

Rule 501 Procedures Before the Hearing Board

(A) General

(1) Purpose

- (a) The purpose of this rule is to provide procedures for actions taken before the Hearing Board of the Mojave Desert Air Quality Management District (District).

(2) Applicability

- (a) This Rule shall apply to all actions before the Hearing Board of the District.
- (b) In case of a conflict, the applicable provisions of Health and Safety Code (H&S Code) Division 26 shall control, including but not limited to sections 40800-40865, 42302-42302.1, 42306-42309, 42350-42372, and 42450-42454.

(3) Exemptions

- (a) The provisions of this Rule shall not apply to a petition for a variance sought solely for the purpose of testing or operating trials if the equipment to be tested and operated has been constructed under a valid permit.

(B) Definitions

For purposes of this Rule the definitions contained in Rule 102 – *Definition of Terms* shall apply unless otherwise defined herein.

(C) General Administrative Requirements

(1) Filing Petitions

- (a) Requests for hearing may be initiated as follows:
 - (i) Requests for hearings initiated by any person except the APCO, Governing Board or Hearing Board shall be initiated by filing the original and one (1) copy of the petition and supporting documents with the Clerk of the Hearing Board, along with payment of the prescribed fee as contained in Rule 303 – *Hearing Board Fees*.

- (ii) Requests for hearings initiated by the APCO shall be initiated by serving one (1) copy of the petition upon the holder of the permit or the person(s) allegedly violating District Rules and Regulations. The original and one (1) copy of the petition are to be filed with the Clerk of the Hearing Board.
- (iii) Requests for hearings initiated by the Governing Board or the Hearing Board shall be initiated by serving one (1) copy of the petition upon the holder of the permit or the person(s) allegedly violating District Rules and Regulations and the APCO. The original and one (1) copy of the petition are to be filed with the Clerk of the Hearing Board.

- (b) The petition shall be filed with the Clerk of the Hearing Board at the following address:

MDAQMD
Attn: Clerk of the Hearing Board
14306 Park Avenue
Victorville, CA 92392

- (c) Service may be made in person or by mail, and proof of service may be provided by written acknowledgement of the person served or by affidavit of the person making the service.
- (d) Up to three (3) conformed copies of the filed petition will be provided to the filing party without cost upon request.

(2) Place of Hearing

- (a) The Hearing Board, by vote of its members, shall establish a schedule of meeting times. Except as otherwise determined by the Hearing Board or as indicated in a specific notice of hearing as specified in (C)(3), hearings shall be held in the Governing Board Chambers located at the following address:

MDAQMD
14306 Park Avenue
Victorville, CA 92392

- (b) Petitions for emergency variances, interim variances, short variances, modifications of increments of progress and interim authorizations may be heard by the Hearing Board Chair or other designated Hearing Board Member telephonically via video conference or wherever the Hearing Board is sitting.

- (3) Notice of Hearing
- (a) 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 a notice under Division 26 of the H&S Code.
- (4) Content of Petitions
- (a) Petitions shall either be on a District provided form, or may be typewritten, double-spaced, on letter-size paper, on one (1) side of the paper only, leaving a margin of at least one (1) inch margin on each side of each sheet.
- (b) Petitions for variances or permit disputes shall contain at a minimum the following information:
- (i) The name, address, and telephone number of the petitioner, or other person(s) authorized to receive service of notices.
- (ii) Whether the person is an individual, co-partnership, corporation or other entity, and names and addresses of the partners if a co-partnership, names and addresses of the persons in control, if other entity.
- (iii) The type of business or activity involved in the application and the street address at which it is conducted.
- (iv) A brief description of the article, machine, equipment or other contrivance, if any, involved in the application.
- (v) The section of the H&S Code under which the petition is filed; that is, whether the petitioner desires a hearing for which of the following:
- a. For an emergency variance under H&S Code §42359.5;
- b. For an interim variance under H&S Code §§40824 and 42351 in conjunction with a petition for a short or regular variance;
- c. For a short variance under H&S Code §§40825 and 42352;
- d. For a regular variance under H&S Code §§40826, 42352 and 42358;
- e. For a group variance under H&S Code §§40826, 42352 and 42358;
- f. For a product variance under H&S Code §§42365 et seq.;
- g. For a modification of a compliance schedule for Rule provisions not yet effective under H&S Code §§41703 and 42357;
- h. To modify a final compliance date under H&S Code §§40826 and 42352;

