

**REGULATION VI**

**HEARING BOARD**

**&**

**VARIANCE**

**PROCEDURES**

**REGULATION VI  
HEARING BOARD AND VARIANCE PROCEDURES**

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**Rule 600 Authorization**

*(Adopted November 3, 1982; Revised May 19, 2005)*

- 1.0 AUTHORIZATION:** Requests to consider emergency and interim variances may be heard by the Chair or by the full Hearing Board appointed by the five (5) member AQMD Governing Board of Directors pursuant to the California Health and Safety Code. Requests to consider short term, regular, and variances beyond one year; changes in increments of progress; petitions from the public and the APCO for rehearing actions ordered by a single Hearing Board representative; and, petitions from the APCO for permit revocation, conditional orders of abatement and orders of abatement, shall be heard by the full Hearing Board appointed by the AQMD Governing Board pursuant to the California Health and Safety Code. These procedures shall apply to all hearings before the Hearing Board of the Air Pollution Control District as authorized by Division 26, Part 3, Chapter 8 of the California Health and Safety Code, and held in accordance with the provisions of Division 26, Part 4, Chapter 4 of said Code.

**Rule 601 Petition Procedures**  
(Adopted November 3, 1982; Revised May 19, 2005)

RULE 601 CONTENTS

- 1.0 PETITION PROCEDURES
  - 1.1 Filing Petitions
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**RULE 601  
PETITION PROCEDURES**

**1.0 PETITION PROCEDURES:**

- 1.1 Filing Petitions:** Requests for hearings shall be initiated by the filing of a petition with the Clerk of the Hearing Board, and the payment of the fee as provided for in Rule 405 of these Rules and Regulations. Service of a copy of the petition shall be made on the Control Officer, and/or 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 acknowledgment of the person served or by the affidavit of the person making the service.
- 1.2 Contents of Petitions:** Every petition for Hearing Board action shall state:
  - 1.2.1** The name, address and telephone number of the petitioner, or other person authorized to receive service of notices.
  - 1.2.2** Whether the petitioner is an individual, co-partnership, corporation or other entity, and the names and addresses of the partners if a co-partnership, the names and addresses of the officers if a corporation, and the names and addresses of the persons in control, if other entity.
  - 1.2.3** The type of business or activity involved in the application and the street address at which it is conducted.
  - 1.2.4** A brief description of the article, machine, equipment, or other contrivance, if any, involved in the application.
  - 1.2.5** The section or rule under which the petition is filed; that is, whether petitioner desires a hearing:
    - 1.2.5.1** To review an Authority to Construct or Permit to Operate denied by the Control Officer.
    - 1.2.5.2** To review the suspension of a permit by the Control Officer.
    - 1.2.5.3** To determine whether a permit shall be revoked.
    - 1.2.5.4** To request a variance under Section 42350 of the Health & Safety Code.
    - 1.2.5.5** To modify or revoke a variance previously granted.
    - 1.2.5.6** To request a public hearing to determine whether a permit was properly issued.
  - 1.2.6** Each Petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner, it shall set forth his authority to sign.
  - 1.2.7** Petitions to review a denial of an Authority to Construct or Permit to Operate shall state the reasons given for the denial and reasons for the appeal.
  - 1.2.8** Petitions for reinstatement of suspended permits shall state the alleged basis for such suspension.

