



Hearing Board Policies & Procedures

Adopted: November 1, 2006

**Terence E. Dressler
Clerk of the APCD Board
260 N. San Antonio Road, Suite A
Santa Barbara, CA 93110-1315
(805) 961-8853**

**POLICIES AND PROCEDURES FOR THE HEARING BOARD
OF THE AIR POLLUTION CONTROL DISTRICT OF THE
COUNTY OF SANTA BARBARA**

TABLE OF CONTENTS

<u>Item</u>	<u>Page</u>
I. General Policies and Procedures	1
A. Regular Meetings	1
B. Special Meetings	1
C. Quorum	1
D. Agenda Preparation	1
E. Agenda Publication	2
F. Agenda Posting	2
G. Public Hearing Notices	2
H. Order of Business	2
I. Public Comment	2
J. Administrative Agenda	3
K. Ex-Agenda Items	3
L. Time Limits	3
M. Public Hearings and Requests to Speak on Agenda Items	3
N. Continuances	3-4
O. Filing and Deadline Timeframe Definition	4
II. Procedures for Filing and Processing Variances, Modifications, Appeals, Applications for Revocation or Abatement	5
A. Emergency (E) Variance	5-6
B. Interim (I) Variance	6-7
C. 90-Day (N) Variance and Application for Modification of a Schedule (MS) of Increments of Progress	7-8
D. Regular (R) Variance and Application for Modification of Final Compliance Date (MF) of Existing Variance	9-10
E. Product Variance	10
F. Abatement (A) Order or Application for Revocation	10-11
G. Appeal (P) from Denial of Authority to Construct, Permit to Operate, Suspension, or Conditions of Approval	11-12
H. Standards for Variance Findings by Hearing Board	13-14
III. Hearing Procedures	15
A. Order of Proceedings	15
B. Evidence	15-17
C. Withdrawals	17-18
IV. Interpretation and Application of these Policies and Procedures	18

Quick Reference Attachments

Variance Quick Reference Chart	A-1
Health and Safety Code Section References	A-2
Abatement Order Reference Chart	A-3
Findings – Health and Safety Code §42352	A-4

**POLICIES AND PROCEDURES FOR THE HEARING BOARD
OF THE AIR POLLUTION CONTROL DISTRICT OF THE
COUNTY OF SANTA BARBARA**

I. General Policies and Procedures

- A. **Regular Meetings** – The Hearing Board meets on the first Wednesday of each month at 9:30 a.m. in the Board of Supervisors' Hearing Room, 4th Floor, Administration Building, 105 East Anapamu Street, Santa Barbara, CA 93101 or Betteravia Government Center, 511 East Lakeside Parkway, Santa Maria, CA 93455. The dates and locations of meetings may be modified to accommodate notice and quorum requirements. Meetings may be held at different locations with proper noticing.
- B. **Special Meetings** – Special meetings may be called by the Chair of the Hearing Board (“Chair”) or the Hearing Board Clerk (“Clerk”). These will be noticed according to the provisions of the Brown Act (Government Code §54956, et seq.) which requires, in summary, that notice be delivered personally or by mail to each member of the Hearing Board, staff of the Air Pollution Control District, and members of the public requesting such notice, at least 24 hours before the time set for such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business may be considered.
- C. **Quorum** – Hearing Board members will notify the Clerk at the earliest possible opportunity if he/she will be unable to attend any scheduled meeting. If it appears a quorum will not be present on a hearing date, the Clerk shall notify the Hearing Board members, applicant(s), District staff, District and County Counsel that the hearing will be continued to a later date. Three members of the Hearing Board shall constitute a quorum, (Health and Safety Code §40820) and no action shall be taken by the Hearing Board except in the presence of a quorum and upon the affirmative vote of a majority of members. In the presence of three members, the vote must be unanimous.
- D. **Agenda Preparation** – Each item of business to be considered at a regular meeting must appear on the Agenda for that meeting, except as provided in Section K. The Agenda shall include a brief general description of each item of business to be transacted or discussed. The description should be calculated to reasonably inform the public as to the nature of the item. All written material pertaining to an item on the Agenda of the Hearing Board must be submitted in compliance with procedures established by the Clerk and delivered to the Clerk’s office no later than 12:00 noon on the 15th day preceding the Board meeting. All materials submitted to the Clerk must include an original and twelve copies. Where there is a holiday observed by the District preceding the date of the Hearing Board meeting, the Clerk may, upon giving reasonable notice in prior issues of the Agenda, move up the deadline to provide adequate time for the preparation and distribution of the Agenda. Minutes of the previous meeting, the Agenda for the next meeting and copies of materials shall be transmitted to Hearing Board members a minimum of ten (10) days before the meeting.

