

Public Participation Handbook

SACRAMENTO METROPOLITAN



AIR QUALITY
MANAGEMENT DISTRICT



Introduction

The Sacramento Metropolitan Air Quality Management District (SMAQMD or District) is committed to ensuring environmental justice for all the residents in Sacramento County regardless of race, color, national origin or income. Minority and low income communities are often disproportionately impacted by air emissions and the SMAQMD works to protect these communities as well as all communities in Sacramento County.

Ensuring environmental justice means protecting the environment for all citizens. It also requires that all citizens be treated fairly and equally and that all citizens have the opportunity to participate in the development, implementation and enforcement of air emission regulations, policies and programs.

This handbook has been developed to describe the most common functions of the SMAQMD and to help facilitate involvement by all communities within the county.

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Most businesses that produce air emissions are required to secure a permit from the SMAQMD. This chapter explains how to participate in the process and how to make your voice heard when a business is seeking a permit.

Chapter 3

Commenting on Plans and Rules

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The SMAQMD is required to meet strict state and federal air quality standards. This is accomplished by creating plans that identify sources of emission that can be controlled and then developing strategies to control them. You can participate in the process of plan and rule development.

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Businesses that emit air emission frequently request relief from permit conditions, relief from penalties that have been assessed or other special requests. These requests are heard by a board of publicly appointed members. The public may attend these meetings and provide relevant information.

REPORTING AIR QUALITY PROBLEMS

The SMAQMD Complaint Handling Program

It is illegal to discharge any air contaminant, which causes a public nuisance. Specifically, California Health and Safety Code Section 41700 and SMAQMD Rule 402 prohibit the discharge from any source whatsoever such quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any such persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property.

In an effort to provide assistance to residents having concerns with air quality and to ensure compliance with the aforementioned requirements, the SMAQMD actively investigates resident complaints about air quality problems. Some common complaints handled by the SMAQMD include the following:

- ☒ Dust from construction sites
- ☒ Solvent odors from businesses doing painting
- ☒ Excessive emissions from smoke stacks
- ☒ Illegal removal and handling of asbestos containing material
- ☒ Smoke from fireplaces and wood stoves

How to File an Air Quality Complaint

Residents observing potential air quality violations or those experiencing air quality problems in their neighborhoods may file a formal complaint with the SMAQMD. In order for District staff to effectively investigate an air quality complaint, the following information is needed:

- ☒ What is the nature of the problem? Is it an odor, smoke, or dust? If an odor, describe what it smells like.
- ☒ Where is the location of the problem? Having a correct address greatly improves response time and helps identify the correct source of the problem.
- ☒ If known, who is causing the problem? Is it a business or a residence?
- ☒ When does the problem occur? Is there a certain time of the day or day of the week when it is most noticeable or is it an intermittent problem?

Complaints can be reported anonymously. However, the SMAQMD recommends that complainants leave their name, address, and telephone number as inspection staff may have additional questions to complete the investigation. In order to protect the confidentiality of complainants, the SMAQMD does not release the identity of anyone reporting a complaint. However, should the investigation result in legal action, the identity of the complainant may be subject to disclosure by order of a court.

There are several methods available for residents wishing to file complaints:

By phone: Call (916) 874-4800 or (800) 880-9025 (translation services available)

By e-mail: Use Web form under Compliance at www.AirQuality.org

By mail: SMAQMD
777 12th Street, 3rd floor
Sacramento, CA 95814-1908
Attention: Complaint Intake

The SMAQMD encourages residents
to become **involved** in ensuring
clean air by reporting
any illegal or harmful emissions
directly to the SMAQMD.

Complaint Investigation and Follow Up

The SMAQMD initiates investigations into complaints generally within 24 hours of receipt. Residents wishing to receive a follow up call on the status of complaints may so indicate on the complaint form when filing a complaint.

In some instances, other regulatory agencies may have primary or additional jurisdiction over an air quality matter. In these instances, the SMAQMD will refer the complaint to the appropriate agency for handling. Residents requesting a follow up call will be informed of such referrals.

Depending on the nature of a particular problem, air quality regulations governing the matter may be limited or quite extensive, but almost all commercial and industrial activities are prohibited from creating a public nuisance. Penalties for entities found to be in violation of public nuisance rules can be considerable.

Given that protection of public health is the primary mission of the SMAQMD, responding to resident complaints is an important component of the District's overall mission. To this end, the SMAQMD encourages you to become involved in ensuring clean air by reporting any illegal or harmful emissions directly to the SMAQMD.

The Permit Application Process

Facilities with equipment that may emit air pollution or is used for controlling air pollution are subject to permit requirements unless exempt pursuant to SMAQMD Rule 201. Applications must be submitted to obtain the necessary permits and must contain all information necessary for the District to determine compliance with all applicable rules and regulations.

The District grants two types of permits—Authority to Construct and Permit to Operate.

Authority to Construct: An Authority to Construct must be obtained before building or installing a new emissions unit or modifying an existing emissions unit that requires a permit.