- 1.2.9** Petitions for revocation of permits shall state the rule which is alleged to have been violated and a brief statement of the facts constituting such alleged violation.
- 1.3 Variance Petitions:** In addition to the requirements of Rule 601 (1.2), petitions for variance shall state briefly:
- 1.3.1** The section, order or rule complained of.
  - 1.3.2** The facts showing why compliance with the section, rule or order is unattainable.
  - 1.3.3** For what period of time the variance is sought and specific dates for achieving various increments of progress.
  - 1.3.4** The damage or harm resulting or which would result to petitioner from compliance with such section, rule or order by either an arbitrary or unreasonable taking of property; or the practical closing and elimination of a lawful business without a corresponding benefit in reducing air contaminants.
  - 1.3.5** The requirements which petitioner can meet and the date when petitioner can comply with such requirements.
  - 1.3.6** Whether or not the subject equipment or process is covered by a Permit to Operate issued by the Control Officer.
  - 1.3.7** That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
  - 1.3.8** During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
  - 1.3.9** During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emission levels to the District pursuant to a schedule established by the District.
  - 1.3.10** An estimate of the quantity and type of excess emissions, including the estimated excess emission fee calculated pursuant to Rule 405.
- 1.4 Dismissal of Petition:** The petitioner may withdraw his petition at any time prior to the date set for the hearing. Such withdrawals, requested at least 72 hours in advance of the hearing, shall result in a 50% refund of the Hearing Board fee to the petitioner. The Clerk of the Hearing Board shall notify all interested persons of such withdrawal.

## **Rule 602 Emergency Variance**

*(Adopted November 3, 1982; Revised May 19, 2005).*

- 1.0 EMERGENCY VARIANCE:** Notwithstanding other provisions of Chapter VI of these regulations, the Chairperson of the Hearing Board or any other member of that Hearing Board designated thereby as the Hearing Officer, except an alternate member, may issue, without notice and hearing, an emergency variance or series of variances to an applicant. The emergency variance or series of variances, if granted, shall be in effect until the hearing to consider a request by the applicant for a variance other than an emergency variance, but not to exceed 30 days.
- 1.1** Upon receipt of a request for an emergency variance, the Control Officer shall contact the Hearing Officer to establish a time and place for consideration of the request. The Control Officer shall inform the applicant of such time and place.
- 1.2** The applicant and Control Officer shall present testimony and evidence to the Hearing Officer. The burden of proof shall be on the applicant to demonstrate that a breakdown or other emergency situation exists.
- 1.3** Prior to acting on the petition for an emergency variance, the Hearing Officer shall determine, if possible, the causes of the breakdown and that the equipment failure or malfunction is not the result of intentional disregard of any air pollution control law or rule or regulation;
- 1.4** After consideration of the emergency variance request, the Hearing Officer may grant or deny an emergency variance. Within five working days following the granting of an emergency variance, a written order shall be issued confirming the decision, with appropriate findings.
- 1.5** An emergency variance shall be granted only after the Hearing Officer makes the following determinations:
- 1.5.1** The emergency variance request is caused by a breakdown condition or other emergency situation and may not be delayed until a properly noticed hearing.
- 1.5.2** Granting of the emergency variance will not create an immediate threat or hazard to public health or safety.
- 1.5.3** Requiring immediate compliance would result in either an arbitrary or unreasonable taking of property, or, a closing of a lawful business without a corresponding benefit in reducing air contaminants.
- 1.5.4** That good cause exists for the granting of the variance.
- 1.6** At any time after an emergency variance has been granted, the applicant or Control Officer may request the Hearing Officer to revise, revoke, or further condition the variance and issue an amended written order. All procedures shall be as designated for the original hearing.
- 1.7** An emergency variance shall remain in effect no longer than thirty (30) days, or shall remain in effect only as long as necessary to correct the breakdown or emergency condition, but not to exceed the time period required for a properly noticed hearing to consider an interim or 90-day variance in accordance with Rule 605 (1.2), or the date set forth in the emergency variance order, whichever is the shorter time period.
- 1.8** Within ten (10) days after the date of expiration of an emergency variance, the applicant shall submit a written report to the Control Officer including, but not limited to, the following details:

- 1.8.1** Duration of excessive emissions.
- 1.8.2** Estimate of quantity of emissions.
- 1.8.3** Statement of the cause of the occurrence.
- 1.8.4** Corrective measures to be taken to prevent a recurrence.

Documentation of the breakdown condition may be required by the Control Officer.

