

RULE 601 PROCEDURE BEFORE THE HEARING BOARD

Adopted 8-1-62

(Amended 6-1-76, 4-10-90, 12-5-96 2-5-98)

INDEX**100 GENERAL**

101 PURPOSE

200 DEFINITIONS

201 ABATEMENT ORDER PETITION

202 GENERAL VARIANCE (90 DAYS OR LESS)

203 GENERAL VARIANCE (MORE THAN 90 DAYS)

204 INTERIM AUTHORIZATION TO MODIFY A VARIANCE WITH INCREMENTS OF
PROGRESS

205 INTERIM VARIANCE

206 MODIFICATION OF A FINAL COMPLIANCE DATE OR INCREMENTS OF PROGRESS

207 PERMIT REVOCATION

208 PETITION BY AN AGGRIEVED PARTY

209 PRODUCT VARIANCE

210 REHEARING OF A DECISION

211 REVIEW OF PERMIT OR EMISSION REDUCTION CREDIT DENIAL

212 REVIEW OF PERMIT SUSPENSION

213 REVIEW OF CONDITIONAL APPROVAL

214 SCHEDULE OF INCREMENTS OF PROGRESS

215 VARIANCE

216 VARIANCE MODIFICATION OR REVOCATION

300 STANDARDS (NOT INCLUDED)**400 ADMINISTRATIVE REQUIREMENTS**

401 FILING PETITIONS

402 GENERAL CONTENTS OF PETITIONS

403 SPECIFIC CONTENTS FOR VARIANCE PETITIONS

404 SPECIFIC CONTENTS FOR PRODUCT VARIANCE PETITION

405 SPECIFIC CONTENTS FOR PERMIT OR EMISSION REDUCTION CREDIT ACTION
PETITIONS

406 SPECIFIC CONTENTS FOR REHEARING PETITIONS

407 SPECIFIC CONTENTS FOR ABATEMENT ORDER PETITIONS

408 FAILURE TO COMPLY WITH RULES

409 WITHDRAWAL OF PETITION

410 PLACE OF HEARING

411 NOTICE OF HEARING

412 EVIDENCE

413 RECORD OF HEARING

414 PRELIMINARY MATTERS

415 CONTINUANCES

416 DECISION

417 VARIANCE FINDINGS

418 PRODUCT VARIANCE FINDINGS

419 PERMIT REVOCATION FINDINGS

420 PERMIT OR EMISSION REDUCTION CREDIT DENIAL FINDINGS

421 ABATEMENT ORDER FINDINGS

422 EFFECTIVE DATE OF DECISION

423 REHEARING DECISIONS

500 MONITORING AND RECORDS (NOT INCLUDED)

This Page Intentionally Left Blank

100 GENERAL

101 **PURPOSE:** To specify procedures that shall apply to all hearings before the Hearing Board of the Air Quality Management District, except hearings governed by Rule 602, BREAKDOWN CONDITIONS; EMERGENCY VARIANCE.

200 DEFINITIONS

201 **ABATEMENT ORDER PETITION:** An order to any person found to be constructing or operating any article, machine, equipment, or other contrivance without a required permit or in violation of Section 41700 or 41701 of the Health & Safety Code, or of any rule, regulation or permit adopted or administered by the Sacramento Metropolitan Air Quality Management District prohibiting or limiting the discharge of air contaminants into the air (CH&SC 42450).

202 **GENERAL VARIANCE (90 DAYS OR LESS):** Variance granted for a period of 90 days or less. Also called a Short-term variance. (CH&SC 40826)

203 **GENERAL VARIANCE (MORE THAN 90 DAYS):** Variance granted for a period of more than 90 days. Also called a Regular variance. (CH&SC 40825)

204 **INTERIM AUTHORIZATION TO MODIFY A VARIANCE WITH INCREMENTS OF PROGRESS:** An authorization granted to a person previously granted a variance which includes a schedule of increments of progress to continue operating when that schedule cannot be met and prior to a duly noticed public hearing to modify the schedule of increments. (CH&SC 42351.5)

205 **INTERIM VARIANCE:** Variance granted a source that has submitted a petition for a variance and wishes to continue operating pending the decision of the Hearing Board at a duly noticed public hearing. (CH&SC 42351)

206 **MODIFICATION OF A SCHEDULE OF INCREMENTS OF PROGRESS OR FINAL COMPLIANCE: DATE:** Petition before the Board to modify a schedule of increments of progress or a final compliance date in such a schedule (CH&SC 42357).

