

MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT

REGULATION VI -- HEARING BOARD RULES

(Adopted by the Hearing Board on February 5, 2002, and Revised on June 19, 2002 to remove fee requirements and incorporate them into District Rule 309).

Part 1. General

1.1 Conformance with State Law

In accordance with Health and Safety Code Section 40807, these Rules shall, in so far as is practicable be interpreted to be consistent with the rules of administrative adjudication by state agencies in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code of the State of California.

1.2 Location of Office.

The office of the Hearing Board of the Monterey Bay Unified Air Pollution Control District and that of its Clerk is located at 24580 Silver Cloud Court, Monterey, CA 93940.

1.3 Tenses, Gender and Number.

For the purpose of these Rules, the present tense includes the past and future tenses, and the future the present; each gender includes the two other genders; and the singular includes the plural and the plural the singular.

1.4 Election of Officers

The Chairperson and Vice Chairperson shall be elected by the Hearing Board members at the first Hearing Board meeting of each calendar year.

1.5 Hearing Calendar and Case Docket

The Clerk shall maintain docket of applications and accusations filed and a calendar or applications or accusations set for hearing. Each application or accusation shall be assigned a separate case number. This docket and calendar shall be available for public inspection at the office of the Hearing Board Clerk. Copies of the docket and calendar may be obtained from the Clerk, upon payment of any required fee pursuant to District Rule 309 (Hearing Board Fees).

1.6 Case Records

1.6.1 Material which comprises the Hearing Board's record in the docket cases is available for study and review by the public and the District staff in the office of the Hearing Board Clerk during normal office hours. This material will not be available for review or other use outside the Hearing Board Clerk's office. Copies of records and exhibits may be obtained at the Clerk's office by paying the actual copying costs.

1.6.2 When transcripts are ordered by a party or by the Hearing Board, the transcripts will be delivered to the Clerk of the Hearing Board and a copy of the transcript will be included in the case file.

1.6.3 The Hearing Board will not permit withdrawal of evidence so long as any issue concerned in the hearing is still pending a final decision either before the Hearing Board or before the courts of California. If after a final decision by the Hearing Board no further proceeding for review has been taken within the time prescribed by law, exhibits may be withdrawn at the request of the party which submitted them, or his counsel, and upon order of the Hearing Board.

Part 2. Emergency Variances

2.1 Notice and Hearing Requirement

Except as provided in Section 2.4 below, an Emergency Variance may be granted without notice and hearing or, at the discretion of the Hearing Board, a hearing may be held.

2.2 Effective Date

If an Emergency Variance is granted, it may become effective as early as the date and time of the initial written filing. An application is considered filed as of the time and date of its receipt by the Clerk of the Hearing Board.

2.3 Application

An Applicant may file for an Emergency Variance by filing a written notification to the Clerk of the Hearing Board. The filing shall explain in detail the grounds for the request, including such information as the foreseeability of the cause of the emergency, whether the Applicant has used good maintenance practices and whether the Applicant's violations are due to conditions beyond its reasonable control. This initial filing does not in itself constitute a variance and provides no assurance of protection from penalty action.

2.4 Hearing

2.4.1 When a written notification requesting an Emergency Variance has been received, the Clerk of the Hearing Board shall, as soon as is practicable, schedule a telephone conference call hearing on the application with one member of the Hearing Board.

2.4.2 The hearing board member conducting the hearing (Hearing Officer) will call the meeting to order, will obtain the names of persons participating in the hearing for the record and will swear in all persons wishing to provide testimony.

2.4.3 After receiving testimony and other evidence, the Hearing Officer may grant or deny the request at that time, may obtain further information orally or in writing from the Applicant or the Air Pollution Control Officer before acting on the request, or may defer the matter for later consideration by the full Hearing Board. Such hearing shall be held within seven (7) days.

2.4.4 If the Applicant is not a participant in the hearing, the Applicant will be notified orally by the Clerk of the decision on the request for Emergency Variance. If an Emergency Variance is granted, the Clerk will notify all other Hearing Board members as soon as possible but not more than 48 hours from the time of the decision.

2.4.5 If, within this 48 hour period, any Hearing Officer notifies the Clerk that he or she wishes to convene a hearing upon the Emergency Variance so granted, the Clerk, after consultation with the Chairman, shall schedule a hearing within seven days and shall notify all Hearing Board Members, the Applicant, and the District. The purpose of such hearing shall be to review the issuance of the Emergency Variance and to consider whether it should remain in effect as ordered, be modified, or be terminated. Any such modification or termination, however, shall not be retroactive.