An applicant that has been granted an Authority to Construct is required to notify the District when the installation or modification is complete. District staff will inspect the equipment and determine whether the completed project was built in accordance with the design specified in the application and/or if the completed project complies with applicable rules and regulations and conditions contained within the Authority to Construct.

Permit to Operate: A Permit to Operate is issued after all construction is completed and the equipment has been inspected and found to be in compliance with all applicable requirements.

Both the Authority to Construct and the Permit to Operate are issued under the same permit application.

The Application Review Process

When an application is submitted to the SMAQMD, it first receives a preliminary review to determine if it contains sufficient information to process. The District has 30 days to perform this initial completeness determination. The applicant is notified of the District's completeness review within 30 days of the date received (Rule 202, Section 402). Additional information will be requested if the application is deemed incomplete. Complete applications are assigned for engineering review in the order they are deemed complete, unless they have been assigned for expedited review.

Permit staff will evaluate the project before an Authority to Construct is issued. The evaluation is based on the application, plans provided for all equipment, and background information on the proposed operation. It is up to the applicant to demonstrate that the equipment can operate in compliance with all applicable requirements including but not limited to:

- ☒ SMAQMD Rules and Regulations: www.AirQuality.org
- ☒ State Air Toxics Control Measures (ATCMs): www.arb.ca.gov/toxics/atcm/atcm.htm
- ☒ State Air Pollution Law: www.arb.ca.gov/bluebook/bluebook.htm
- ☒ State Executive Orders: www.arb.ca.gov/html/eo.htm
- ☒ California Environmental Quality Act (CEQA): www.ceres.ca.gov/ceqa
- ☒ Federal New Source Review: www.epa.gov/nsr/
- ☒ Federal New Source Performance Standards (NSPS): <http://yosemite.epa.gov/r9/r9nsps.nsf/ViewStandards?ReadForm&Part=60>
- ☒ National Emission Standards for Hazardous Air Pollutants (NESHAP):
 - 40CFR, Part 61: <http://yosemite.epa.gov/r9/r9nsps.nsf/ViewStandards?ReadForm&Part=61>
 - 40CFR, Part 63: <http://yosemite.epa.gov/r9/r9nsps.nsf/ViewStandards?ReadForm&Part=63>
- ☒ Title V: www.access.gpo.gov/nara/cfr/waisidx_04/40cfr70_04.html
- ☒ Other federal Rules and Regulations: www.epa.gov/oar/oarregul.html

Key Requirements

Although proposed projects may be subject to a multitude of different regulations, there are some key regulations that serve as the cornerstone of our program:

SMAQMD Rule 202 – New Source Review

The New Source Review (NSR) rule provides the mechanism for the District to issue permits to new and expanding businesses without interfering with efforts to meet the state and federal health-based air quality standards. NSR contains two main requirements – Best Available Control Technology and Offsets.

Best Available Control Technology (BACT): The best available air pollution control technology is required for new and modifying units that result in certain calculated emissions increases. BACT is, at a minimum, the most stringent control technique or limitation that has been achieved in practice for the same class of source. However, if there is a more effective control that is both technologically feasible and cost effective, or that is contained in an approved implementation plan, the more effective control technique must be used.

Emissions Offsets: Emissions offsets are emissions reductions that are provided to “offset” emissions increases from new or modifying sources of air pollution. District Rule 202 requires offsets for increases in allowed emissions above certain trigger levels.

Offsets, when required, may be provided by onsite or offsite emissions reductions and must be real, surplus, quantifiable, enforceable, and permanent. Offsets may be obtained by purchasing emission reduction credits (ERCs) from another party. Procedures for banking emission reduction credits are described in Rule 204 (Emission Reduction Credits) of the District’s Rulebook. The District also manages the “Community Bank” and the “Priority Reserve Bank” pursuant to Rule 205. The Priority Reserve Bank is for the purpose of providing loans of emission reduction credits for use as offsets for new or modified stationary sources that are essential public services, or use or reuse of a military base. The Community Bank holds ERCs owned by the District and available to the public for lease.

SMAQMD Regulation 4 – Prohibitory Rules

In addition to Rule 202 which applies only to new or modified sources, prohibitory rules apply to new and existing sources regardless of whether it holds an air quality permit or not. Regulation 4 contains more than 40 different rules and the majority of them are equipment-specific. However, there are a few, such as Rules 401 and 402, that apply to any source emitting air pollutants.

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that are provided to “offset” emissions
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of air pollution.