207 **PERMIT REVOCATION:** Petition from the Air Pollution Control Officer for the Hearing Board to decide whether a permit should be revoked when the Air Pollution Control Officer finds that the permit holder is violating an applicable order, rule or regulation of the District, or an applicable provision of the California Health & Safety Code. (CH&SC 42307)

208 **PETITION BY AN AGGRIEVED PARTY:** Petition from a party who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in a permitting or Emission Reduction Credit action before the District, requesting that the Hearing Board hold a hearing to determine whether that permit or Emission Reduction Credit was properly issued (CH&SC 42302.1)

209 **PRODUCT VARIANCE:** Variance granted and attached to a particular product which does not comply with District rules or regulations and the variance is necessary for the sale, supply, distribution or use of the product. (CH&SC 42365 & 42366)

210 **REHEARING OF A DECISION:** A hearing before the Board at its discretion that occurs within 30 days of the effective date of a previous decision. (CH&SC 40821).

211 **REVIEW OF PERMIT OR EMISSION REDUCTION CREDIT DENIAL:** A hearing before the Board requested by a source within ten (10) days of receiving the notice of permit or Emission Reduction Credit denial and requesting the Board to decide whether the permit was properly denied. (CH&SC 42302)

- 212 **REVIEW OF PERMIT SUSPENSION:** A hearing before the Board requested by a permittee within ten (10) days of receipt of notice of suspension of a permit requesting the Board decide whether the permit was properly suspended. (CH&SC 42306)
- 213 **REVIEW OF CONDITIONAL APPROVAL:** A hearing before the Board requested, in writing, by the applicant or any other aggrieved person who participated in the permit issuance proceedings for an order modifying or reversing that decision (SMAQMD Rule 201.408)
- 214 **SCHEDULE OF INCREMENTS OF PROGRESS:** A statement of dates when various steps are to be taken to bring a source of air contaminants into compliance with emission standards. (CH&SC 39051)
- 215 **VARIANCE:** Temporary dispensation granted to sources from District rules and regulations.
- 216 **VARIANCE MODIFICATION OR REVOCATION:** Petition filed by the Air Pollution Control Officer for the Hearing Board to determine whether a permit should be modified or revoked when the Air Pollution Control Officer determines that the holder of the permit is violating an applicable order, rule or regulation of the District, or an applicable provision of the California Health & Safety Code. (CH&SC 42357)
- 400 **ADMINISTRATIVE REQUIREMENTS**
- 401 **FILING PETITIONS:** A request for a hearing shall be initiated by filing of a petition with the Hearing Board of the Sacramento Metropolitan Air Quality Management District. If the Petitioner is the Air Pollution Control Officer, a copy of the petition shall be served upon the party named in the petition. Service may be made in person or by mail, and service may be proven by written acknowledgment of the person served or by the affidavit of the person making the service. A fee, as specified in Rule 302, HEARING BOARD FEES, shall be paid at the time of filing of a petition.
- 402 **GENERAL CONTENTS OF PETITIONS:** Every petition shall state:
- 402.1 The name, address and telephone number of the petitioner, and the person authorized to receive service of notice, if different therefrom.
- 402.2 Whether the petitioner is an individual, partnership, corporation, the names of the partners, if a partnership or other entity, and the names and addresses of the officers, if a corporation; and the names and addresses of the person in control, if some other entity.
- 402.3 The name, location, and type of business or activity concerned.
- 402.4 A brief description of the article, machine, equipment or other contrivance, if any involved.
- 402.5 The nature of the petition which is being filed, that is:
- a. Variance Petitions
 1. General variance - 90 days or less (Short - term variance)
 2. General variance - greater than 90 days (Regular variance)
 3. Interim variance
 4. Interim authorization to modify a variance specifying increments of progress
 5. Variance revocation
 6. Variance modification
 7. Product Variance
 - b. Permit Action Petitions
 1. Review of permit denial
 2. Review of conditional approval
 3. Petition by an aggrieved party
 4. Review of permit suspension
 5. Petition to revoke a permit

