessary precautions taken to ensure the safety of all employees.

Finding

F4. There was no evidence of criminal violations occurring based on the review by the District Attorney's Office.

Conclusion

The Grand Jury found several instances of sexual harassment in the form of rude, vulgar and lewd remarks that occurred in the workplace. Other allegations of hostile work environment, management retaliation, illegal spraying, and nepotism were unfounded.

The Grand Jury found the San Joaquin County Mosquito and Vector Control District, like other public agencies, continues to struggle financially with the decrease in property tax revenue, the added workload and additional state regulations. The Board was prudent over the years by maintaining a general fund balance and adequate reserves. These reserves sustain the district at the present time. The District performs a vital public health function in San Joaquin County by working to control the breeding and habitat of mosquitos and other vectors.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn and admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code §911, 924.1 and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code § 924.2 and 929).

Response Requirements

California Penal Code §933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court by (within 90 days).

Mail or hand-deliver a hard copy of the response to:

Hon. David P. Warner, Presiding Judge

San Joaquin County Superior Court

222 E. Weber Avenue, Room 303

Stockton, CA 95202

Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury, at

grandjury@courts.san-joaquin.ca.us

APPENDIX

SAN JOAQUIN COUNTY MOSQUITO AND VECTOR CONTROL DISTRICT Policy Handbook

POLICY TITLE: SEXUAL HARASSMENT
POLICY NUMBER: 2210

RESOLUTION NO. 92-8 RESOLUTION OF THE BOARD OF TRUSTEES OF THE SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT'S POLICY CONCERNING SEXUAL HARASSMENT

It is the policy of the San Joaquin County Mosquito Abatement District that sexual harassment is unacceptable conduct in the work place and will not be tolerated.

The management of the district shall implement a program to educate employees and supervisors on what conduct can be considered sexual harassment and that such behavior will not be tolerated by the district.

It is the policy of the district that any employee who feels that they are the victim of sexual harassment or that they are bothered by an offensive or hostile work place may report their complaint to either their immediate supervisor, the assistant manager, manager, or President of the Board of Trustees. Upon receiving such a report the district management shall immediately investigate the complaint to see if it does consist of sexual harassment. If sexual harassment is found to have occurred the district shall take all appropriate action to end the harassment.

For purposes of this policy Sexual Harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct of a sexual nature constitute unlawful harassment in the work place if:

- (A) Submission to such conduct is made an explicit or implicit term or condition of employment;
- (B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; or
- (C) Such conduct has the purpose or effect of either;
 - (1) unreasonable interfering with an individuals work performance or
 - (2) creating an intimidating, hostile, or offensive working environment.

The District considers the following conduct to illustrate some of the conduct that violates the District's Sexual Harassment Policy:

A. Physical assaults of sexual nature, such as:

1. Rape, sexual battery, molestation, or attempts to commit these assaults; and
2. Intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.

B. Unwanted sexual advances, propositions or other sexual comments, such as:

1. Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct is unwelcome in his or her presence;
2. Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
3. Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of the employee's sex.
4. Retaliation for sexual harassment complaints, such as:
 - a. Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination, or retaliation; and
 - b. Intentionally lying about, falsely denying, exerting pressure, or otherwise attempting to cover up conduct such as that described in any item above.

The illustrations stated above are not to be construed as an all-inclusive list of prohibited acts under this policy.

The District will provide its employees with convenient, confidential, and reliable mechanisms for reporting incidents of sexual harassment and retaliation. The District has provided that the assistant manager, the manager and President of the Board of Trustees shall serve as investigative officers for sexual harassment issues. If an issue of sexual harassment involves the manager, anyone with information regarding such harassment should direct that information to the President of the Board of Trustees. The names, responsibilities and phone number of each investigative officer shall be continuously posted so that an employee making a complaint or giving information regarding a complaint can do so inconspicuously.