California Air Toxics Control Measures (ATCMs)

The state of California has promulgated a number of regulations aimed at reducing the release of toxic air contaminants into the atmosphere. These regulations are source-specific and include:

- ☒ Benzene ATCM for Retail Service Stations
- ☒ Hexavalent Chromium ATCM for Decorative and Hard Chrome Plating and Chromic Acid Anodizing Facilities
- ☒ Chromate Treated Cooling Towers
- ☒ Dioxins ATCM for Medical Waste Incinerators
- ☒ Asbestos ATCM for Construction, Grading, Quarrying and Surface Mining Operations
- ☒ Asbestos ATCM for Surfacing Applications
- ☒ ATCM for Emissions of Toxic Metals from Non-Ferrous Metal Melting
- ☒ Ethylene Oxide ATCM for Sterilizers and Aerators - Parts 1 and 2
- ☒ ATCM for Emissions of Perchloroethylene from Dry Cleaning Operations
- ☒ Environmental Training Program Regulation for Perchloroethylene Dry Cleaning Operations
- ☒ ATCM for Emissions of Chlorinated Toxic Air Contaminants from Automotive Maintenance and Repair Activities
- ☒ ATCM for Emissions of Hexavalent Chromium and Cadmium from Motor Vehicle and Mobile Equipment Coatings
- ☒ ATCM to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning
- ☒ ATCM to Reduce Particulate Emissions from Diesel-Fueled Engines – Standards for Nonvehicular Diesel Fuel
- ☒ ATCM for Stationary Compression Ignition Engines
- ☒ ATCM for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater

The state has also promulgated several ATCMs applicable to mobile and off-road vehicles.

New Source Performance Standards (NSPS)

New Source Performance Standards (NSPS) are source-specific requirements promulgated by the U.S. Environmental Protection Agency. NSPS have been in place since the 1970s and establish technology-based standards applicable to criteria pollutant emissions from new or modified sources. NSPS are generally based on “best demonstrated technology.” U.S. EPA establishes performance-based standards requiring the application of the best-proven control system or method, while considering the cost of the technology. There are currently around 80 promulgated NSPS.

National Emission Standards for Hazardous Air Pollutants (NESHAP)

U.S. EPA is required to regulate airborne toxic pollutants under the National Emission Standards for Hazardous Air Pollutants (NESHAP). Hazardous Air Pollutants (HAP) are pollutants that are known or suspected to cause cancer or other serious health effects, such as birth defects. There are currently 188 regulated HAP. A listing of the regulated HAP can be found in Appendix II of Title 129 or via the following link: www.epa.gov/ttn/atw/188polls.html.

Prior to the 1990 Clean Air Act Amendments only seven HAP standards had been promulgated. The “risk-based” standards were difficult to develop as they were frequently challenged on the basis that the required margin of safety was either too strict or not strict enough. The NESHAP promulgated prior to 1990 can be found in 40 CFR Part 61 and Chapter 23 of Title 129.

Because of the difficulty U.S. EPA faced in developing the risk-based standards, the Amendments of 1990 required that U.S. EPA regulate HAP based on a two-phased approach. The first phase requires development of technology-based standards that set emission limits based on emissions levels already being achieved by many similar sources in the country. The technology-based standards are referred to as Maximum Achievable Control Technology (MACT) standards. MACT standards are found in 40 CFR Part 63 and Chapter 28 of Title 129. Currently, the U.S. EPA has finalized more than 100 MACT standards.

The second phase applies a risk-based approach, in which U.S. EPA is required to assess how well the technology-based standards have reduced public health and environmental risks. If U.S. EPA finds significant residual health or environmental risks, additional standards must be implemented.

Public Review Process

Projects Subject to Public Review

The District is required to provide public notice prior to taking final action on the following types of projects:

1. New or Modified Equipment

Applications for new or modified projects meeting any of the following criteria:

- a. The project requires emission offsets; or
- b. The project's potential to emit will be equal to, or greater than:
 - 5,000 lb/quarter of Reactive Organic Compounds (ROC); or
 - 5,000 lb/quarter of Nitrogen Oxides (NO_x); or
 - 13,650 lb/quarter of Sulfur Oxides (SO_x); or
 - 7,500 lbs/quarter of PM₁₀; or
 - 49,500 lbs/quarter of Carbon Monoxide (CO); or
- c. The proposed project will emit toxic air contaminants and will be located within 1,000 feet of a school; or
- d. The project is being reviewed under the Enhanced New Source Review process.

2. Title V Permits

Applications for new Title V permits, significant Title V permit modifications, minor Title V permit modifications and Title V permit renewals.

Public Noticing Procedures

The procedures for notifying the public differ depending on the type of project and the reason for public notification.

Projects that require offsets (see 1.a. above) or have a potential to emit exceeding the thresholds specified in section 1.b. above, are subject to the following procedure (Rule 202, Section 406):

Within 10 calendar days following a preliminary decision, the District must publish in at least one newspaper of general circulation in Sacramento County a notice including the following information:

- Stating the preliminary decision
- Noting how pertinent information can be obtained; and
- Inviting written public comment for a 30-day period following the date of publication

The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing. The District shall give notice of any public hearing at least 30 days in advance of the hearing. Hearings are typically not held unless specifically requested by the public.

The District will make available for public inspection at the District's office the information submitted by the applicant and the District's analysis and draft permit no later than the date the notice of the preliminary decision is published. The District's analysis and draft permit will also be available on the Permit section of its Web site at www.AirQuality.org.

The evaluation and draft permit will also be transmitted no later than the date of publication to the California Air Resources Board and the U.S. Environmental Protection Agency regional office, and to any party which requests such information. Information submitted that contains trade secrets will be handled in accordance with Section 6254.7 of the California Government Code and relevant sections of the California Administrative Code.