- i. To modify an increment of progress date under H&S Code §40825;
 - j. To revoke or otherwise modify a variance under H&S Code §42356;
 - k. To rehear a single member decision under H&S Code §§40825(c) and 42351.5;
 - l. To rehear a variance petition after decision under H&S Code §40861. Such petition shall clearly specify the ground on which the petitioner requests a rehearing;
 - m. To determine whether a suspended permit should be reinstated under H&S Code §42306;
 - n. To determine whether a permit shall be revoked under H&S Code §42307;
 - o. To review the issuance, denial or conditional granting of a Authority to Construct, or Permit to Operate under H&S Code §§42302 or 42302.1.
- (vi) Each petition shall be signed by the petitioner, or by a person on their behalf, and where the person signing is not the petitioner, it shall set forth their authority to sign.
 - (vii) Petitions for revocation of permits shall allege, in addition, the Rule under which the permit was granted, the Rule or section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation.
 - (viii) Petitions for reinstatement of suspended permits shall allege, in addition, the Rule under which the permit was granted, the request and alleged refusal which formed the basis for such suspension, together with a brief statement as to why the information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent and, if so, when it will be furnished.
 - (ix) A petition to review the issuance, denial, or conditional approval of an Authority to Construct or Permit to Operate, shall set forth a summary of the application or a copy thereof and the alleged reasons for the denial or conditional approval and the reasons for appeal.

(5) Failure to Comply with Rules

- (a) 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 Hearing Board Chairman directs otherwise. Such direction need not be made at a meeting of the Hearing Board. The Hearing Board Chairman may require the petitioner to state further facts or reframe a petition so as to clarify the issues involved.

- (6) Failure to Appear for Hearing 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.
 - (c) Nothing herein shall be construed to deprive the party of the right to make a showing by way of mitigation.

(7) Small Business Assistance

- (a) Assistance will be provided to small businesses in filling out and filing of various petitions, developing compliance schedules, and in obtaining low-cost financing for air pollution control equipment needed to comply with the Rules and Regulations of the District. Information may be obtained by contacting:

MDAQMD
14306 Park Avenue
Victorville, CA 92392
(760) 245-1661
Email: HearingBoard@mdaqmd.ca.gov

(D) Variances

- (1) 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 Authority to Construct or a Permit to Operate has been granted and is in effect, or unless such equipment is exempt from permit requirements.
- (2) In addition to the requirements of (C)(4), petitions for variances shall state briefly:
 - (a) The section, Rule, or order from which a variance is sought.
 - (b) The facts showing why compliance with the section, Rule, or order is unreasonable.
 - (c) For what period of time and dates the variance is sought.
 - (d) The damage or harm which would result to the petitioner from compliance with such section, Rule, or order.
 - (e) Except in a petition for an interim or emergency variance, a final compliance date specifying when the petitioner will be in compliance with the section or Rule from which a variance is sought.

- (f) If the final compliance date is one (1) year or more after the date set for hearing (other than the hearing for an emergency or interim variance) then the petitioner shall attach to their petition a proposed schedule of increments of progress as defined by H&S Code §39051.
 - (g) Both the advantages and disadvantages to the residents of the District resulting from requiring compliance or otherwise resulting from granting a variance.
 - (h) Whether or not any case involving the same identical equipment or process is pending in any court, civil or criminal.
 - (i) Whether or not the subject equipment or process is covered by Permit to Operate issued by the APCO, whether or not such permit has been denied or revoked, or whether the subject equipment is exempt from permit requirements.
 - (j) Whether the subject equipment was constructed in conformance with an Authority to Construct, or whether the subject equipment is exempt from such requirement.
- (3) Dismissal of Petition
- (a) The petitioner may dismiss the 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 in writing of such dismissal.
- (4) No variance shall be granted unless the Hearing Board makes all of the following findings:
- (a) That the petitioner is or will be in violation of any Rule, Regulation or order of the District or applicable section of the H&S Code.
 - (b) That due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either:
 - (i) An arbitrary or unreasonable taking of property; or
 - (ii) The practical closing and elimination of a lawful business.

Such finding shall include, but not be limited to, an examination of whether the petitioner took actions to comply or seek the variance in a timely and reasonable manner; and if an unreasonable burden would be imposed if immediate compliance was required.
 - (c) That such closing or taking would be without a corresponding benefit in reducing Air Contaminants.
 - (d) That petitioner considered limiting operations in lieu of obtaining the variance.