Complaints of acts of sexual harassment or retaliation that are in violation of the sexual harassment policy will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated. Anyone who has observed sexual harassment or retaliation should report it to a designated Investigative Office. A complaint need not be limited to someone who was the target of harassment or retaliation.

Only those who have an immediate need to know, including the Investigative Officers and/or his or her designee, the alleged target of harassment or retaliation, the alleged harassers or retaliators, any witnesses will or may find out the identity of the complainant. All parties contacted in the course of an investigation will be advised that all parties involved in a charge are entitled to respect, and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint is a separate actionable offense as provided in the schedule of penalties. This complaint process will be administered in a manner consistent with federal labor law when bargaining unit members are affected.

Each Investigative Officer will receive thorough training about sexual harassment and the procedures under this policy, and will have the responsibility for investigating complaints or having an appropriately trained and designated District Investigator do so.

All complaints will be investigated expeditiously by a trained District Investigative Officer or his or her designee. The Investigative Officer will produce a written report, which, together with the investigation file, will be shown to the complainant on request within a reasonable time. The Investigative Officer is empowered to recommend remedial measures based on the results of the investigation, and District management will promptly consider and act on that recommendations.

An effective sexual harassment policy requires the support and example of District personnel in positions of authority. District agents or employees who engage in sexual harassment or retaliation or who fail to cooperate with District sponsored investigations of sexual harassment or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other District employees, and/or retaliate against sexual harassment complainants or witnesses may be immediately sanctioned by suspensions or dismissal.

Education and training for employees at each level of the work force are critical to the success of the District policy against sexual harassment. To meet its goals in this area the District shall conspicuously post throughout the work place a statement of the District Policy on Sexual Harassment. This statement will be given to all new employees and seasonal employees. All employees with supervising authority will participate in annual workshops devoted to the problem of sexual harassment and its prevention.

ATTEST:

AYES

NOES

ABSENT

ABSTAIN

SIGNED:

PRESIDENT

ADOPTED: September 15, 1992

NOTICE TO ALL EMPLOYEES

It is the policy of the San Joaquin County Mosquito Abatement District that sexual harassment is unacceptable conduct in the work place and will not be tolerated. Acts of sexual harassment can be grounds for discipline or even termination.

Sexual harassment is unwelcome verbal or physical conduct of a sexual nature. It can be unwelcome sexual advances, requests for sexual favors or offensive conduct of a sexual nature which creates a hostile work environment or which interferes with job performance. The following examples illustrate some conduct which would be sexual harassment:

1. Physical assaults of a sexual nature such as rape, sexual battery, molestation or attempts to commit these acts.
2. Intentional physical touching that is sexual in nature such as touching, pinching, patting, grabbing or brushing against another persons body.
3. Stories, jokes, gestures or comments of a sexual nature or directed to a persons sexuality and directed at or made in the presence of any employee who indicates or indicated that such conduct is unwelcome in his or her presence.
4. Cartoons, pictures or drawings of a sexual nature which are publicly displayed in a work place.

Sexual harassment can come from either men or women. It is important to remember that what you may consider harmless, may be offensive to another employee.

If you as an employee are offended by what you consider sexual harassment, you may either 1) tell the individual involved that his or her actions are offensive and that you want it stopped or 2) report the activity to your immediate supervisor, assistant manager, manager or President of the Board of Trustees.

If you as an employee are told by another employee that your conduct is offensive to that employee, respect the rights of that other employee and do not repeat such conduct in the presence of that employee. You should follow this guideline even if you do not consider the activity to be offensive.

A complaint of sexual harassment can be made in writing or orally. Anonymous complaints will be taken and investigated. A complaint need not be limited to someone who was the target of harassment or retaliation.

Only those who have a need to know may find out the identity of the complainant. These include the investigation officer, the alleged harassers and any witnesses. All complaints will be investigated by management. a written report will be provided to the complainant on request within a reasonable time.

If you have any further questions regarding the District's policy against Sexual Harassment you may contact your supervisor, Assistant Manager or the Manager.

ADOPTED MAY 15, 1992