- c. Rehearing Petitions
 - 1. Rehearing of a decision
 - d. Abatement Order Petitions
- 402.6 Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner it shall set forth his authority to sign.
- 403 **SPECIFIC CONTENTS FOR VARIANCE PETITIONS:** In addition to the requirements set forth in Section 402, petitions for variances shall state briefly:
- 403.1 The section, rule or order which will be violated if a variance is not granted.
 - 403.2 The facts showing that compliance with the section, rule, or order will result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of lawful business.
 - 403.3 The facts showing that the closing or taking will be without corresponding benefit in reducing air contaminants.
 - 403.4 The consideration given to curtailing operations in lieu of obtaining a variance.
 - 403.5 The final compliance date and increments of progress if the requested variance period exceeds one year, or if requested by the Air Pollution Control Officer.
 - 403.6 The conditions associated with the individual increments of progress; including, but not limited to, increments of progress schedules, operating parameters, and reporting requirements.
 - 403.7 Estimation of excess emissions and proposed actions which will reduce excess emissions to the maximum extent feasible during the variance period.
 - 403.8 The advantages and disadvantages to the residents of the district resulting from requiring compliance or resulting from granting a variance.
 - 403.9 Procedures, methods, and equipment used to quantify emission levels from the source during the variance period, subject to approval and reporting requirements of the Air Pollution Control Officer.
 - 403.10 Whether or not operations under such variance, if granted, will constitute a nuisance.
 - 403.11 Facts demonstrating past diligence in trying to comply with applicable standards.
- 404 **SPECIFIC CONTENTS FOR PRODUCT VARIANCE PETITIONS:** In addition to the requirements set forth in Section 402 and 403, petitions for product variances shall state briefly:
- 404.1 The facts showing that the petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with District Rules and Regulations (CH&SC 42368 [a] {4}).
 - 404.2 A proposed written notice that is to be furnished to any retailer, distributor or purchaser of the product for the duration of the variance. The notice shall contain the following information (CH&SC 42368 [b]):
 - a. That the product is being sold pursuant to a product variance granted by the District Hearing Board.
 - b. The beginning and ending dates of the product variance.
 - c. Any conditions to be set forth in the product variance which might reduce excess emissions to the extent feasible.
- 405 **SPECIFIC CONTENTS FOR PERMIT OR EMISSION REDUCTION CREDIT ACTION PETITIONS:** In addition to the requirements set forth in Section 402, petitions for permit or Emission Reduction Credit actions shall state briefly:
- 405.1 The section, rule or order which is the basis for conditional approval, suspension, denial, or revocation; or which is alleged to have been violated or is the basis of the grievance.
 - 405.2 Statement as to why the petition is being sought.

