

**RULE 5.1  
PROCEDURE BEFORE THE HEARING BOARD**

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## 100 GENERAL

101 **PURPOSE:** To specify procedures that shall apply to all hearings before the Hearing Board (Hearing Board) of the Yolo-Solano Air Quality Management District (District).

102 **SEVERABILITY:** If any section, subsection, sentence, clause, phrase or portion of this Rule is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, that portion shall be deemed as a separate, distinct and independent provision, and the holding shall not affect the validity of the remaining portions of the Rule.

103 **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 (CH&S Code) are applicable to all hearings before the Hearing Board of the District.

104 **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.

110 **EXEMPTIONS:** Except as stated in District Rule 5.2, Section 303.1, the provisions of this rule shall not apply to hearings governed by District Rule 5.2 – UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE.

**200 DEFINITIONS:** Except as defined below, the terms used in this Rule are the same as defined in District Rule 1.1.

201 **ESSENTIAL PUBLIC SERVICE:** As defined in CH&S Code section 42352.

202 **PUBLIC AGENCY:** As defined in CH&S Code section 42352.

## 400 ADMINISTRATIVE REQUIREMENTS

### 401 GENERAL ADMINISTRATIVE REQUIREMENTS

401.1 **FILING PETITIONS:** A request for a hearing shall be initiated by the filing of a petition with the Clerk of the Hearing Board, and the payment to said Clerk of the filing fee as specified in Rule 4.4. Petitions filed with the

Clerk of the Hearing Board may be transmitted electronically, and any such electronically transmitted petition shall have the same legal effect as an original. The Clerk of the Board shall serve a copy of any petitions received under Sections 401.3(b) or (d) on the permit holder or individual/business which is the real party in interest so they may have the opportunity to file an answer under Section 401.5.

**401.2 CONTENTS OF PETITIONS:** Every petition shall state:

- a. The name, address, e-mail, and telephone number of the petitioner, or other person authorized to receive service of the notices;
- b. 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;
- c. The type of business or activity involved in the application and the street address or location at which it is conducted;
- d. A brief description of the article, machine, equipment, or other contrivance, if any, involved in the application;
- e. The nature of the petition which is being filed, that is:

Variances Petitions

- i. General variance, as specified in CH&S Code sections 40825, 40826, 42352, and 42358;
- ii. Interim variance as specified in CH&S Code sections 40824 and 42351, in conjunction with a petition for a general variance;
- iii. Emergency variance as specified in CH&S section 42359.5;
- iv. Product variance as specified in CH&S Code section 42365;
- v. Variance revocation; or
- vi. Variance modification.

Permit Action Petitions

- vii. Review of permit denial;
- viii. Review of conditional approval;
- ix. Petition by an aggrieved party;
- x. Review of permit suspension; or

- xi. Petition to revoke a permit.

#### Rehearing Petitions

- xi. Rehearing of a decision.

#### Abatement Order Petitions

- xii. Defense of an interim abatement order; or
- xiii. Issuance of an abatement order.

- f. Each petition shall be signed either by the petitioner or a designated agent on petitioner's behalf with a statement of their authority to sign; and
- g. All petitions shall be submitted in writing on the District approved petition application and shall contain all information required by this Rule.

**401.3 SPECIFIC CONTENTS FOR PETITIONS:** In addition to the requirements set forth in Section 401.2 above, petitions shall state briefly the information below as required by the petition type:

- a. Variance Petition
  - i. The section, rule, or order which will be violated if a variance is not granted.
  - ii. 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.
  - iii. The facts showing that the closing or taking will be without corresponding benefit in reducing air contaminants.
  - iv. For what period of time the variance is sought.
  - v. The consideration given to curtailing operations in lieu of obtaining a variance.
  - vi. 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 (APCO).