Projects Within 1,000 Feet From a School (H&S Code, §42301.6)

Prior to approving an application for a permit to construct or modify a source, the District must prepare a public notice if:

- ☒ The project will result in an increase of hazardous air emissions; and
- ☒ The source of the emissions is located within 1,000 feet from the outer boundary of a school. “School” means any public or private school used for purposes of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

At least 30 days prior to the date of final action, the District shall distribute or mail the public notice to:

- ☒ The parents or guardians of children enrolled in any school that is located within one-quarter mile (1,320 feet) of the source. With the permission of the school, the notices may be given to the children to be given to their parents or guardians
- ☒ Each address within a radius of 1,000 feet of the proposed new or modified source

The District shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final action on the application.

The requirements for public notice are fulfilled if the District makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in these circumstances, failure of any person to receive the notice does not affect the validity of any permit subsequently issued by the District.

Projects Being Reviewed Under Enhanced New Source Review or Title V

Within 10 calendar days following the preliminary decision to issue or deny a permit, the District shall publish in at least one newspaper of general circulation in Sacramento County a notice stating the preliminary decision, noting how the pertinent information can be obtained, and inviting written public comments. The notice shall also be given to persons on a mailing list developed by the District, including those who request in writing to be on the mailing list and by other means (such as the District’s Web site, community groups, public meeting) when necessary to ensure that adequate notice is given.

The notice must identify all of the following:

- ☒ The name and address of the affected stationary source
- ☒ The name and address of the permittee
- ☒ The name and address of the District
- ☒ The activity or activities involved in the permit action
- ☒ The emissions change involved in any permit modification
- ☒ The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft Title V permit, the Title V permit application, and all relevant supporting materials
- ☒ Information submitted by the source which contains trade secrets shall be handled in accordance with Section 6254.7 of the California Government Code, and with relevant sections of the Administrative Code of the state of California
- ☒ A brief description of the comment procedures; and
- ☒ The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled)

The District shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

The District must keep a record of the public comments and also of the issues raised during the public comment period. All public comments received by the District during the public comment period shall be made available to the public for review.

Commenting on Projects

The application evaluation and draft permits for all permit applications subject to public notification are posted on the Web site at www.AirQuality.org. Copies of these documents and the application itself can also be obtained by contacting the District.

Writing Effective Comments

In order for comments to be considered, they must be:

- ☒ Received by the District within the specified time period (typically within 30 days from date of public notice)
- ☒ Pertinent to the project and the District's jurisdiction

The District reviews projects to ensure that the proposed equipment will comply with all applicable rules and regulations (see **Key Requirements**) and issues an Authority to Construct or Permit to Operate with conditions to ensure continuous compliance with all applicable rules and regulations. Pertinent comments include, but are not limited to:

- ☒ BACT determination
- ☒ Emission calculations
- ☒ Health risk assessment (modeling procedures, assumptions, emission calculations, etc.)
- ☒ Applicability or interpretation of certain regulations
- ☒ Level of monitoring or record keeping necessary to verify compliance with applicable regulations
- ☒ Permit conditions

Appeals

Within 30 days after notice by the District of final action on an Authority to Construct, or Permit to Operate, any aggrieved person who participated in the permit issuance proceedings may petition the Hearing Board, in writing, for an order modifying or reversing that decision. After notice and a public hearing held within 30 days after filing the petition, the Hearing Board may sustain or reverse the action of the District.

To file an appeal, please contact the SMAQMD Office of the District Counsel at (916) 874-4800.

The application and draft permits
for all permit applications subject to public notification
are posted on our **Web site** at
www.AirQuality.org.

COMMENTING ON PLANS AND RULES

Before the District adopts new air quality plans or rules, the public has an opportunity to get involved. The District holds public meetings on proposed air quality plans and rules, and encourages people to attend and share their opinions. Public input is important to ensure that all sides of an issue are considered. You can make your opinions known by:

- ☒ Attending meetings with staff or Board members
- ☒ Mailing letters
- ☒ Sending e-mail
- ☒ Making telephone calls
- ☒ Scheduling appointments to visit District staff

How Does the District Adopt Air Quality Plans and Rules?

The District adopts air quality plans and rules to help our region attain clean air standards. The plans and rules implement air quality laws enacted by the California Legislature or the U.S. Congress, as well as regulations promulgated by the U.S. EPA and the California Air Resources Board. This section will focus on the decision-making process at the District, but most regulatory agencies in California follow a similar public participation process.

Proposed Plans and Rules

Air quality plans and rules are required by state and federal laws and regulations. Air quality plans include information to characterize the area's air quality problems, pollution sources, and pollution reduction strategies that will lead to clean air. Air quality rules enact pollution reduction strategies in the form of specific mandatory requirements on businesses and individuals in Sacramento County. The process for proposing new or amended rules and plans begins with a draft proposed plan or rule and associated technical documents. These documents are made available for review by members of the community, affected businesses and individuals, and other regulatory agencies.

