

YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

RULE 5.1 - PROCEDURE BEFORE THE HEARING BOARD

(Adopted February 23, 1994)

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100 GENERAL

101 PURPOSE: The purpose of this Rule is to specify procedures that shall apply to all hearings before the Hearing Board of the Yolo-Solano Air Quality Management District, except for hearings governed by Rule 5.2, BREAKDOWN CONDITIONS, EMERGENCY VARIANCE.

102 APPLICABLE ARTICLES OF THE HEALTH AND SAFETY CODE: The provisions of Chapters 6, 7, and 8 of Part 3 and Chapter 4 of Part 4 of Division 26 of the California Health and Safety Code are applicable to all hearings before the Hearing Board of the Yolo-Solano Air Quality Management District.

103 FEDERAL TITLE V REQUIREMENTS: Where a conflict exists between the applicable parts of Section 400, Administrative Requirements, of Rule 3.8, FEDERAL OPERATING PERMITS, and Section 400 of this rule, the applicable requirements, including reporting requirements, of Rule 3.8 shall take precedence over the Administrative Requirements contained in Section 400 of this Rule.

200 DEFINITIONS

201 ESSENTIAL PUBLIC SERVICE: A prison, detention facility, police or firefighting facility, sewage treatment works, health care facility, landfill gas control or processing facility, or water delivery operation, if owned and operated by a public agency.

202 PUBLIC AGENCY: Any state agency, board, or commission; any county; city and county; city; regional agency; public district; or other political subdivision.

203 SMALL BUSINESS: The same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by the applicable provisions of the Federal Clean Air Act (42 U.S.C. Sec 7661(2)), is a small business.

400 ADMINISTRATIVE REQUIREMENTS

401 FILING PETITIONS: A request for a hearing shall be initiated by the filing of a petition in triplicate with the Clerk of the Hearing Board, and the payment to said Clerk of the filing fee as specified in Rule 4.4, HEARING BOARD FEES, after service of a copy of the petition has been made on the Air Pollution Control Officer, and one copy on the holder of the permit or variance, if any involved. Service may be made in person or by mail, and service may be proved by written acknowledgement of the person served.

402 GENERAL CONTENTS OF PETITIONS: Every petition shall state:

402.1 The name, address, and telephone number of the petitioner, or other person authorized to receive service of the notices;

402.2 Whether the petitioner is an individual, partnership, corporation, or other entity, and names and addresses of partners, if a partnership, names and addresses of the officers, if a corporation, names and addresses of the persons in control, if other entity;

402.3 The type of business or activity involved in the application and the street address or location at which it is conducted;

402.4 A brief description of the article, machine, equipment, or other contrivance, if any, involved in the application;

402.5 The nature of the petition which is being filed, that is:

a. Variances Petitions

i. General variance - 90 days or less;

ii. General variance - greater than 90 days;

iii. Interim variance;

iv. Interim authorization to modify a variance specifying increments of progress;

v. Variance revocation; or

vi. Variance modification.

b. Permit Action Petitions

i. Review of permit denial;

ii. Review of conditional approval;

iii. Petition by an aggrieved party;

iv. Review of permit suspension; or

v. Petition to revoke a permit.

c. Rehearing Petitions

i. Rehearing of a decision.

402.6 Each petition shall be signed by the petitioner, or some person on his behalf, and where the person signing is not the petitioner it shall set forth his authority to sign; and

402.7 All petitions shall be typewritten, double spaced, on legal or letter size paper, one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.

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 For what period of time the variance is sought.

403.5 The consideration given to curtailing operations in lieu of obtaining a variance.

403.6 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.

403.7 The conditions associated with the individual increments of progress; including, but not limited to, increments of progress schedules, operating parameters, and reporting requirements.

403.8 An estimation of excess emissions and proposed actions which will reduce excess emissions to the maximum extent feasible during the variance period.

403.9 The advantages and disadvantages to the residents of the District resulting from requiring compliance or resulting from granting a variance.

403.10 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.

403.11 Whether or not operations under such variance, if granted will constitute a nuisance.

403.12 Facts demonstrating past diligence in trying to comply with applicable standards.

403.13 Whether or not any case involving the same identical equipment or process is pending in any court, civil or criminal.

403.14 Whether or not the subject equipment or process is covered by a permit to operate issued by the Air Pollution Control Officer.

404 SPECIFIC CONTENTS FOR PERMIT ACTION PETITIONS: In addition to the requirements set forth in Section 402, petitions for permit actions shall state briefly:

404.1 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.

404.2 A statement as to why the petition is being sought.

404.3 The facts illustrating the potential impact on the source, public, and aggrieved party if the action is sustained by the Hearing Board.

404.4 The Hearing Board action requested.

405 SPECIFIC CONTENTS FOR REHEARING PETITIONS: In addition to the requirements set forth in Section 402, petitions for rehearing shall state briefly:

405.1 The original petition number and hearing date.

405.2 The reasons and additional facts which merit the rehearing the petition.

405.3 The Hearing Board action requested.

406 SPECIFIC CONTENTS FOR ABATEMENT ORDER PETITIONS: In addition to the requirements set forth in Section 402, petitions for abatement orders shall state briefly:

406.1 The section, rule, or order which is alleged to have been violated.

406.2 A statement of the facts constituting the violation, or alleged violation, and a description of the potential impacts.