2.5 Order

After an Emergency Variance is granted, denied, or set for hearing pursuant to Section 2.4 above, a written order shall be issued by the Hearing Board member so acting, and shall be served by the Clerk upon the Applicant and the District. Any subsequent orders by the Hearing Board shall likewise be issued in writing and served upon the parties.

PART 3. Short Term and Interim Variances

3.1 Notice and Hearing Requirement

A Short Term or Interim variance may be granted only after legally adequate notice and a hearing.

3.2 Effective Date

If a variance is subsequently granted, it may become effective as early as the date and time of the filing of the written application. An application is considered filed as of the time and date of its receipt by the Clerk of the Hearing Board.

3.3 Application and Fees

An Applicant may file for a Short Term or Interim Variance by filing an application with the Clerk and paying the fee as set forth in Rule 309. This initial filing does not in itself constitute a variance and provides no assurance of protection from penalty action.

3.4 Hearing

3.4.1 The Clerk of the Hearing Board thereafter shall schedule a telephone hearing on the application with one member of the Hearing Board (Hearing Officer).

3.4.2 The Hearing Officer will call the meeting to order, will obtain the names of persons participating in the hearing for the record and will swear in all persons wishing to provide testimony.

3.4.3 The Hearing Officer shall grant or deny the request at that time, shall obtain further information orally or in writing from the Applicant or the Air Pollution Control Officer before acting on the request, or shall defer the matter for later consideration by the Hearing Board, which shall be set to be heard within seven (7) days.

3.5 After a short term or interim variance is granted, denied, or set for hearing a written order shall be issued by the Hearing Board member so acting, and shall be served by the Clerk upon the Applicant and the District. Any subsequent orders by the Hearing Board shall likewise be issued in writing and served upon the parties.

PART 4. Long Term Variance, Abatement Orders, Permit Revocations or Permit Appeals

4.1 Filing of Applications

Applications for long term variances, permit appeals and accusations for abatement orders, permit revocations or permit appeals shall be filed with the Clerk. This initial filing does not in itself constitute a variance or other order and provides no assurance of protection from penalty action.

4.2 Scheduling of the Hearing

The Clerk of the Hearing Board thereafter shall schedule the matter for the next regularly scheduled Hearing Board meeting unless a special meeting of the Hearing Board is

noticed in compliance with the Brown Act.

4.3 Fees

All such applications shall include the appropriate fee as stated in Rule 309 at the time of filing.

4.4 Notice and Hearing Requirements

Such demands for relief may be granted only after legally adequate notice and a hearing.

4.5 Effective Date

If a variance is subsequently granted or a permit issued, it may become effective no earlier than the date and time of the initial written filing.

PART 5. Application procedures

For all matters other than emergency variances, the following application procedures shall apply.

5.1 Filing Fees.

Except for an emergency variance, any application submitted on any Hearing Board matter shall be accompanied by the filing fee as set forth in Rule 309.

5.2 Filing of Papers.

All papers filed with or submitted to the Hearing Board shall be directed to the Clerk. The Clerk of the Hearing Board shall file the original in the original case file. If conformed copies are requested by the party filing a document, then sufficient additional copies shall be furnished by him for this purpose. Papers presented in proper form, accompanied with the required number of copies, required fee, if any, shall be deemed filed on the day presented.

5.3 Form of Papers - Variance

Unless otherwise indicated in this rule, papers filed with the Hearing Board shall be on a form provided by the District or typewritten or printed upon paper 8 ½ x 11 inches in size and the impression shall be on one side of the paper only and double-spaced. The heading for variance applications shall be as follows:

BEFORE THE HEARING BOARD
OF THE MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
STATE OF CALIFORNIA

In the Matter of the)
Application of)
)
name))
_____)

Docket No.

APPLICATION
FOR VARIANCE

5.4 Contents of Application for Variance.

5.4.1 An application to the Hearing Board shall state the grounds for the application and the specific section(s) of the regulations of the District, as well as the specific dates, for which a variance is requested.

5.4.2 The applicant shall set forth a concise statement of the ultimate facts constituting the reasons for granting a variance. For any variance other than an Emergency Variance, the statement must include those facts which would support the making of the finding required under Health and Safety Code Section 42352. If a class action is contended, supporting facts therefor shall be alleged.