- E. **Agenda Publication** – The Agenda for each regular meeting shall be available ten (10) days preceding the meeting. Copies shall be available to the news media and public in the Clerk’s office. Any person may have a copy of the Agenda mailed by the Clerk by providing to the Clerk a self-addressed postage-prepaid envelope of sufficient size to accommodate the Agenda.
- F. **Agenda Posting** – The Agenda for each regular meeting shall be posted on a posting board at or near the public entrance to the County Administration Building, 105 East Anapamu Street, Santa Barbara, CA 93101, on a bulletin board outside of the Board hearing room, at the entrance to the Air Pollution Control District (APCD) Office at 260 North San Antonio Road, Suite A, Santa Barbara, CA 93110, and the North County office at 301 East Cook Street, Suite L, Santa Maria, CA 93454. The Clerk shall keep on file a signed declaration of the time and place of posting of the Agenda for each meeting. Such declaration shall remain on file for one (1) year following the date of the meeting.
- G. **Public Hearing Notices** – A public hearing on a specific Agenda item shall be set for a specified time, and each written or published notice regarding that hearing shall announce its date and time.
- H. **Order of Business** – Hearing Board business at a regular meeting shall be conducted in the following order except as otherwise directed by the Board or the Chair:

Roll Call
Administration of Oath
Approval of Minutes of prior meeting(s)
Requests for Continuance or Addition of Ex-Agenda items
Announcements/Staff Reports
Public Comment
Regular Agenda
Administrative Agenda (Receive and File)
Adjournment

- I. **Public Comment** – At each regular Board meeting, the Board shall allow any member of the public to address the Board on a matter within its jurisdiction. The total amount of time for public comments shall be no more than 15 minutes. All individual speakers and organized presentations to the Hearing Board are subject to time limits imposed at the discretion of the Chair. Any person wishing to address the Hearing Board must complete and deliver to the Clerk a "Request to Speak" form prior to the time that the public comment period commences; the form shall include a description of the subject the speaker wishes to address. A speaker shall not be heard during the public comment portion of the meeting on a matter listed on the Agenda. Comments on agenda items are appropriate when the item is being discussed by the Board.

The Board shall not take action on any item not appearing on the Agenda unless the action is authorized through Ex-Agenda Procedures outlined in Section K. However, the Board hereby gives the Chair the authorization to refer matters raised during the "Public Comment" period to the appropriate staff.

- J. **Administrative Agenda** – The Administrative Agenda shall be comprised of items which will not require discussion. An Administrative Agenda item shall be open for discussion on the request of a member of the Board or member of the public.
- K. **Ex-Agenda Items** – Except as provided in this paragraph, no action shall be taken at a regular meeting on any item which does not appear on the posted Agenda. An item may be added to the Agenda after the Agenda has been posted upon a determination by a four-fifths vote of the Board (or a unanimous vote if less than four of the Board is present); the vote shall be on a motion stating that the need to take action arose after the Agenda was posted. Any such motion shall be accompanied by distribution of a written statement on a form provided by the Clerk, to be included in the record, stating the facts upon which it can be determined that the need to take action arose after the Agenda was posted. In addition, action may be taken on an item not on the posted Agenda under the circumstances stated in Government Code §54954.2(b)(1) [emergency] and §54954.2(b)(3) [continued regular meetings].
- L. **Time Limits** – The Chair, with consensus of the Board, may order reasonable limitations on testimony, including, but not limited to, limiting the amount of time allocated for testimony on particular issues and for each individual speaker.
- M. **Public Hearings and Requests to Speak on Agenda Items** – A member of the public who wishes to address the Board shall complete a "Request to Speak" form and deliver it to the Clerk prior to the scheduled time for commencement of the item. No person shall substantially repeat the testimony given by a previous speaker but may indicate concurrence with the views expressed earlier.
- N. **Continuances** – Public hearings on any matter shall be commenced and completed on the date for which they have been noticed unless the Hearing Board agrees to a continuance. Continuances may be requested as follows:
1. Requests to continue an item on the agenda of a public hearing should be filed in writing in the office of the Hearing Board Clerk by 5:00 p.m. the day prior to the date and time set for the hearing. Such requests should be signed by the person requesting the continuance or by an authorized representative, and must clearly state reasons justifying the continuance. If a continuance is filed with the Clerk and granted by the Chair, pursuant to District Rule 516,¹ this continuance will be noted on the Agenda, if possible, and the Board will take formal action to continue the item at the meeting. The written request shall be delivered to the Chair who shall announce at the appropriate time to those in the meeting room that a request to continue the item has been received and by whom it was made. Oral

¹ Rule 516. CONTINUANCES. The chairperson, vice-chairperson or any two members of the Hearing Board shall grant any continuance of 15 days or less, concurred in by petitioner, the Control Officer and 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.

requests may be made by any person on the date of the hearing provided good cause is shown for the continuance.

2. Requests to continue an open public hearing may be made by any person orally prior to the close of the public hearing. The request should include the reasons why a continuance is necessary. Those present and interested in the particular matter shall be given an opportunity to comment on the requested continuance.
 3. The Hearing Board shall vote whether to grant or deny the request based on whether good cause has been shown. If granted, the matter shall be continued to a specific date.
 4. In the absence of the applicant, his/her representative, or a request for continuance, the Hearing Board may (a) conduct the hearing and vote on the application; (b) continue the hearing to a later date; (c) open the hearing and postpone the matter to a later place on the agenda; or (d) open the hearing, receive evidence and continue the hearing to a new date.
0. **Filing and Deadline Timeframe Definition** – All reference to “days” means calendar days unless otherwise noted.