- (e) That during the period the variance is in effect the petitioner will reduce excess emissions to the maximum extent feasible.
 - (f) That during the period the variance is in effect the petitioner will monitor or otherwise quantify emissions from the equipment subject to the variance if requested to do so by the District and report such emissions pursuant to a schedule established by the District.
 - (g) That the variance, if granted, will not prevent the attainment or maintenance of any applicable National Ambient Air Quality Standard.
- (5) Special Provisions for Group Variances
- (a) The Hearing Board shall accept for consideration an application for a group variance when the variance relief sought by each individual applicant comprising the group is based on issues of law and fact common to each applicant.
 - (b) The initial application for a group variance shall comply with the requirements of (C)(4) and (D)(2) and shall include individual applications or written declarations by each applicant, setting forth information sufficient to support the inclusion of each applicant in the group. The declaration must be signed under penalty of perjury and include consent to be represented by the named, authorized group representative and an agreement that each applicant will be bound by the Hearing Board order. No person may be included in the group variance unless he or she has submitted a declaration.
 - (c) Applicant(s) shall file a final copy of the declarations, proposed conditions, and proposed findings of fact and law with the Hearing Board at least five (5) working days before the scheduled full hearing.
 - (d) Witnesses may present testimony on behalf of the groups at the hearing; it shall not be necessary for each individual applicant to present testimony.
 - (e) The Hearing Board shall immediately remove an application from the group variance upon the objection of the District or of any Hearing Board member and continue the removed application to the next available date for an individual hearing. The District, any applicant, or any Hearing Board member may make a motion to disallow use of the group variance procedure in a particular case or to remove an application from the group variance and consider it individually.
- (6) Special Provisions for Product Variances
- (a) In addition to the requirements set forth in Sections (C)(4) and (D)(2), petitions for Product Variances shall also state briefly:

- (i) The facts showing the petitioner exercised due diligence in attempting to locate, research, or develop a product in compliance with District Rules and Regulations.
 - (ii) 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:
 - a. That the product is being sold pursuant to a product variance granted by the Hearing Board.
 - b. The proposed beginning and ending dates of the product variance.
 - c. Any conditions proposed to be set forth in the product variance which might reduce excess emissions to the extent feasible.
- (b) No product variance shall be granted unless the Hearing Board makes all the following findings:
- (i) 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.
 - (ii) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in:
 - a. An Arbitrary or unreasonable taking of property; or
 - b. The practical closing and elimination of a lawful business.
 - (iii) The taking or closing would be without a corresponding benefit in reducing Air Contaminants.
 - (iv) The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with District Rules and Regulations.
 - (v) 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.
 - (vi) 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.

(7) Special Provisions for Public Agencies

- (a) In addition to the requirements set forth in Section (D)(4) if the petitioner is a public agency as defined in H&S Cod 42352(b) then the Hearing Board should consider if requiring immediate compliance would place an unreasonable burden on an essential public service, including but not limited to prisons, detention facility, police, fire, school health care facility, landfill gas control or processing facility, sewage treatment work or water delivery system.

(8) Special Provisions for Small Businesses

- (a) If the petitioner is a small business meeting the definitions of same as promulgated by the Small Business Administration but is not a Major Facility as defined pursuant to District Rule 1201(S) and emitting less than 10 tons per year of air contaminants then the Hearing Board should:
 - (i) In determining the extent to which petitioner took timely actions to comply or seek a variance, the Hearing Board should make specific inquiries and take into account the reasons for any claimed ignorance of the requirement for which the variance is sought.
 - (ii) In determining the extent to which the petitioner took reasonable actions to comply, the Hearing Board should make specific inquiries and take into account the petitioner's financial and other capabilities to comply.
 - (iii) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the Hearing Board should make specific inquiries and take into account the impact on petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

(E) Abatement Orders

- (1) The petition for order for abatement shall contain the following information:
 - (a) The name, address, and telephone number of the respondent.
 - (b) The type of business or activity involved and the street address at which it is conducted.
 - (c) A brief description of the article, machine, equipment, or other contrivance, if any, involved in the alleged violation.
 - (d) The section or Rule which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation.
 - (e) The permit status and history of the source sought to be abated may be included in the petition.
 - (f) A proposed order for abatement may also be included.
- (2) An order for abatement ordered by the Hearing Board shall include an order to comply with the statute or Rule being violated. Such order may provide for installation of control equipment and, except in the case of a violation of H&S Code §41700, for a schedule of completion and compliance. As an alternative to an order to comply, the Hearing Board may order the shutdown of any source of emissions which violates any statute or Rule. An order for abatement may also include a directive to take other action determined appropriate to accomplish the necessary abatement.