5.4.3 The application should state, to the extent possible, the number of emission points, the different nature, if any, of emission points and should include measured values or estimates of the quantity and nature of emissions and the degree of violation for the source(s) in question. It shall close with a prayer for a variance, which shall set forth the conditions or terms of the desired variance.

5.4.4 The application shall contain a description of the property affected which shall be sufficient for its identification.

5.4.5 The application shall include a statement of whether or not the applicant intends to file additional written material. Such additional material shall be filed no less than 10 days prior to a hearing on the matter. The District and any intervenor may file a response to any additional material not less than five days prior to hearing.

5.4.6 The application shall include the date by which final compliance is to be achieved.

5.4.7 The application for a long term variance with a final compliance date longer than one year from the effective date of the variance must contain a statement of the "increments of progress" proposed by applicant.

5.4.8 The application for variance shall include a statement of facts regarding the applicant's evaluation as to whether the granting of the requested variance will adversely

affect the attainment and maintenance of pertinent national or State ambient air quality standards.

5.4.9 Verification.

Unless the state, or a county, city, or district, or an officer of such in his official capacity is an applicant, the application shall be verified. The form of verification, executed within this State, may be substantially the following form:

I, the undersigned, do hereby declare under penalty of perjury that I have read the foregoing document; that I know its contents, and that it is true.

Dated at _____, on _____

Signature _____

5.5 Contents of Other Applications.

All other applications for Hearing Board relief shall conform to the provisions of Section 5.4 of this Part to the extent that such sections are applicable to the subject of such applications, and shall include the appropriate filing fee pursuant to Rule 309.

5.6 Application for Intervention.

5.6.1 Any person who claims that he has a special interest relating to a pending variance action, may file a written application for intervention in such variance proceeding.

5.6.2 The application shall be filed with the Clerk not later than five days before the hearing of the matter, which hearing may be continued to facilitate action on the intervention request.

5.6.3 The application shall be served by mail or in person upon the parties to the proceeding, and shall set forth the grounds and purpose of such intervention.

5.6.4 The Hearing Board shall allow the parties to the action an opportunity to respond in writing to the application, may convene a prehearing conference, and shall rule on any such application prior to commencement of hearings.

5.6.5 If the person seeking intervention claims a special interest relating to the pending variance action, and that person is so situated that the disposition of the action may, as a practical matter, impair or impede that person's ability to protect that interest, the Hearing Board may, upon timely application, permit that person to intervene.

5.6.6 In exercising its discretion as to whether to grant or deny such an application, the Hearing Board shall consider whether intervention would unduly delay or prejudice the adjudication of the rights of the parties.

5.6.7 Intervention shall not be permitted in any variance action which is or becomes consolidated with an abatement action relating to the same subject. Any person permitted to intervene in a proceeding shall have all the rights and responsibilities of any party to a variance action, and shall be referred to as "intervenor".

5.7 Amendment of Application

The Hearing Board may in its discretion, upon stipulation or ten days notice, permit the amendment of an application either before or after submission on such terms and conditions as it may determine to be proper. The Hearing Board may continue the hearing, or reopen the hearing if the case has been submitted, whenever an amendment to an application makes it necessary to do so.

5.8 Response to Applications.

The Hearing Board may require the Air Pollution Control Officer to file a response to any or all applications in such a manner as the Hearing Board may from time to time direct. Any such response shall be served on the applicant and any other parties.

5.9 Permit Revocations and Abatement Orders

A hearing on a complaint by the Air Pollution Control Officer or by the Hearing Board or by the District Board, filed pursuant to Health and Safety Code Sections 42307, 42450, 42451, or other applicable provisions, shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The allegations of the accusation may be on information and belief.

5.10 Service of Accusation: Form, Manner and Proof.

5.10.1 Upon the filing of the accusation the District shall serve a copy thereof on the respondent. The District may include with the accusation any information which it deems appropriate including a form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the Hearing Board, will acknowledge service of the accusation and constitute a Notice of Defense.

5.10.2 The copy of the accusation shall include or be accompanied by a statement that

respondent may request a hearing by filing a notice of defense within 15 days after service upon him of the accusation, and that failure to do so will constitute a waiver of his right to a hearing.