California Environmental Quality Act (CEQA)

Any public agency, including local air districts, that approves projects that may have a significant effect on the environment is subject to CEQA. Every public agency that takes action on an activity or project that may have a significant negative effect on air quality or any other environmental media must prepare or consider an Environmental Impact Report (EIR). The document describes the potential environmental impacts, the alternatives to the project, and mitigation measures that will avoid or reduce the negative effects. The EIR documents the impacts a proposed project may have and how they can be eliminated or minimized so that decision makers will make wise decisions.

A draft EIR is the initial CEQA document that is prepared by the public agency taking the action that may have a significant environmental impact. This document is circulated to other agencies and the public, and then certified as the Final EIR by the agency before it adopts/approves the action and after it responds to all public comments on the draft. A subsequent EIR is prepared only if the criteria in Title 14 of the California Code of Regulations, Section 15162 are met (i.e. substantial changes required to the EIR or negative declaration due to new or more severe impacts, changed circumstances, or certain kinds of new information not previously known). Projects can be denied because of the impacts listed in the EIR, or they can be modified or conditioned to reduce or eliminate the negative impacts.

If further analysis shows that a project or activity will not have significant negative effects on the environment, a Negative Declaration (ND) is prepared instead of an EIR. The public can receive notice of the EIRs and NDs proposed for projects in their neighborhoods or anywhere in the state by getting on the mailing list of local, regional, or state agencies for all projects subject to CEQA. The public has the opportunity to comment and attend hearings. City and counties cannot approve activities, plans, or projects, or issue building permits until EIRs or NDs are approved for each individual project. In some cases, projects are approved because of specified overriding considerations even though the negative environmental impacts have not been mitigated. If you would like to learn more about CEQA, visit OPR's Web site at www.ceres.ca.gov/ceqa.

Workshops

For all major plans and rules, District staff will present the proposal during its development phase at one or more public workshops in various parts of the county. Workshops provide opportunities for interested people to express their ideas and concerns early in the process and for District staff to consider and address public comments during the workshops. During the development of a plan or rule, there may be several versions, and the final draft that is presented to the Board often reflects the modifications suggested during this process. At the draft stage of the process, people on the mailing list for the topic will be notified about upcoming workshops and meetings. Upcoming draft plans and rules are also posted on the District's Web site at www.AirQuality.org.

Notices of Public Hearings

In the next stage of the process, the proposed plan or rule is scheduled for a public hearing before the District's Board of Directors. The 14-member Board is composed of all five Sacramento County Supervisors, four members of the Sacramento City Council, one member representing each of the cities of Citrus Heights, Elk Grove, Folsom and Rancho Cordova, and one member representing the cities of Galt and Isleton. At least 30 days prior to the public hearing, there is a public notice and the final proposed plan or rule to be considered is made available to the public. Written comments on the proposal can be submitted in the period leading up to the public hearing.

Public Notification and Mailing Lists

District staff identifies the businesses, communities, groups, or individuals likely to be affected by the proposed plan or rule and develops an appropriate strategy to notify the affected parties. Depending on the nature of the plan or rule, public notices may be published as ads in the Sacramento Bee and/or a variety of smaller community and ethnic newspapers. Specific types of businesses are identified through the District's permitting system as well as through Yellow Page listings. In addition, the District maintains a database of those who have requested to receive public notices.

Public notices for workshops and hearings are posted on the District's Web site, along with the proposed rules or plans. Hard copies are provided upon request. When appropriate, these notices may also be published in languages other than English. In addition, any person may request language assistance for help in translating documents into other languages.

Public Hearings

At the public hearing, the Board discusses the proposed plan or rule and the comments received. The Board also receives oral testimony at the hearing before taking action on the proposed plan or rule. If you wish to speak, you will be asked to fill out a public comment card and possibly be asked questions from board members.

Meeting Broadcast

The meeting is videotaped in its entirety and will be cablecast without interruption on Metrocable 14, the Government Affairs Channel on the Comcast, Surewest & Strategic Technologies Cable Systems, and will be Webcast at www.sacmetrocastable.tv.

How Do I Get Involved?

The first thing to do if you want to get involved is to get on appropriate mailing lists and attend workshops, hearings, or other meetings that the District conducts. These meetings are a good source of information and also provide an opportunity to raise issues or concerns. In general, the meeting notice provides information about the location, time, and subject for the meeting. If you are going to raise a specific question or concern, it is always wise to do some preparation prior to the meeting. This will allow you to more effectively participate. You may submit written or oral comments at a meeting. It is important to know when each is appropriate and how to contact the right people to address your issue.

If you would like to meet with District staff, you can schedule an appointment to discuss your concerns about a particular issue. You may also want to make an occasional phone call or send an e-mail to establish contact and exchange ideas with appropriate staff. Staff often incorporates input from the public into their work products and proposals, so your participation at the staff level can be very important.

Be aware that comments provided become part of the public record and must be made available to any member of the public who requests it.

How Do I Prepare and Present Comments?

When you receive a meeting notice, it will describe the process for submitting written comments. The notice will provide information on where to send comments, the deadline for submitting comments, and a contact person for answering questions. However, you do not need to send in written comments prior to the hearing in order to participate.