- vii. The conditions associated with the individual increments of progress; including, but not limited to, increments of progress schedules, operating parameters, and reporting requirements.
- viii. An estimation of excess emissions and proposed actions which will reduce excess emissions to the maximum extent feasible during the variance period.
- ix. The advantages and disadvantages to the residents of the District resulting from requiring compliance or resulting from granting a variance.
- x. Procedures, methods, and equipment used to quantify emission levels from the source during the variance period, subject to approval and reporting requirements of the APCO.
- xi. Whether or not operations under such variance, if granted, will constitute a nuisance as specified in CH&S Code section 41700.
- xii. Facts demonstrating past diligence in trying to comply with applicable standards.
- xiii. Whether or not any case involving the same equipment or process is pending in any court, civil or criminal.
- xiv. Whether or not the subject equipment or process is covered by a permit to operate issued by the APCO.
- xv. For an interim variance or an emergency variance, facts which will support a determination by the Board that “good cause” exists to hear a variance without notifying the public about the variance and providing the public with an opportunity to present evidence concerning the variance.
- xvi. For a product variance, the facts showing the petitioner exercised due diligence in attempting to locate, research, or develop a product in compliance with District Rules and Regulations; and a proposed written notice that is to be furnished to any retailer, distributor, or purchaser of the

product for the duration of the variance as specified in CH&S Code section 42368.

b. Permit Action Petition

- i. 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.
- ii. A statement as to why the petition is being sought.
- iii. The facts illustrating the potential impact on the source, public, and aggrieved party if the action is sustained by the Hearing Board.
- iv. The Hearing Board action requested.

c. Rehearing Petition

- i. The original petition number and hearing date.
- ii. The reasons and additional facts which merit rehearing the petition.
- iii. The Hearing Board action requested.

d. Abatement Order Petition

- i. The section, rule, or order which is alleged to have been violated.
- ii. A statement of the facts constituting the violation, or alleged violation, and a description of the potential impacts.
- iii. Permit status and history of the source sought to be abated.
- iv. The particular act or operation sought to be abated, together with petitions, if applicable.
- v. Facts showing that the abatement is necessary to prevent future violations.

401.4 **FAILURE TO COMPLY:** 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.

401.5 **ANSWERS:** Written statements responding to petitions served by the Clerk of the Hearing Board may be filed with the District. Any person may file an answer within ten (10) days after service. All persons answering shall be served in the same manner as petitioners under provisions of Section 401.

401.6 **DISMISSAL OF PETITION:** The petitioner may dismiss their 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.

401.7 **FAILURE TO APPEAR OR TO FILE A NOTICE OF DEFENSE**

- a. Where a party fails to appear for a hearing after notice of time and place has been given to all parties by the Hearing Board, the Hearing Board may upon its own motion decide the matter or dismiss the action.
- b. If the respondent to an accusation fails to file a notice of defense, affidavits and respondent's express admissions may be used as evidence without any notice thereof to respondent, and the Hearing Board may at a public hearing decide the matter or dismiss the action. Nothing herein shall be construed to deprive the party of the right to make a showing by way of mitigation.

402 **VARIANCES**

402.1 No general or interim variance shall be granted unless the Hearing Board makes all of the following findings:

- a. That the petitioner for a variance is, or will be in violation of any rule, regulation, or order of the District.

- b. 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.
- c. That a positive finding required by Section 402.1(b) would be without corresponding benefit to air quality.
- d. The applicant has given consideration to curtailing operations in lieu of obtaining a variance.
- e. That the applicant will reduce excess emissions to the maximum extent feasible during the variance period.
- f. 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.
- g. That the effective variance period has been specified, including:
  - i. Initial effective date;
  - ii. Final compliance date; and
  - iii. Schedule of increments of progress for variances exceeding one year, and, if requested by the APCO 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.

- h. 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 CH&S Code Section 42355.



402.2 No product variance shall be granted unless the Hearing Board makes all of the following findings:

- a. 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.
- b. Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either: an arbitrary or unreasonable taking of property, or the practical closing and elimination of a lawful business.
- c. The taking or closing would be without a corresponding benefit in reducing air contaminants.
- d. The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with District rules and regulations.
- e. 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.
- f. 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.