The statement to respondent shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as Respondent in the accompanying Accusation is delivered or mailed to the Hearing Board within 15 days after the accusation was personally served on you or mailed to you, the Hearing Board may proceed with a hearing upon the accusation without your presence, and may issue any order supported by substantial evidence. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a Notice of Defense as provided by Section 3.4 below to the Clerk of the Hearing Board at 24580 Silver Cloud Court, Monterey, California 93940. You may be represented by counsel at any or all stages of these proceedings if you wish.

If you desire the names and addresses of witnesses, or an opportunity to inspect and copy any public documents in the possession, custody or control of the District, you may contact the District Counsel, 24580 Silver Cloud Court, Monterey, California 93940.

5.10.3 The accusation and all accompanying information shall be served on respondent by certified mail, return receipt requested or by any other manner authorized in civil actions in California.

5.11 Notice of Defense. Waiver of Right to Hearing; Statement by Way of Mitigation.

5.11.1 Within 15 days after service upon him of an accusation, the respondent may file with the Hearing Board Clerk a notice of defense in which he may;

Request a hearing;

Object to the accusation upon the ground that it does not state acts or omissions upon which the Hearing Board may proceed

Object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the occurrence(s) complained of or prepare his defense;

Admit the accusation in whole or in part; or

Present new matter by way of defense.

5.11.2 Within the time specified, respondent may file one or more notices of defense upon any or all of these grounds, but all such notices shall be filed within that period unless the Hearing Board in its discretion authorizes the filing of a later notice.

5.11.3 The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a hearing, but the Hearing Board may nevertheless hold a hearing upon the merits of the accusation without respondent's participation.

5.11.4 Unless objection is taken as provided Section 5.11.1, all objections to the form of the accusation shall be deemed waived.

5.11.5 The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

5.11.6 Even if he does not file a notice of defense a respondent may file a statement by way of mitigation or file a request for variance.

5.12 Amendment of Accusation before Submission.

5.12.1 At any time before the matter is submitted for decision, the Hearing Board may file or permit the filing of an amended or supplemental accusation.

5.12.2 All parties shall be notified thereof.

5.12.3 If the amended or supplemental accusation presents new charges, the Hearing Board shall afford the respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file further pleadings unless the Hearing Board so orders.

5.12.4 Any such new charges shall be deemed controverted and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

5.13 Amendment of Accusation after Submission.

5.13.1 The Hearing Board may order amendment of the accusation after submission of the case for decision.

5.13.2 Each party shall be given notice of the intended amendment and an opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown, the Hearing Board shall reopen the case to permit the introduction of additional evidence

5.14 Withdrawal of Abandonment of Application for Variance or Accusation.

5.14.1 At any time before the application for a variance is scheduled on calendar, the applicant may file in the office of the Hearing Board Clerk a written abandonment of the application, or the parties may file in the said office a stipulation for abandonment.

5.14.2 The filing of either document shall operate to dismiss the application.

5.14.3 After application for a variance has been scheduled on calendar, an application may be dismissed by the Hearing Board on written request of the applicant or stipulation of the parties filed with the Hearing Board

5.14.4 Requests for abandonment or withdrawal must be received by the Clerk of the Hearing Board 72 hours prior to the time set for the hearing excluding Sundays and holidays. For hearings which are set for a Monday, the request must be received by the Clerk of the Hearing Board prior to 3:00 p.m. of the preceding Thursday.

5.14.5 The Hearing Board may, either on its own motion or upon application of Counsel for the District, in the furtherance of justice and for good cause shown, order an accusation to be dismissed.

5.15 Failure to appear for Hearing or to File a Notice of Defense.

5.15.1 If the respondent to an accusation fails to file a notice of defense or to appear at the hearing, the Hearing Board may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice thereof to respondent.

5.15.2 Where an applicant for a variance fails to appear for a hearing after notice of time and place has been given all parties, the Hearing Board may decide the matter upon the application and any briefs of the absent party, and any other evidence received, if any, or dismiss the application.

5.15.3 Nothing herein shall be construed to deprive the party of the right to make any showing by way of mitigation.

PART 6. Discovery

6.1 Depositions and Requests for Admission of Facts and of Genuineness of Documents.

For the purpose of discovery or for use as evidence in any proceedings, or for both purposes, and in addition to the methods of discovery provided in Chapter 5

(commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, any party may conduct discovery as to any other party, including an employee or agent of a party, by any of the following methods:

Depositions upon oral examination; or

Written requests for admission of the genuineness of any relevant documents described in the request, or of the truth of any matters of fact set forth in the requests.