You can come to the meeting and sign up to speak during the portion of the meeting set aside for public testimony. At the meeting, you may provide pictures or any other kind of visual aids to help get your message across. You can read from prepared comments or you can simply speak. You should make advance arrangements with agency staff for any special equipment needed. You can also arrange in advance to have a translator if you do not speak English. Special arrangements will be made for the disabled upon request.

Because many people often sign up to testify at District Board meetings, there may be a limit on how much time you have to speak. If that is the case, it is important to try not to repeat previous testimony and to speak to the point. You can submit written comments of any length, as long as they are on the topic, and the Board members will consider them in making their decision. Once the staff has made its report to the Board and everyone who is interested has spoken, the Board members will discuss the issue and then may either vote or defer action to a subsequent Board meeting. Immediately prior to the close of the meeting, there is time for the public to address the Board on any other air quality-related items.

Be aware that comments provided
become part of the public record
and must be made available
to any member of the public who requests it.

How Can I Contact the District?

■ In person:

Our office is located at:
777 12th Street, 3rd floor
Sacramento, CA 95814
(916) 874-4800 or (800) 880-9025

The District office hours are 8am-5pm, Monday through Friday, excluding major holidays.

■ Mail:

Sacramento Metropolitan Air Quality Management District
777 12th Street, 3rd Floor
Sacramento, CA 95814-1908
Attn: {Please put the title of the plan or rule you are commenting on}

Please include your contact information.

■ E-mail:

You can submit questions, concerns, or comments on plans to sacsip@airquality.org.
Please put the title of the plan, rule or questions you wish to address in the subject line.

In addition, the rule and plan public notices will include the e-mail address of the specific staff who is assigned to those documents. You can e-mail your comments to them directly.

Please use the subject line in an e-mail. The Air District e-mail filter may consider non-subjected e-mail as spam.

■ Fax:

The Air District fax number is: (916) 874-4899. Please identify the title of the plan or rule on the cover as well as your contact information, so that comments can be routed to the staff appropriately.

■ Web site:

For more information visit our Web site at www.AirQuality.org. You may also sign up for the District's e-mail list at this Web site.

THE HEARING BOARD

The Hearing Board is established by state law and consists of five members – an attorney, a professional engineer, a member from the medical profession and two members of the public. Hearing Board members are appointed by the District’s Governing Board of Directors, but act independently from that Board.

The Hearing Board members serve as an impartial, quasi-judicial body and are authorized to address requests for:

- ☒ Petitions by companies for variances
- ☒ Appeals by companies from the granting of permits, permit conditions, permit denials and suspensions, denials of emission reduction credits, and denials of pollution control plans
- ☒ Appeals by third parties
- ☒ Petitions for abatement orders

An abatement order is the only request issued by the Air Pollution Control Officer that requires a company operating out of compliance to take specific actions or to shut down its operation.

The Hearing Board is not authorized to modify rules, exempt a business from complying with a rule, grant a variance from a violation of the public nuisance law (such as one that creates an odor problem or threatens public health or property) or review a notice of violation.

What is a Variance?

A variance is a temporary administrative exemption from a law or regulation. A variance allows a company to continue operating in violation of AQMD rules, without penalty, while it takes appropriate steps to meet air pollution control requirements. Variances can only be granted by the Hearing Board. AQMD inspectors or engineers cannot grant variances.

To obtain a variance, the applicant must prove that there is a good reason why it can’t immediately comply with air pollution control laws. If an entity cannot immediately comply with a rule or regulation, the only legal way to operate while working toward a solution is to get a variance. If the requirements are also federal requirements, however, the U.S. EPA may take enforcement action, notwithstanding a variance.

There are four types of variances—Emergency, Interim, Short-term, and Regular.

Emergency: When a situation develops without warning (such as an equipment breakdown, power failure, or similar event that could cause a violation of AQMD rules) the owner or operator may request an emergency variance. The Chairperson of the Hearing Board may grant an emergency variance without public notice or hearing.

Interim: For immediate coverage other than for emergencies, an interim variance may be requested by the owner or operator until a hearing for a short or regular variance can be held. This interim situation only requires a “reasonable public notice” period. An interim variance must be requested at the same time either a short or regular variance is requested. The Hearing Board is required by law to find good cause to grant an interim variance. That means there has to be a good reason why the company could not have filed its petition in time for the hearing to be announced to the public.

Short-term: Companies that can comply with AQMD rules within 90 days or less may request a short-term variance. A short-term variance requires a 10-day posted notice, plus five days processing time before the request can be heard. A variance may not be granted unless the applicant establishes an adequate basis for the Hearing Board to make all six findings listed under Health and Safety Code section 42352.*

Regular: Companies that need more than 90 days to comply with AQMD rules may request a regular variance. The variance period is usually one year or less, but can be longer if a specific compliance schedule is set. An application for a regular variance must be filed at least 35 days before the request can be heard. As with a short-term variance, this variance may not be granted unless the applicant establishes an adequate basis for the Hearing Board to make all six findings listed under Health and Safety Code section 42352.*

See the detailed Variance Chart at the end of this chapter for notice requirements, requirements for issuance and the applicable laws.