#### 403 PERMIT ACTIONS

403.1 After hearing on a permit action, the Hearing Board may:

- a. Grant a permit denied by the APCO;
  - i. A variance granted by the Hearing Board, after a denial of a permit to operate by the APCO, may include a permit to operate for the duration of the variance.
- b. Continue the suspension of a permit suspended by the APCO;

- c. Remove the suspension of an existing permit invoked by the APCO pending the furnishing by the permittee of the information, analyses, plans, and specifications required;
- d. Find that no violation exists and reinstate an existing permit; or
- e. Revoke a permit pursuant to CH&S Code Section 42309 if the Hearing Board makes any of the following findings:
  - i. The permittee has failed to correct any conditions required by the APCO;
  - ii. A refusal of a permit would be justified;
  - iii. Fraud or deceit was employed in obtaining the permit; or
  - iv. A violation of Part 4 of Division 26 of the CH&S Code or any rule, regulation, or order of the District.

#### 404 ABATEMENT ORDERS

404.1 After notice and a hearing, the Hearing Board may:

- a. Issue a preliminary determination, final determination, or vacate an interim abatement order as specified in CH&S Code Section 42451.5;
- b. 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; is in violation of CH&S Code Sections 41700 or 41701; or of any rule, regulation, or order prohibiting, or limiting the discharge of air contaminants into the atmosphere; or
- c. Pursuant to CH&S Code Section 42451(b), issue an abatement order pursuant to the stipulation of the APCO and the person or persons accused of violations specified in Section 404.1.b. The stipulations shall set forth terms and conditions.

#### 405 HEARINGS

405.1 **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.

405.2 **NOTICE OF HEARING:** The Clerk of the Hearing Board shall mail or deliver a notice of hearing to the petitioner, the APCO, the holder of the permit or variance involved, if any, and to any person entitled to notice under provisions of CH&S Code sections 40823, 40824, 40825, 40826, or 40827.

405.3 **EVIDENCE:**

- a. Oral evidence shall be taken only on oath of affirmation.
- b. Each party shall have these rights:
  - i. To call and examine witnesses;
  - ii. to introduce exhibits;
  - iii. to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
  - iv. to impeach any witness regardless of which party first called them to testify; and
  - v. to rebut the evidence against them.

If respondent does not testify in their own behalf, they may be called and examined as if under cross-examination.

- c. 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.
- d. The burden of proof is on the party asserting the affirmative of an issue before the Hearing Board. The general presumption is that

the APCO has obeyed the law in an action taken by them. The degree of proof by which a case must be established is a preponderance of the evidence.

- e. 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 to conform to formal rules of evidence. The chairperson may impose reasonable limits on the duration of oral presentations.
- f. The Hearing Board shall prepare a record of witnesses and the testimony of each witness at the hearing.
- g. 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 CH&S Code Sections 40840, 40841, and 40842.

405.4 **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.

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

405.6 **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 APCO, 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.

405.7 **DECISIONS:**

- a. Except as stated in Section 405.7(e), 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.

- b. 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 the following:
  - i. A brief statement of facts found by the Hearing Board to support the findings required by Sections 402, 403, or 404;
  - ii. The determination of the issues presented; and
  - iii. The order of the Hearing Board.
- c. A copy shall be mailed or delivered to the APCO, 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.
- d. 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.
- e. The chairperson of the Hearing Board, or any other member as designated by the Hearing Board, may hear and decide on an application for an interim variance, a variance or a series of variances to be in effect for a period of not more than 90 days, or an application for modification of a schedule of increments of progress. Should action be taken under this paragraph, the chairperson or the designated member of the Hearing Board, may issue, without notice and hearing, an emergency order to the applicant. Reasonable conditions may be included in the order. A written order confirming the decision, with appropriate findings, shall be issued within five (5) days.

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

**405.9 REHEARING DECISIONS:**

- a. Pursuant to CH&S 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.

- b. Pursuant to CH&S Code Section 40821, the Hearing Board may, in its discretion, with not fewer than four (4) members present, within thirty (30) days of the effective date of the decision, rehear any matter.
- c. If any member of the public contests a decision made by a single member of the Hearing Board, the application shall be reheard by the full hearing board within ten (10) days of the decision.