***Rule 603 Interim Variances***

*(Adopted November 3, 1982, Revised May 19, 2005).*

**1.0 INTERIM VARIANCE:** Any person who has submitted an application for a variance, except for an Emergency Variance, and who desires to commence or continue operation pending the decision of the Hearing Board on the application, may submit an application for an Interim Variance.

- 1.1** An Interim Variance may be granted:  
For good cause shown and stated in the order granting an Interim Variance.
- 1.2** The Interim Variance shall not be valid beyond the date of the decision of the Hearing Board on the application for the underlying variance, the date set forth in the Interim Variance, or for more than 90 days from the date of issuance of the Interim Variance, whichever comes first.
- 1.3** The Hearing Board Chair or the Hearing Board shall not grant any Interim Variance:
  - 1.3.1** After it has held a hearing in compliance with the requirements of Rule 605, pertaining to Regular Hearings; or,
  - 1.3.2** Which is being sought to avoid the notice of hearing requirements of Rule 605.



**Rule 604 Modifications of Increments of Progress Schedule:**

*(Adopted November 3, 1982, Revised May 19, 2005).*

**1.0 MODIFICATION OF INCREMENTS OF PROGRESS SCHEDULE:** If a person granted a variance with a schedule of increments of progress, files an application for modification of the schedule and is unable to notify the Hearing Board sufficiently in advance to allow the Hearing Board to schedule a public hearing, the Hearing Board may grant a one time interim authorization which is valid for no more than 30 days, to continue operation pending decision of the Hearing Board on the application as follows:

**1.1** The Chair of the Hearing Board or any other Hearing Board member, except for an alternate member, designated by the Board may hear such application.

**1.2** If a member of the public contests a decision made by one member of the Hearing Board, the application shall be reheard by the full Hearing Board within 10 days of the decision.

The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

**Rule 605 Hearing Procedures**  
(Adopted November 3, 1982, Revised May 19, 2005)

RULE 605 CONTENTS

- 1.0 HEARING PROCEDURES
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  - 1.9 Counsel for the Hearing Board
  - 1.10 Clerk of the Hearing Board Responsibilities

**RULE 605  
HEARING PROCEDURES**

**1.0 HEARING PROCEDURES:**

- 1.1 Place of Hearing:** All hearings shall be held at such time and place as designated by the Clerk of the Hearing Board on the notice of hearing.
- 1.2 Notice of Hearing:**
  - 1.2.1** Except as provided for in Rule 605 (1.3), (1.4), and (1.5), the Hearing Board shall serve notice of the time and place of the hearing upon the Control Officer and upon the applicant or permittee affected not less than 10 days prior to such hearing.
  - 1.2.2** Except as provided for in Rule 605 (1.3), (1.4), and (1.5), the Hearing Board shall also send notice of hearing to every person who requests such notice and obtain publication of such notice in at least one daily newspaper of general circulation within the district. The notice shall state the time and place of the meeting, and reasonably apprise the people within the district of the purpose of the meeting.
- 1.3 Short Term Variances/Modifications of Increments of Progress:** In the case of a hearing to consider an application for a variance, or a series of variances to be in effect for a period of not more than 90 days, or an application for a modification of a schedule of increments of progress-
  - 1.3.1** The Hearing Board shall serve notice of the time and place of a hearing to grant such a variance or modification upon the Control Officer, all the North Coast Air Basin districts, the California Air Resources Board, the Environmental Protection Agency, and upon the applicant or permittee not less than 10 days prior to such hearing. (H&S 40825)
  - 1.3.2** Rule 605 (1.2.2) shall not apply.
  - 1.3.3** The Chairman of the Hearing Board or any other member of the Hearing Board so designated by the Hearing Board, except for an alternate member, may hear an application for a short term variance. If any member of the public contests a decision made by any one member of the Hearing Board, the application shall be reheard by the full Hearing Board within 10 days of the decision.
- 1.4 Interim Variance:** In the case of a hearing to consider an application for an interim variance, as authorized in Rule 603:

