

REGULATION V - HEARING BOARD PROCEDURES

RULE 5.0 - GENERAL (Adopted 6/91)

This Regulation shall apply to all hearings before the Hearing Board of the Feather River Air Quality Management District.

RULE 5.1 - HEARING BOARD (Adopted 6/91)

The District Hearing Board shall be established in accordance with Article 1 (commencing with Section 40800), of Part 3, of Chapter 8, of Division 26, of the California Health and Safety Code.

RULE 5.2 - PROCEDURES (Adopted 6/91)

The procedures of the District Hearing Board shall be in accordance with Article 2, commencing with Section 40820); Article 3 (commencing with Section 40840); and Article 4 (commencing with Section 40860) of Chapter 8 of Part 3 of Division 26 of the California Health and Safety Code.

RULE 5.3 - HEARINGS (Adopted 6/91)

Request for hearings shall be initiated by the filing of a petition in triplicate with the Clerk of the Hearing Board and the payment of a fee as provided for in Regulation VII. The Clerk shall serve a copy of the petition on the Air Pollution Control Officer and one copy on the holder of the Authorization to Construct permit, or Permit to Operate, or Variance holder, if any, involved. Service may be made in person or by mail, and service may be proved by written acknowledgement of the person served or by the affidavit of the person making the service.

RULE 5.4 - CONTENTS OF PETITION FOR HEARINGS (Adopted 6/91)

A. EVERY PETITION SHALL STATE:

1. The name, address and telephone number of the petitioner or other person authorized to receive service of notices;
2. Whether the petitioner is an individual, co-partnership, corporation or other entity; names and addresses of the partners if a co-partnership; names and addresses of the

officers if a corporation; and the names and addresses of the persons in control, if other entity;

3. The type of business or activity involved in the application, and the street address at which it is conducted;
4. A brief description of the article, machine, equipment or other contrivance, if any, involved in the application;

The section or rule under which the petition is filed; that is, whether petitioner desires a hearing:

- a. To determine whether a permit shall be revoked or suspended permit reinstated under Section 42302;
 - b. For a variance under Section 42350;
 - c. To revoke or modify a variance Section 42356;
 - d. To review the denial or conditional granting or an Authorization to Construct, or Permit to Operate, under Rules 4.5 and 4.7 of these Rules and Regulations.
5. 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;
 6. Petitions for revocation of permits shall allege, in addition, the section under which the permit was granted and the rule or section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation;
 7. Petitions for reinstatement of suspended permits shall allege, in addition, the section 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 information requested, if any, was not furnished; and whether such information is believed by petitioner to be pertinent, and if so, when it will be furnished.

RULE 5.5 - REQUEST FOR VARIANCE (Adopted 6/91)

- A. In addition to the matters required by Rule 5.4, petitions for variances shall state briefly:
1. The section, rule or order complained of;
 2. The facts showing why compliance with the section, rule or order is unreasonable;
 3. For what period of time the variance is sought and why;
 4. The damage or harm resulting or which would result to petitioner from compliance with such section, rule or order;
 5. The requirements which petitioner can meet and the date when petitioner can comply with such requirements.
 6. The advantages and disadvantages to the residents of the District resulting from requiring compliance or resulting from granting a variance.
 7. Whether or not operations under such variance, if granted, would constitute a nuisance;
 8. Whether or not any case involving the same identical equipment or process is pending in any court, civil or criminal;
 9. Whether or not the subject equipment or process is covered by a Permit to Operate issued by the Air Pollution Control Officer.

RULE 5.6 - APPEAL FROM DENIAL (Adopted 6/91)

A petition to review a denial or conditional approval of an Authorization to Construct or Permit to Operate, shall, in addition to the matters required by Rule 5.4, set forth a summary of the application, or a copy thereof; the alleged reasons for the denial or conditional approval; and the reasons for appeal.

RULE 5.7 - FAILURE TO COMPLY WITH RULES (Adopted 6/91)

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 Chairman or any two members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The Chairman or any two members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

RULE 5.8 - ANSWERS (Adopted 6/91)

Any person may file an answer within ten (10) days after service. All answers shall be served the same as petitions under Rule 5.3

RULE 5.9 - DISMISSAL OF REQUEST FOR A HEARING (Adopted 6/91)

The petitioner may dismiss his petition at any time before submission of the case to the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons as such dismissal.

RULE 5.10 - PLACE OF HEARING (Adopted 6/91)

All hearings shall be held at a place designated by the Hearing Board.

RULE 5.11 - NOTICE OF HEARING (Adopted 6/91)

The Clerk of the Hearing Board shall mail or deliver a notice of hearing to the petitioner, the Air Pollution Control Officer, the holder of the permit or variance involved, if any, and to any person entitled to notice under Sections 40823, 40824, 40825 and 40826 of the California Health and Safety Code.

RULE 5.12 - EVIDENCE (Adopted 6/91)

- A. Oral evidence shall be taken only on oath or affirmation.
- B. Each party shall have these rights: Right to counsel; 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.

- 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.

RULE 5.13 - PRELIMINARY MATTERS (Adopted 6/91)

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 Chairman or any two members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

RULE 5.14 - OFFICIAL NOTICE (Adopted 6/91)

The Hearing Board may take official notice of any matter which may be judicially noticed by the court of this state.

RULE 5.15 - CONTINUANCES (Adopted 6/91)

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

RULE 5.16 - DECISION (Adopted 6/91)

In accordance with Section 40820 of the California Health and Safety Code there must be three or more members of the Hearing Board present to make a decision. However, the chairman of

the Hearing Board or any member designated by the Hearing Board may grant a variance for not more than 90 days in accordance with Section 40825 of the Health and Safety Code. All decisions shall be in writing, served and filed within fifteen (15) days after submission of the 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 Air Pollution Control Officer, the petitioner and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing. Within 30 days of any order granting or modifying, or otherwise affecting a variance, a copy of the order shall be forwarded to the Air Resources Board.

RULE 5.17 - EFFECTIVE DATE OF DECISION (Adopted 6/91)

The decision shall become effective fifteen (15) days after delivering or mailing a copy of the decision as provided in Rule 5.15, or the Hearing Board may order that the decision shall become effective sooner.

RULE 5.18 - LACK OF PERMIT (Adopted 6/91)

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any article, machine, equipment or other contrivance until a Permit to Operate has been granted or denied by the Air Pollution Control Officer. A variance granted by the Hearing Board, after denial of a Permit to Operate by the Air Pollution Control Officer may include a Permit to Operate for the duration of the variance.

RULE 5.19 - RECORD OF HEARING (Adopted 6/91)

All hearings before the Hearing Board shall be recorded.