6.2 Procedures and Practice

Procedure and practice for taking of depositions, or for admission of facts, and of genuineness of documents shall follow, so far as compatible, Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code and the procedures and practice of the Code of Civil Procedure, Sections 2016 through 2021, and 2030, and 2036. The Hearing Board, in its discretion, may decide disputes between the parties concerning the availability or conduct of discovery and may set a schedule for discovery in any proceeding.

6.3 Subpoenas.

6.3.1 The Chairperson of the Hearing Board shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance of witnesses or production of documents at the hearing.

6.3.2 Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum.

6.3.3 After the hearing has commenced the Hearing Board may issue subpoenas and subpoenas duces tecum.

6.3.4 The process pursuant to 6.3.1 above shall be valid for all parts of the state and shall be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure.

6.3.5 No witness shall be obliged to attend at a place out of the county in which he resides unless the distance is less than 150 miles from his place of residence, except that the Hearing Board, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

6.3.6 All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all

witnesses appearing pursuant to subpoena, except the parties, shall receive mileage, in the same amounts and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court.

6.3.7 Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residence as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of forty dollars (\$40) for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing.

6.3.8 Fees, mileage, and per diem shall be paid by the party at whose request the witness is subpoenaed.

PART 7. Hearings

7.1 Representation of Counsel.

A party in any Hearing Board proceeding may be represented by legal counsel, but this is not mandatory. If a party elects to proceed without legal counsel, this does not entitle such party to a rehearing. A party requesting relief in a Hearing Board proceeding must appear in person or by legal counsel or other qualified representative.

7.2 Conduct of hearings

7.2.1 Hearings on emergency variances may be heard by a single hearing board member at the discretion of the Hearing Board Chair.

7.2.2 Hearings on short term variances and interim variances may be heard by a single hearing board member at the discretion of the Hearing Board Chair and for so long as the population of the District is less than 750,000 persons.

7.2.3 Hearing on applications for long term variances, abatement orders, permit revocations and permit appeals as well as any matter which does not qualify for a hearing before one board member shall be heard by the full hearing board, sitting as a single body at the District Office or at such other place as the Hearing Board shall direct and as law may allow.

7.3 Hearing by Five Members or less.

7.3.1 The Hearing Board may hold a hearing en banc or with three or four of their number present.

7.3.2 The concurrence of three members shall be necessary for any decision.

7.3.3 A Hearing Board member who is unable to attend all the hearings in a matter may participate in the decision of the matter, provided such member has read the transcripts or heard a tape recording of the missed proceedings, or upon the stipulation of the parties.

7.4 Rehearing of Matter Decided by Less Than Five Members.

The Hearing Board with not less than four members being present, may, within 30 days rehear any matter which was decided by three members.

7.5 Disqualification of Hearing Board Members

7.5.1 A Hearing Board member shall disqualify himself and withdraw from any case in which, in his opinion, he cannot accord a fair and impartial hearing or consideration.

7.5.2 Any party may request the disqualification of any member by filing an affidavit before the submission of the case for decision stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue raised by the request shall be determined by the other members of the Hearing Board.

7.6 Quorum.

Three members of the Hearing Board shall constitute a quorum.

7.7 Continuances.

7.7.1 Authority for scheduling cases before the Hearing Board or continuing cases before the Hearing Board rests with the Chairperson of the Hearing Board or, in his absence, the Vice Chairperson.

7.7.2 Requests for continuance of cases scheduled before the Hearing Board must be received by the Clerk of the Hearing Board 72 hours prior to the time set for the hearing, excluding Sundays and Holidays. For hearings which are set for a Monday, the request must be received by the Clerk of the Hearing Board prior to 3:00 p.m. of the preceding Thursday.

7.7.3 It is the responsibility of the parties before the Hearing Board to notify the Clerk of the Hearing Board when they request continuance of a hearing.

7.7.4 Continuance requests made after the required 72 hour period will be ruled on by the Hearing Board during the scheduled hearing.

7.8 Prehearing Conferences.

7.8.1 For the purposes of expediting hearings, reducing expense and delay in Hearing Board procedures, eliminating excessive presentation of noncontroversial matters, defining disputed issues, deciding discovery questions, making evidentiary rulings which will streamline the conduct of hearings, or deciding any preliminary matter not determinative of the merits, the Hearing Board may conduct a prehearing conference.

7.8.2 Any party or any Hearing Board member may request a prehearing conference by submitting a written request prior to any hearing in the case to the Clerk.