- 405.3 The facts illustrating the potential impact on the source, public, and aggrieved party if the permit or Emission Reduction Credit action is sustained by the Hearing Board.
- 405.4 The Hearing Board action requested.
- 406 **SPECIFIC CONTENTS FOR REHEARING PETITIONS:** In addition to the requirements set forth in Section 402, petitions for rehearing shall state briefly:
- 406.1 The original petition number and hearing date.
- 406.2 The reasons and additional facts which merit rehearing the petition.
- 406.3 The Hearing Board action requested.
- 407 **SPECIFIC CONTENTS FOR ABATEMENT ORDER PETITIONS:** In addition to the requirements set forth in Section 402, petitions for abatement orders shall state briefly:
- 407.1 The section, rule, or order which is alleged to have been violated.
- 407.2 A statement of the facts constituting the violation, or alleged violation, and a description of the potential impacts.
- 407.3 Permit status and history of the source sought to be abated.
- 407.4 The particular act or operation sought to be abated, together with conditions, if applicable.
- 407.5 Facts showing that abatement is necessary to prevent future violations.
- 408 **FAILURE TO COMPLY WITH RULES:** No petition shall be accepted by the Hearing Board which does not comply with these rules relating to the filing, content, and service of petitions, unless the chairperson or any two members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The chairperson or any two members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.
- 409 **WITHDRAWAL OF PETITION:** The petitioner may, by giving notice to the Hearing Board, withdraw his petition at any time prior to the time set for a hearing thereof, without a hearing or meeting of the Hearing Board. The Hearing Board shall notify all interested persons of such withdrawal.
- 410 **PLACE OF HEARING:** Hearings shall be held at a place designated by the Hearing Board.
- 411 **NOTICE OF HEARING:** The Hearing Board shall give notice of the time and place of hearing either by personal service, or by mail. If either the identity or address of any person entitled to notice is unknown, notice shall be served as specified in Section 6061 of the Government Code. Notice shall be given to all parties to the petition, including the Air Pollution Control Officer. The notice shall state the place where the petition and related information, including, but not limited to proposed conditions or increment of progress schedule are available for inspection. Additional noticing requirements are:
- 411.1 **General Variance Petitions Longer than 90 Days and Final Compliance Date Modifications :**
- a. Notice shall be given to all other districts in the Sacramento Valley Air Basin, the California Air Resources Board, the U.S. Environmental Protection Agency, and every other person requesting such notice, not less than 30 days prior to such hearing.
- b. The notice shall also be published in at least one daily newspaper of general circulation not less than 30 days prior to such hearing.
- 411.2 **90-Day Variance and Increments of Progress Modifications:** Notice shall be given to all other districts in the Sacramento Valley Air Basin, the California Air Resources Board, and the U.S. Environmental Protection Agency not less than 10 days prior to such hearing.

- 411.3 **Interim Variance and Interim Authorization to Modify Increments of Progress:** Reasonable notice shall be given prior to such hearing. The District defines reasonable notice as a written notice displayed in a place accessible to the public on District premises at least three days (3) prior to the public hearing.
- 411.4 **All Other Hearings:** Notice shall be published in at least one daily newspaper of general circulation not less than 10 days prior to such hearing.
- 411.5 **Product Variance:** Notice shall be given in accordance with Section 411.1 or 411.2, whichever is applicable.
- 412 **EVIDENCE:**
- 412.1 Oral evidence shall be taken only on oath or affirmation.
- 412.2 Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to present rebuttal evidence. If respondent does not testify in his own behalf he may be called and examined as if under cross examination.
- 412.3 The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.
- 412.4 The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements at the hearing, however, it is desirable that written statements be submitted to the Hearing Board five (5) days before the hearing. Statements need not conform to formal rules of evidence. The chairperson may impose reasonable limits on the duration of oral presentations.
- 412.5 As deemed necessary by the Hearing Board, any person relevant to a particular hearing may be examined by the Hearing Board. The Chairperson of the Hearing Board may issue a subpoena in accordance with Health and Safety Code Sections 40840, 40841, and 40842.
- 413 **RECORD OF HEARINGS:** Each Hearing Board hearing shall be electronically recorded by the Clerk of the Hearing Board. Any party to the hearing may arrange for a court reporter at the party's expense. Tapes shall be retained by the District for at least three (3) years.
- 414 **PRELIMINARY MATTERS:** Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, permitting amendments thereto and other preliminary matters not determinative of the merits of the case may be determined by the chairperson or any two members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.
- 415 **CONTINUANCES:** The chairperson or any two members of the Hearing Board shall grant any continuance of up to 45 days, which is concurred in by petitioner, the Air Pollution Control Officer and by all other persons who are party to the action. This action may be taken without a meeting of the Hearing board and without prior notice. This does not preclude the Board from continuing a petition for a period longer than 45 days during or after the duly noticed hearing.