Materials & Information

All materials and information regarding the Hearing Board and submitting petitions for hearings are available on the District's Web site at www.AirQuality.org. This information includes:

- ☒ AQMD Variance Information Packet and relevant Health and Safety Code sections
- ☒ Variance Petition Forms
- ☒ Health and Safety Code Sections 41700 and 41701, regarding public nuisance
- ☒ All current AQMD Rules and Regulations, which include Rules pertaining to the Hearing Board:
 - AQMD Rule 302: Hearing Board Fees
 - AQMD Rule 601: Hearing Board Procedures
 - AQMD Rule 602: Breakdown Conditions
- ☒ Hearing Board Meeting Agenda & Public Notice
- ☒ 2007 Meeting and Filing Date Schedule

The Variance Process

Assessment of Need: A source should assess whether it believes it can meet the findings under Health and Safety Code section 42352* before applying for a variance. The Hearing Board may not grant a variance unless all six findings are proven by a preponderance of the evidence. This may require legal or technical advice from an attorney or consultant with expertise in the field.

Petition: If a source determines that a variance is appropriate, then it should submit a Variance Petition along with the required filing fees to the Clerk of the Hearing Board. Again, a source may require legal or technical assistance when completing the application. Once the application has been submitted along with the appropriate filing fees, the Clerk will advise the source of the scheduled hearing date and will prepare and submit the appropriate Public Notice.

¹ *Health and Safety Code section 42352. Findings prerequisite to grant of variance. (a) No variance shall be granted unless the hearing board makes all the following findings: (1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district. (2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making these findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public agency. For the purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency. (3) That the closing or taking would be without a corresponding benefit in reducing air contaminants. (4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance. (5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible. (6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district. (b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

Staff Report: When the petition is accepted by the Clerk, it is forwarded to the District Council, who will review the petition with the aid of District staff and complete a staff report. This staff report will contain the District’s assessment of the petition, the evidence submitted with the application, and whether in the staff’s opinion a variance should be granted. Typically, a copy of the staff report along with the petition and other pertinent information is sent to the Hearing Board members, the Hearing Board Counsel and the source the week before the variance hearing for review.

Hearing

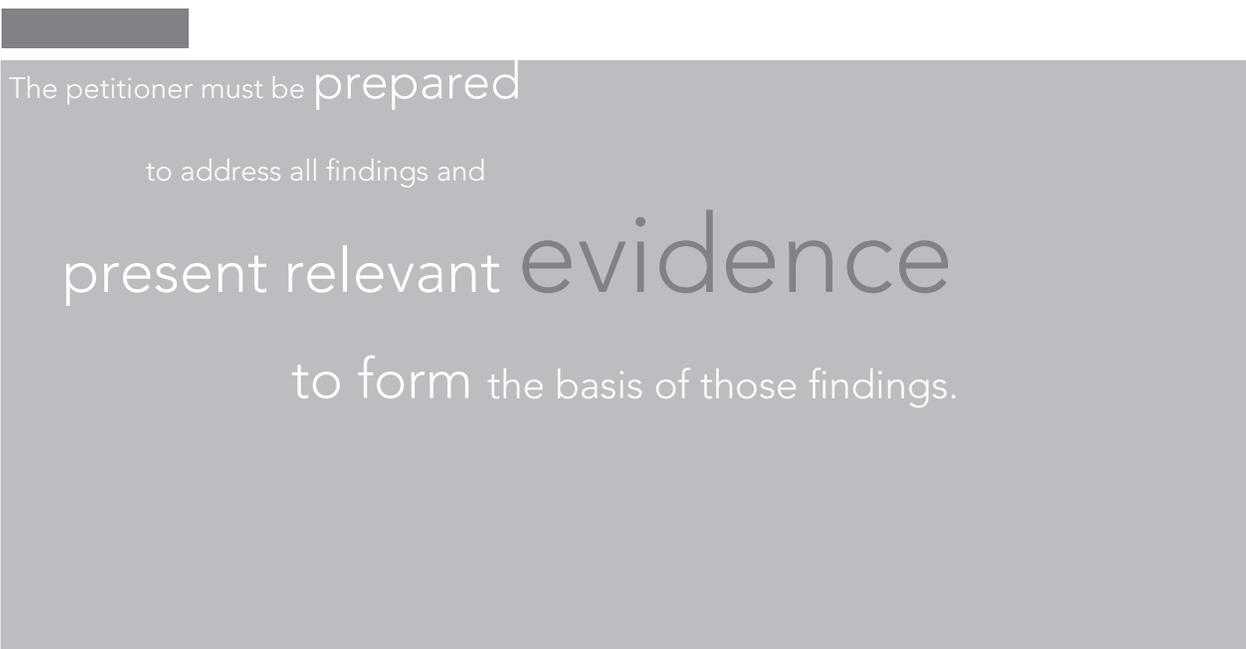
Conduct at the Hearing: The “open meeting” requirements of the Brown Act (Government Code section 54950, etc.), as well as the Health and Safety Code, govern the conduct of Hearing Board meetings. These laws, among other things, require that members of the public have the opportunity to be fully informed about the work of the Hearing Board. The law requires public notice of the meetings and an opportunity for the public to attend, observe and participate in Hearing Board procedures. *Any information submitted in the petition process becomes a public record, which must be disclosed to any member of the public upon request.*

Both the petitioner and the District (represented by the District Council) have the opportunity to present evidence through witnesses, documents and exhibits. Witnesses are sworn in under oath and may be cross-examined by the opposing side and questioned by Hearing Board members.