- 1.4.1** The Hearing Board shall serve reasonable notice of the time and place of the hearing on the Control Officer and upon the applicant.
- 1.4.2** The Chairman of the Hearing Board or any other member of the Hearing Board so designated by the Hearing Board, except for an alternate member, may hear an application for an interim variance. If any one member of the public contests a decision made by any one member of the Hearing Board, the application shall be reheard by the full Hearing Board within 10 days of the decision.
- 1.5 Regular Variance Procedure:** In the case of a hearing to consider an application for variance, other than a 90 day variance, or an interim variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements shall be as follows:
- 1.5.1** The Hearing Board shall serve a notice of the time and place of a hearing to the Control Officer, all other districts in the North Coast Air Basin, the state board, the Environmental Protection Agency, and upon the petitioner or permittee at least 15 days prior to the hearing.
- 1.5.2** The Hearing Board shall also publish a notice of the hearing in at least one newspaper of general circulation within the district, and send such notice, at least 15 days prior to the hearing to every person who requests such notice.
- 1.5.3** The notice shall state the time and the place of the hearing, the time when, commencing not less than 15 days prior to the hearing, and the place where the application including any proposed conditions or schedule of increments of progress is available for public inspection.
- 1.6 Answers:** Parties to the petition may file a response within 10 days after service. All responses shall be served the same as petitions under Rule 601(1.1).
- 1.7 Continuances:** For any petition hearing requiring the attendance of a quorum of the Hearing Board for action, the Hearing Board, by majority vote, may grant any reasonable continuance of the hearing. For any petition hearing which can be acted on by a single member of the Hearing Board, the Chairman or presiding Hearing Board Member may grant any reasonable continuance of the hearing upon request of either the petitioner or the respondent. Such action may be without prior notice.
- 1.8 Evidence:**
- 1.8.1** Oral evidence shall be taken only on oath or affirmation.
- 1.8.2** 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.
- 1.8.3** 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, and irrelevant and unduly repetitious evidence shall be excluded.

- 1.8.4** Whenever the members of the Hearing Board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the Chairman of the Hearing Board may issue a subpoena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession or under his control, material to such a hearing. A subpoena to appear before the Hearing Board shall be served in the same manner as a subpoena in a civil action.
- 1.8.5** The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this state.
- 1.8.6** The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to the matter under consideration, and shall consider such testimony in making its decision.

## **1.9 Hearing Procedures**

**1.9.1 Identification of the Parties:** Each Hearing before the Hearing Board shall consist of two sides, the petitioner and the respondent, and may also include participation by amicus parties and the public.

- a. The Petitioner shall be the party (or parties) filing the moving petition before the Hearing Board.
- b. The Respondent shall be the party (or parties) responding to the initial moving petition filed by the Petitioner to be considered before the Hearing Board.
- c. Amicus Party: Upon prior approval by the Hearing Board, an amicus party may file a petition supporting either the Petitioner or the respondent, or as a friend of the Hearing Board.
- d. Public: All persons not otherwise identified as the Petitioner, Respondent, or an Amicus Party shall be members of the public.

**1.9.2 The Hearing Procedures:** All Hearings before the AQMD Hearing board shall be guided by the following procedures:

**1.9.2.1 Summary of evidence.** Prior to the beginning of each hearing, the Petitioner and the Respondent shall provide a brief written summary of its position and of evidence to be presented during the hearing to the Clerk of the Hearing Board, along with 10 copies of all documentary evidence. The Clerk of the Hearing Board shall retain an original for the Clerk's formal record of the proceeding and distribute copies of the evidence to each Hearing Board member, Counsel to the Hearing Board, the Petitioner, the Respondent and make available a copy to the public.

**1.9.2.2 Opening the Hearing.** The Hearing shall begin by the AQMD Hearing Board Chair formally opening the hearing, stating the purpose of the hearing, and identifying the petitioner and the respondent, and amicus parties, if applicable.