- 416 **DECISION:** A quorum of not less than three members of the Hearing Board is required for all decisions. No decision shall be made except in the presence of a quorum and upon affirmative vote by at least three members of the Hearing Board. The decision shall be in writing, served and filed within 30 days after signature by the Hearing Board members and shall contain: a brief statement of facts found by the Hearing Board to support the findings required by Sections 417, 418, 419 or 420; a determination of the issues presented, and the order of the Hearing Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the petitioner and to every person who has appeared as a party in person or by counsel at the hearing. Decisions granting, modifying, or otherwise affecting a variance shall be mailed to the California Air Resources Board within 30 days after signature by the Hearing Board members.
- 417 **VARIANCE FINDINGS:** No variance shall be granted unless the Hearing Board makes all of the following findings:
- 417.1 That the petitioner for a variance is, or will be, in violation of Section 40701 of the California Health & Safety Code, or any rule regulation or order of the District.
- 417.2 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,
 - b. or the practical closing or elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose unreasonable burden upon an essential public service. For 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 (CH&SC 42352 [2] {A} & {B}).
- 417.3 That closing or taking required by Section 417.2 would be without corresponding benefit to air quality.
- 417.4 That the applicant has given consideration to curtailing operations in lieu of obtaining a variance.
- 417.5 During the period that the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible during the variance period.
- 417.6 The applicant will monitor or otherwise quantify the emission levels from the source during the variance period, and report these emission levels to the District pursuant to a schedule established by the District, if requested to do so by the District.
- 417.7 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 (CH&SC 42352 [b]).
- 417.8 That an effective variance period has been specified including:
- a. initial effective date,
 - b. final compliance date, and
 - c. schedule of increments of progress for variance periods exceeding one year, and, if requested by the Air Pollution Control Officer at the discretion of the Hearing Board, variance periods less than one year. The Hearing Board may also impose reporting requirements showing compliance with a schedule of increments of progress, or compliance with an emissions curtailment or reporting plan.
- 417.9 That the applicant agrees to post a bond, if required by the Hearing Board as a condition of the variance, to assure performance of any construction, alteration, repair, or other work required by the variance. The bond may provide that, if failure to perform the required work by the agreed date, the bond shall be forfeited as provided in Health and Safety Code Section 42355.

- 418 **PRODUCT VARIANCE FINDINGS:** No product variance shall be granted unless the Hearing Board makes all of the following findings (CH&SC 42368):
- 418.1 The facts substantiating that the manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a rule, regulation, or order of the district.
 - 418.2 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.
 - 418.3 The taking or closing would be without a corresponding benefit in reducing air contaminants.
 - 418.4 The petitioner exercised due diligence in attempting to locate, research or develop a product that is in compliance with district rules and regulations.
 - 418.5 During the period that the product variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission level to the district, if requested by the district.
 - 418.6 Verification that during the duration of the variance the, appropriate and approved notice shall be provided to any retailer, distributor or purchaser of the product who is located in the district.
- 419 **PERMIT REVOCATION FINDINGS:** A permit may be revoked pursuant to Health and Safety Code Section 42309 if the Hearing Board finds any of the following:
- 419.1 The permittee has failed to correct any conditions required by the Air Pollution Control Officer.
 - 419.2 A refusal of a permit would be justified.
 - 419.3 Fraud or deceit was employed in obtaining the permit.
 - 419.4 Any violation of Part 4 of Division 26 of the Health and Safety Code or any rule, regulation, or order of the District.
- 420 **PERMIT OR EMISSION REDUCTION CREDIT DENIAL FINDINGS:** In order to deny a permit or Emission Reduction Credit, the Board must find that the permit or Emission Reduction Credit was improperly issued (CH&SC 42302.1).
- 421 **ABATEMENT ORDER FINDINGS:** The Hearing Board may:
- 421.1 Issue an abatement order if it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by District Rule 201 - GENERAL PERMIT REQUIREMENTS; or is in violation of Health and Safety Code Section 41700 or 41701, or of any rule, regulation, or order prohibiting, or limiting the discharge of air contaminants into the atmosphere; or
 - 421.2 Pursuant to Health and Safety Code Section 42451(b), issue an abatement order pursuant to the stipulation of the Air Pollution Control Officer and the person or persons accused of violations specified in Section 418.1. The stipulation shall set forth terms and conditions.
- 422 **EFFECTIVE DATE OF DECISION:** The decision shall become effective upon affirmative vote of the Hearing Board unless otherwise specified.
- 423 **REHEARING DECISIONS:**
- 423.1 Pursuant to Health and Safety Code Section 40861, the Hearing Board may rehear a decision if a party petitions for a rehearing within 10 days after a copy of the decision has been mailed to said party.
 - 423.2 Pursuant to Health and Safety Code Section 40821, the Hearing Board may, in its discretion, with not fewer than four members present, within 30 days of the effective date of the decision, rehear any matter.

This Page Intentionally Left Blank