- (3) No order for abatement shall be granted unless the Hearing Board makes all of the following findings:
 - (a) That the respondent is in violation of H&S Code §41700 or 41701, or of any Rule or Regulation of the District.
 - (b) That the order of abatement will not constitute a taking of property without due process of law.
 - (c) That if the order for abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.
- (4) The APCO may dismiss his petition at any time before submission of his case to the Board without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such dismissal.

(F) Permit Disputes

- (1) In addition to the requirements set forth in Section (C)(4), petitions involving Permit disputes shall briefly state:
 - (a) Statement as to why the petition is being sought.
 - (b) The basis for challenging the suspension of the permit, requiring the revocation of the permit, or review of the issuance, denial, or conditional approval of an Authority to Construct or Permit to Operate.
 - (c) The facts illustrating the potential impact on the source, public, and aggrieved party if the permit action is sustained by the Hearing Board.
 - (d) The Hearing Board action requested.
- (2) After hearing on a permit dispute the Hearing Board may take any of the following actions:
 - (a) Grant a permit denied by the APCO;
 - (b) Continue the suspension of a permit suspended by the APCO;
 - (c) Remove the suspension of a permit suspended by the APCO upon furnishing by the permittee of the information, analysis, plans and/or specifications required;
 - (d) Revoke an existing permit if the Hearing Board finds any of the following:
 - (i) The permittee has failed to correct any conditions required by the APCO.
 - (ii) A refusal of a Permit to Operate would be justified.
 - (iii) Fraud or deceit was employed in obtaining the Permit to Operate.

- (iv) Any violation of Part 4 of Division 26 of the H&S Code or any Rule, Regulation, or order of the District.

(G) Hearings

(1) Preliminary Matters

- (a) 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 Hearing Board Chairman or any three (3) members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

(2) Official Notice

- (a) The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.

(3) Continuances

- (a) The Hearing Board Chairman or any three (3) members of the Hearing Board shall grant any continuance of 15 days or less, concurred in by the respondent, petitioner, the APCO, and by every person who has filed an answer or other pleading in the action.
- (b) The Hearing Board Chairman or any three (3) members of the Hearing Board may grant any reasonable continuance;
- (c) In either case such action granting a continuance may be ex parte, without a meeting of the Hearing Board and without prior notice.

(4) Additional Pleadings

- (a) Any person may file an initial brief, memorandum or additional argument in addition to the petition;
- (b) Any person may file a written answer, other responsive pleading, memorandum, or brief. If a responsive pleading is filed the petitioner may file a reply addressing issues raised in the responsive pleading.
- (c) All additional pleadings shall be received not less than five (5) days before the hearing. Said documents shall be served the same manner as petitions under §(C)(1)(c).

(5) Testimony and Evidence

- (a) Oral evidence shall be taken only on oath or 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 him to testify;
- (v) To rebut the evidence against him.

If respondent does not testify on his own behalf, he/she or an authorized representative 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 Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested parties may attend and submit oral and 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 the formal rules of evidence, nor with subsections (a), (b) or (c) of this Section. The Hearing Board Chairman may impose reasonable limits on the duration of oral presentations.

(6) Conduct of Hearing

- (a) The hearing shall be conducted in an orderly manner in accordance with this rule and any procedural rules as duly adopted by the Hearing Board.

(7) Request for Rehearing

- (a) A petition for rehearing shall specify the grounds on which petitioner seeks a rehearing.
- (b) The Hearing Board may rehear a decision if a party petitions for rehearing within 10 days after a copy of the decision has been mailed.
- (c) The Hearing Board may, in its discretion, with no fewer than four members present, rehear any matter within 30 days of the effective date of the decision.

(8) Order and Decision

- (a) The decision shall be reduced in writing, served and filed within 30 days after the submission of cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issues presented, and the order of the Hearing Board. A copy shall be mailed or delivered to the APCO, the petitioner, and to every person who has filed an answer or other pleading or who has applied or appeared as a party in person or by council at the hearing.
 - (i) A copy of any decision granting, modifying, or otherwise affecting a variance shall be mailed to the California Air Resources Board within 30 days after the effective date of the decision.
- (b) Unless otherwise ordered, the decision of the Hearing Board shall become effective immediately upon the concurring vote of three (3) or more of its members.

(H) Appeals

- (1) A variance granted by the Hearing Board after a denial of a permit by the APCO may include a Permit to Operate for the duration of the variance.
- (2) Decisions of the Hearing Board may be appealed to the Superior Court as provided by the provisions of Division 26 of the Health & Safety Code applicable to the particular type of hearing held and action taken by the Hearing Board.

See SIP Table at: <http://mdaqmd.ca.gov/rules/overview>

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