**1.9.2.3 Conflict of Interest.** If any member of the Hearing Board believes he or she has a conflict of interest or for some other reason should reclude him or herself, the member shall announce such conflict and withdraw from participation in the hearing.

**1.9.2.4 Oath of affirmation.** As an alternative to the Chair individually giving oath of affirmations to each person intending to present evidence during the Hearing, the Hearing Board Chair may collectively give oath of affirmation to all those who express intent to present evidence during the hearing, as long as the Clerk of the Hearing Board maintains a record of the names of those having been provided the oath and introducing evidence into the hearing.

**1.9.2.5 Proposed Conditions for Variance or Order.** Even if the Control Officer opposes or does not support the issuance of a variance or order, the Control Officer shall submit proposed conditions for the issuance of a variance or order for the consideration of the Hearing Board, in the event the Board chooses to exercise its discretion in the issuance of a variance or order.

1.9.2.6 **Marking of Evidence.** Evidence shall be formally referenced as “Petitioner’s Exhibits” P-1, P-2, P-3...etc. and “Respondent’s Exhibits” R-1, R-2.R-3, etc.

1.9.2.7 **Time Limits for Hearing.** The Chair, at his or her discretion, may impose a reasonable time limit for the conduct of the hearing, provided that the Petitioner and Respondent have equal time in which to present their respective cases. Time limits may be for the conduct of the entire hearing or for identifiable components of the hearing (such as opening statements, closing statements, etc.).

1.9.2.8 **Opening Statements.** Petitioner and then, Respondent shall have the right to provide a brief oral opening statement prior to the introduction of evidence. However, the parties may elect to waive opening statements and proceed directly to the introduction of evidence.

1.9.2.9 **Petitioner’s Evidence.** The Petitioner shall present its case first to the Hearing Board and shall carry the burden of proving the Petitioner’s case and introducing evidence relevant to the Petitioner’s petition. The Respondent shall have the right to cross-examine each witness called by Petitioner, and the Board or Hearing Officer may direct questions to the witnesses.

1.9.2.10 **Respondent’s Evidence.** Following the Petitioner’s presentation of evidence, the Respondent shall next have the opportunity to present evidence on issues relevant to the petition. The Petitioner shall have the right to cross-examine each witness called by Respondent, and the Board of Hearing Officer may direct questions to the witnesses.

1.9.2.11 **Order of Witnesses.** Notwithstanding other provisions in these Rules, the Hearing Board may, for the convenience and scheduling of witnesses, permit a party to call a witness out of order.

1.9.2.12 **Public testimony.** Following the presentation of evidence by the Petitioner and Respondent, the Chair shall open the Hearing to the public for comment or testimony. The Chair, in his or her discretion, may impose a time limit that shall apply equally to each member of the public who addresses the Hearing Board. All public testimony presented during the Hearing shall be relevant to the petition and shall be directed to the Hearing Board. If the Chair determines such testimony is not relevant to the petition before the hearing Board, the Chair may so advise the speaker and terminate the speaker’s opportunity to provide irrelevant public testimony. The Public shall have the right to present all relevant testimony, subject to any time limits imposed by the Chair.

1.9.2.13 **Petitioner’s Closing Statement.** The Petitioner shall next be provided an opportunity to present a closing statement to the Hearing Board.

1.9.2.14 **Respondent’s Closing Statement.** The Respondent shall next be provided an opportunity to present a closing statement to the Hearing Board.

1.9.2.15 **Petitioner’s Rebuttal to Respondent’s closing Statement.** The Petitioner shall next be provided an opportunity to present a rebuttal to the Respondent’s Closing Statement. The rebuttal shall be limited to comments on evidence or issues raised in the closing statements of the Respondent.

1.9.2.16 **Closing Public hearing.** The Chair shall then close the Public Hearing.

1.9.2.17 **Hearing Board Consideration and Action.** The Chair shall then direct the Hearing Board to consider and act on the petition. During the discussion and consideration of action by the Hearing Board on the petition, the Hearing Board may ask for clarification of prior testimony and evidence having been provided, however, no new evidence shall be introduced following the close of the hearing.