Most hearings are relatively brief. By the time the petition and the staff report have been submitted to the Hearing Board, both the petitioner and District staff have a very clear idea of what issues may need to be resolved by the Hearing Board.

Presentation of Evidence: Since the petitioner has the burden of proof, the petitioner will present its “case” to the board first. The petitioner will need to explain the circumstances that led to the violations and how the petitioner intends to come into compliance. The District will also address the board, providing any evidence supporting or opposing the petitioner’s variance request.

The Hearing Board will discuss the evidence in support of all six findings in Health and Safety Code section 42352* (see page 14). The petitioner must be prepared to address all findings and present relevant evidence to form the basis of those findings. Once all the issues have been addressed, the Hearing Board will decide whether to issue a variance and may place additional conditions that the petitioner must meet during the length of the variance.



The petitioner must be prepared
to address all findings and
present relevant evidence
to form the basis of those findings.

Findings and Orders: After the hearing, the counsel to the Hearing Board (not the District Counsel) will draft a document called the Findings and Orders. This document includes the specific facts found by the Hearing Board and the outcome of the hearing. It will specify the laws and rules the petitioner is exempted from and any conditions that may be imposed by the Hearing Board members.

The relief in the order is effective from the date of the hearing in which a decision was issued, unless the Hearing Board specifies a different date. In no case may relief be granted prior to the date on which the application, along with the fees, was submitted to the Clerk of the Hearing Board.

All Findings and Orders are sent to the California Air Resources Board's Enforcement Division. The Air Resources Board is the state oversight agency that has the authority to modify or overrule a variance granted by the Hearing Board.

Help with Variance Request Process

- For more information about how to request a variance, or for assistance in filling out the application, call the Clerk of the Hearing Board at (916) 874-4800.
- If you have questions about the variance process, call the AQMD Office of the District Counsel at (916) 874-4800.
- You can pick up a variance packet at the AQMD office or download the information via the Internet at www.AirQuality.org.
- You may also write to the AQMD Clerk of the Hearing Board at 777 12th Street, 3rd floor, Sacramento, CA 95814-1908.

Sacramento Metropolitan Air Quality Management District Variances

TYPE OF VARIANCE	APPLICATION OF VARIANCE	NOTICE OF HEARING REQUIREMENTS	REQUIREMENTS FOR ISSUANCE	LENGTH OF VARIANCES	STATUTES AND DISTRICT RULES
Emergency	This variance is for situations that develop without warning (i.e. an equipment breakdown, power failure, etc.) that could cause a violation of AQMD Rules.	No notice or hearing required	Good Cause	Until problem has been resolved or up to 15 days maximum.	Health & Safety Code, § 42359.5 District Rule 602 District Rule 302*
Interim	This variance covers the time until a hearing for a short or regular variance can be held. An application for a short or regular variance must be submitted at the same time the interim application is submitted.	Reasonable Notice (3 days)	Good Cause – may be shown in a number of different ways, including “a substantial likelihood of meeting the findings required by Health & Safety Code, § 42352.	Shall not be valid beyond the date of decision of the application for a variance or for more than 90 days from the date of issuance, whichever comes first.	Health & Safety Code, § 42351 Health & Safety Code, § 40824 District Rule 601 District Rule 302
Short-term	This variance is for any person who can comply with AQMD rules within 90 days or less.	Ten (10) days posted notice, plus 5 days processing time before the request can be heard.	Must meet all 6 findings, by a preponderance of the evidence, in Health & Safety Code, § 42352.	90 days or less	Health & Safety Code, § 42352 Health & Safety Code, § 40825 District Rule 601 District Rule 302
Regular	This variance is for any person who needs more than 90 days to comply with AQMD rules.	Thirty (30) days posted notice, plus 5 days processing time before the request can be heard.	Must meet all 6 findings, by a preponderance of the evidence, in Health & Safety Code, § 42352.	More than 90 days, but usually less than one year. For more than one year a compliance schedule needs to be set. (H&S Code § 42358)	Health & Safety Code, § 42352 Health & Safety Code, § 42358 Health & Safety Code, § 40826 District Rule 601 District Rule 302

* District Rule 302 lists the Hearing Board fees for the various types of petitions that can be submitted to the Hearing Board. All fees are due at the time the application is submitted. There is a separate fee schedule for small businesses, and sources with financial hardship may apply for a fee waiver.

SACRAMENTO METROPOLITAN



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MANAGEMENT DISTRICT

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