406.3 Permit status and history of the source sought to be abated.

406.4 The particular act or operation sought to be abated, together with petitions, if applicable.

406.5 Facts showing that the abatement is necessary to prevent future violations.

407 FAILURE TO COMPLY WITH RULES: The Clerk of the Hearing Board shall not accept for filing any petition which does not comply with these rules relating to the form, filing 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.

408 ANSWERS: Any person may file an answer within 10 days after service. All persons answering shall be served in the same manner as petitioners under provisions of Section 401.

409 DISMISSAL OF PETITION: The petitioner may dismiss his petition at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such dismissal.

410 PLACE OF HEARING: All hearings shall be held at a place designated by the Hearing Board and which is in a location readily accessible to the public.

411 NOTICE OF HEARING: The Clerk of the Hearing Board shall mail or deliver a notice of hearing to the petitioner, the Air Pollution Control Officer, the holder of the permit or variance

involved, if any, and to any person entitled to notice under provisions of Sections 40823, 40824, 40825, 40826, or 40827, Health and Safety Code.

412 EVIDENCE:

412.1 Oral evidence shall be taken only on oath of 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 that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. 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 sort of evidence on 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 used 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, and irrelevant and unduly repetitious evidence shall be excluded.

412.4 The burden of proof is on the party asserting the affirmative of an issue before the Hearing Board. The general presumption is that the Air Pollution Control Officer has obeyed the law in an action taken by him. The degree of proof by which a case must be established is a preponderance of the evidence.

412.5 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 prior to the hearing. Statements need not conform to formal rules of evidence. The chairperson may impose reasonable limits on the duration of oral presentations.

412.6 The Hearing Board shall prepare a record of witnesses and the testimony of each witness at the hearing. The record shall be retained for at least three (3) years.

412.7 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 PRELIMINARY MATTERS: Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments, and other preliminary rulings not determinative of the merits of the case, may be made by the chairperson or any two members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

414 OFFICIAL NOTICE: The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this state.

415 CONTINUANCES: The Chairperson or any two members of the Hearing Board shall grant any continuance of fifteen (15) days or less concurred in by petitioner, the Air Pollution Control Officer, and by every person who has filed an answer in the action, and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

416 DECISIONS:

416.1 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.

416.2 The decision shall be in writing, served, and filed within thirty (30) days after submission of the cause by the parties thereto, and shall contain a brief statement of facts found by the Hearing Board to support the findings required by Sections 417, 418, 418, or 419; the 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 filed an answer or 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 thirty (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 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: arbitrary or unreasonable taking of property, or the practical closing or 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 service.

417.3 That a positive finding required by Section 417.2 would be without corresponding benefit to air quality.

417.4 The applicant has given consideration to curtailing operations in lieu of obtaining a variance.

417.5 That the applicant will reduce excess emissions to the maximum extent feasible during the variance period.

417.6 That 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 That the effective variance period has been specified, including:

- a. initial effective date;
- b. final compliance date; and
- c. schedule of increments of progress for variances exceeding one year, and, if the Air Pollution Control officer at the discretion of the Hearing Board, variance periods of 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.

417.8 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 any 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 by Health and Safety Code Section 42355.

418 PERMIT REVOCATION FINDINGS: A permit may be revoked pursuant to Health and Safety Code Section 42309 if the Hearing Board makes any of the following findings:

418.1 The permittee has failed to correct any conditions required by the Air Pollution Control Officer.

418.2 A refusal of a permit would be justified.

418.3 Fraud or deceit was employed in obtaining the permit.

418.4 A violation of Part 4 of Division 26 of the Health and Safety Code or any rule, regulation, or order of the District.

419 ABATEMENT ORDER FINDINGS: The Hearing Board may:

419.1 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 3.1 - GENERAL PERMIT REQUIREMENTS; is in violation of Health and Safety Code Sections 41700 or 41701; or of any rule, regulation, or order prohibiting, or limiting the discharge of air contaminants into the atmosphere; or

419.2 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 419.1. The stipulations shall set forth terms and conditions.

420 EFFECTIVE DATE OF DECISION: The decision shall become effective upon affirmative vote of the Hearing Board unless otherwise specified.

421 REHEARING DECISIONS:

421.1 Pursuant to Health and Safety Code Section 40861, the Hearing Board may rehear a decision if a party petitions for a rehearing within ten (10) days after a copy of the decision has been mailed to said party.

421.2 Pursuant to Health and Safety Code Section 40821, the Hearing Board may, in its discretion, with not fewer than four (4) member present, within thirty (30) days of the effective date of the decision, rehear any matter.

422 LACK OF PERMIT: The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any article, machine, equipment, or other contrivance until a permit to operate has been granted or denied by the Air Pollution Control Officer; except that an appeal from a denial of a permit to operate and a petition for a variance may be filed with the Hearing Board in a single petition. A variance granted by the Hearing Board, after a denial of a permit to operate and a petition for a variance, may be filed with the Hearing Board in a single petition. A variance granted by the Hearing Board, after a denial of a permit to operate by the Air Pollution Control Officer, may include a permit to operate for the duration of the variance.