1.9.2.18 **Hearing Board Action.** The Hearing Board shall act on the petition and issue a verbal decision and direct the Hearing Board Counsel to prepare a written ruling or order pursuant to Rule 606, Decisions.

1.9.2.19 **Open Meeting Comment Period.** Prior to adjournment of the Hearing Board meeting, the Chairman shall open the meeting up to public comment pursuant to Government Code Section 54957.

#### **1.10 Counsel For the Hearing Board**

The Hearing Board shall have independent legal counsel, retained by the AQMD and pursuant to a contract approved by the AQMD Governing Board of Directors. The Hearing Board Counsel shall advise the Hearing Board and assist the Board in ensuring legal requirements for all hearings are reasonably fulfilled in acting on petitions. The Hearing Board Counsel shall, at the direction of the Hearing Board, prepare Orders of the Hearing Board for the approval and signature of the Hearing Board Chair. The Hearing Board Counsel shall interact with the Control Officer for matters pertaining to the Hearing Board.

#### **1.11 Clerk of the Hearing Board Responsibilities**

1.10.1 The Clerk of the Hearing Board shall be the legal custodian of records for all Hearing Board files.

1.10.2. All petitions for hearing before the Hearing Board, including, but not necessarily limited to, petitions for emergency variances and interim variances, shall be submitted directly to the Clerk of the Hearing Board. Petitions initiated by the Control Officer and Amicus Party communications shall be filed with the Clerk of the Board.

1.10.3 All communication, correspondence, and evidence concerning the subject of a hearing, by any party to the hearing (including amicus parties) or member of the public, shall be directed to the Clerk of the Hearing Board, except for information delivered during a public hearing.

1.10.4 The Clerk of the Hearing Board shall distribute the communication, correspondence, and evidence as expeditiously as reasonable to the other parties.

#### **1.12 Public and Ex Parte Communication**

1.12.1 Once a petition has been filed with the Clerk of the Hearing Board, Hearing Board members shall refrain from making public comment on the matter of the petition. Additionally, Hearing Board members shall refrain from communicating directly with the petitioner about the subject matter of the petition, except in regards to procedural matters which may be communicated directly to the Control Officer. Hearing Board members shall not attempt to obtain information or evidence outside the hearing, and shall disclose at the hearing ex parte communication if any.

**Rule 606 Decisions**

*(Adopted November 3, 1982; Revised May 19, 2005).*

**1.0 DECISIONS:**

- 1.1** After a hearing, the Hearing Board may do any of the following:
- 1.1.1** Grant a permit denied by the Control Officer.
  - 1.1.2** Continue the suspension of a permit suspended by the Control Officer.
  - 1.1.3** Remove the suspension of an existing permit invoked by the Control Officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required.
  - 1.1.4** Find that no violation exists and reinstate an existing permit.
  - 1.1.5** Revoke an existing permit, if it finds any of the following:
    - 1.1.5.1** The permittee has failed to correct any conditions required by the Control Officer.
    - 1.1.5.2** A refusal of a permit would be justified.
    - 1.1.5.3** Fraud or deceit was employed in the obtaining of the permit.
    - 1.1.5.4** Any violation of this part, or of any order, rule, or regulation of the District.
  - 1.1.6** Grant a variance in accordance with the conditions as further specified in this Rule.
- 1.2** The Hearing Board shall file its decision in writing with the Clerk of the Hearing Board, within three business days after the close of the public hearing on the petition. The decision shall contain a statement of findings and shall be distributed to all parties and their attorneys by the Clerk of the Hearing Board.
- 1.3** No Short Term or Regular variance shall be granted unless the Hearing Board makes all of the following findings:
- 1.3.1** That the petitioner for a variance is or will be in violation of a provision of the California Health & Safety Code or of any rule, regulation or order of the District, including, but not limited to, any permit condition.
  - 1.3.2** That 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.
  - 1.3.3** That such closing or taking would be without a corresponding benefit in reducing air contaminants.
  - 1.3.4** That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
  - 1.3.5** During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
  - 1.3.6** During the period the variance is in effect, that the applicant will monitor or otherwise quantify emissions levels from the source, if requested to do so by the District, and report these emissions levels to the district pursuant to a schedule established by the District.
- 1.4** Upon making the specific findings set forth in Rule 606(1.3), the Hearing Board may prescribe requirements other than, but not more onerous than, those imposed by statute or by any rule, regulation, or order of the district board, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of