7.8.3 The Chairman shall then instruct the Clerk to set a prehearing conference either just prior to a Hearing Board meeting at some other specified date and time and to give written notice of such setting to the parties and to all Hearing Board members.

7.9 Stipulations.

7.9.1 The parties to an action may stipulate to any matter which is in controversy, whether factual or an issue of law, either orally or in writing.

7.9.2 A stipulation is an agreement by the parties as to the existence of certain facts, the manner in which the law applies to the facts in the case, or the manner in which the controversy should be resolved.

7.9.3 While a stipulation expresses the agreement of the parties, it is not binding upon the Hearing Board, which can either issue a decision in accordance with the stipulation or take any other action which is warranted by the evidence. A stipulation as to factual matters, however, conclusively establishes facts stipulated to and removes such facts from issue.

7.9.4 The submission by the parties of any stipulation does not relieve the parties of the necessity to appear at any hearing, since a stipulation has no binding effect upon how the Hearing Board may proceed in any action.

7.10 Validity of Class Action.

As soon as practicable after the commencement of a proceeding brought as a class action, the Hearing Board shall determine whether it may properly be so maintained and may, if necessary, hold a hearing with respect to this determination prior to the initiation of hearings on the merits of the application.

7.11 Order of Proceedings.

The order of proceedings before the Hearing Board shall ordinarily be as follows. The

Hearing Board may in its discretion alter the order of proceedings as may be desirable to expedite the business of the board.

- Announcement of pending matters;
- Enter appearances;
- Opening statement of moving party;
- Opening statement of Intervenor(s);
- Opening statement of responding party;
- Evidence produced by moving party;
- Evidence produced by intervenor(s);
- Evidence produced by responding party;
- Public testimony;
- Rebuttal evidence produced by moving party;
- Rebuttal evidence produced by intervenor(s);
- Rebuttal evidence produced by responding party;
- Closing argument of moving party;
- Closing argument of intervenor(s);
- Closing argument of responding party;
- Rebuttal argument of moving party;
- Matter decided, taken under submission or continued.

7.12 Oral Evidence.

Oral evidence shall be taken only on oath or affirmation. Each party shall have these rights; to call and examine witnesses; to introduce exhibits; to cross examine 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.

7.13 Affidavits.

7.13.1 At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with proper notice.

7.13.2 Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally.

7.13.3 If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

7.13.4 Notice shall be given substantially in the following form:

"The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing (here insert title of proceeding). (here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective, your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party.)"

7.14 Rules of Evidence

7.14.1 The hearing need not be conducted according to technical rules relating to evidence and witnesses.

7.14.2 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.

7.14.3 Hearsay evidence may be used but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

7.14.4 The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

7.14.5 Irrelevant and unduly repetitious evidence shall be excluded. The Hearing Board in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, or confuse the issues, or where matter sought to be proved are otherwise established.

7.14.6 The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to the matter under consideration, and the Hearing Board shall consider such testimony in making its decision. Such testimony shall be relevant to the matter being heard, shall be under oath, and shall be subject to cross examination and any appropriate evidentiary objections, the same as any other testimony.

7.15 Evidentiary Rulings.

Rulings upon evidentiary objections by either party or by any member of the Hearing Board shall be decided by majority vote of the Hearing Board.

7.16 Official Notice. Putting Noticed Matters upon Record: Manner of Refutation.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the Hearing Board's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, or appended thereto. Any such party shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Hearing Board.

7.17 Preparation and Filing of Record.

Proceedings of the Hearing Board shall be not recorded by a court reporter unless a party to the action so requests and pays the costs of such recording. Proceedings will not be transcribed unless a request for a transcription is made to the court reporter by a party to the proceedings or a member of the Hearing Board. In the event a transcript is desired by a party to the proceedings other than the District, the cost of this transcription shall be paid by said party.

PART 8. Orders and Rehearings

8.1 Orders of the Hearing Board.

All orders of the Hearing Board shall be in writing and shall contain the findings and conclusions upon which the Board's decision is based. The decision of the Hearing Board shall be effective upon filing with the Clerk, unless otherwise provided in the order.

8.2 Excess Emission Fees.

The applicant to whom a variance is granted shall pay an excess emission fee as may be fixed from time to time by the District Board and set forth in Rule 309.

8.3 Request for Rehearing: Time to File.

The Hearing Board may grant or deny a rehearing of a decision if a party petitions for a rehearing within ten days after a copy of the decision has been mailed to him.