individual persons. However, no variance shall be granted if the operation under the variance will result in a violation of Rule 104(1.0) of the District.

- 1.5** In prescribing other and different requirements, in accordance with Rule 606(1.4), the Hearing Board shall exercise a wide discretion consistent with Legislative declarations contained in Health and Safety Code Sections 3900 and 39001, in weighing the equities involved and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with such requirements.
- 1.6** The Hearing Board may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the district having jurisdiction, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the District an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.
- 1.7** The Hearing Board, in making any order permitting a variance, shall specify the time during which such order shall be effective, in no event, except as otherwise provided in Rule 606(1.8), to exceed one year, and shall set a final compliance date.
- 1.8** A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.
- 1.9** The Hearing Board may, in its discretion, rehear a decision if a party petitions for a rehearing within 10 days after a copy of the decision has been mailed to him.
- 1.10** The decision shall become effective 30 days after it is filed, unless either of the following occurs:
  - 1.10.1** A rehearing is granted by the Hearing Board.
  - 1.10.2** The Hearing Board orders that it be made effective sooner.
- 1.11** A copy of the decision shall be mailed or delivered by the Clerk of the Hearing Board to the Air Pollution Control Officer, California Air Resources Board, the Environmental Protection Agency, the petitioner, and to every person who has filed a response or who has appeared as a party in person or by counsel at the hearing.



**Rule 607 Records of Proceedings**

*(Adopted November 3, 1982; Revised May 19, 2005)*

- 1.0 RECORDS OF PROCEEDINGS:** A record of all proceedings heard before the Hearing Board shall be made. All or any part of this record may be requested by any party to the proceedings or by any interested public citizen. Such requests shall be directed to the Clerk of the Hearing Board in writing. A reasonable fee may be charged, not to exceed the actual cost of providing the written transcript or tape recording copy. The record that shall be produced will be in the form maintained by the Hearing Board. Nothing in this Rule shall be construed to require the Hearing Board to produce a written transcript from the tape recorded proceedings.

**Rule 608 Appeal of Decision**

*(Adopted November 3, 1982; Revised May 19, 2005).*

**1.0 APPEAL OF DECISION:**

- 1.1** Judicial review may be had of a decision of the Hearing Board by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. Except as otherwise provided in this Rule, any such petition shall be filed within 30 days after the decision has been mailed. The right to petition shall not be affected by the failure to seek a rehearing before the Hearing Board.
- 1.2** The complete record of the proceedings or such parts thereof as are designated by the petitioner, shall be prepared by the Clerk of the Hearing Board and shall be delivered to the petitioner within 30 days after a request therefore by him, upon payment of the fee specified in Rule 607.
- 1.3** The complete record includes the pleading, all notices and orders issued by the Hearing Board, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case.
- 1.4** Where the petitioner, within 10 days after the last day on which a rehearing can be ordered, requests the Clerk of the Hearing Board to prepare all or any part of the record, the time within which a petition may be filed shall be extended until five days after its delivery to him. The Hearing Board Counsel may file with the court the original of any document in the record in lieu of a copy thereof.
- 1.5** In any proceeding pursuant to Rule 608, the court shall receive in evidence any order, rule, or regulation of the district board, any transcript of the proceedings before the Hearing Board, and such further evidence as the court, in its discretion, deems proper.