II. Procedures for Filing and Processing Variances, Modifications, Appeals, Applications for Revocation or Abatement

There are four different types of Variances for which an eligible source may apply: Emergency, Interim, 90-day, and Regular. The filing requirements to be met by the applicant vary in accordance with the type of Variance relief being sought. A single Variance form is sufficient for any applicant seeking more than one variance type (for example: an Interim and Regular Variance) so long as all information is consistent for each Variance requested. All Variance petitions submitted for hearing shall be signed by the petitioner under penalty of perjury under the Laws of the State of California and submitted to the Clerk with the applicable filing fee. Information regarding applicable filings fees is included in District Rule 210 which is updated annually on July 1 to adjust for the consumer price index, and is available on the APCD website: www.sbcapcd.org. In addition, information regarding procedures for filing variance petitions, noticing requirements and time deadlines for the submission of documents is available in the Clerk's office Monday through Friday from 8:00 a.m. to 5:00 p.m. or by calling (805) 961-8853.

A. Emergency (E) Variance:

1. **Filing** – Any application for Emergency Variance, (form on website: www.sbcapcd.org) shall be filed directly with the District at either the Santa Barbara or Santa Maria office. All applications must be accompanied by the required filing fee. Upon receipt, the District will review, make recommendations, and obtain a case number from the Clerk of the Hearing Board. An emergency variance is the typical remedy sought for any “breakdown” condition, as defined in District Rule 505, which persists for more than 24 hours. Breakdown occurrences persisting less than 24 hours (except for continuous monitoring equipment for which the period will be 96 hours) are within the jurisdiction of the Control Officer and subject to District procedures.
2. **Noticing** – There are no noticing requirements for an Emergency Variance.
3. **Hearing** – The District will contact a Hearing Board member to establish a time and place for consideration of the request, and advise the petitioner of such time and place. An Emergency Variance may be issued for good cause, including, but not limited to, a breakdown condition. If the variance is sought due to a “breakdown condition” pursuant to District Rules 505/506, then additional findings as outlined in Rule 506 must be made. The findings required by Attachment A-4 of these Policies and Procedures do not need to be made for the granting of an Emergency Variance except as otherwise required by Rule 506.
4. **Effective Time Span** – Emergency Variances for breakdowns are limited to fifteen (15) days unless a petition for a 90-day or Regular Variance is filed. Non-breakdown related variances may be granted for up to thirty (30) days. An Emergency Variance shall not remain in effect longer than thirty (30) days and shall not be granted when sought to avoid the public noticing provisions of

Health and Safety Code §40824 or 42351.

5. **Processing** – If an Emergency Variance is granted or denied, the District will prepare a Variance Findings and Order to be signed by the Hearing Board member. The District will transmit the original of the executed copy to the Clerk of the Hearing Board for filing and inclusion on the next Hearing Board meeting Administrative Agenda. The Clerk will send a copy of the executed document to the California Air Resources Board within 30 days, pursuant to Health and Safety Code §42360, and a copy will be sent to the applicant.

B. **Interim (I) Variance** (Including request for interim authorization for modification of a schedule of increments of progress):

1. **Filing** – An original of the applicant's variance petition accompanied by the required filing fee shall be filed with the Clerk of the Hearing Board, 260 San Antonio Road, Suite A, Santa Barbara, CA 93110. The Clerk shall assign a case number which will be used on all subsequent documents referring to the same underlying incident. A petition for Interim Variance or interim request for modification of increments of progress must be filed in conjunction with a petition for Regular Variance or a 90-day Variance. It is the purpose of the Interim Variance to allow the applicant to continue operation pending a hearing on a petition for a Regular or 90-day Variance. The applicant will submit the appropriate filing fee for each Variance.

Unless otherwise ordered by the Chair, the applicant and the District are to submit to the Hearing Board Clerk, at least fifteen (15) days prior to the hearing date, all documentary evidence and support materials which they wish to include in the Board packet and propose to introduce at the hearing. The Hearing Board will not accept last minute documents on the day of the hearing unless good cause is shown.

All District briefing documents and evidentiary support materials must be mailed to the applicant and all applicant briefing documents and evidentiary support materials must be mailed to the District on the date of submittal to the Clerk. The Chair may order a briefing schedule where deemed appropriate and necessary. If the above described submittal procedures are not or cannot be followed, or additional review and/or analysis is required, the hearing on the case may be continued to a subsequent date, provided, however, that the Hearing Board may permit later submission of documentary evidence for good cause shown. If at least eight (8) calendar days are not available to file a response to a petition in a timely manner, this may constitute good cause.

2. **Noticing** – The Clerk shall schedule said application on the next Hearing Board Agenda, and shall serve reasonable notice upon the Control Officer and the applicant or, the applicant shall contact District staff to schedule a hearing by the Chair or any member designated by the Hearing Board and shall serve reasonable notice upon the Control Officer (Health and Safety Code §40824).

3. **Hearing** – The Chair, or any member of the Hearing Board designated by the Board, may hear an application for an Interim Variance or interim request for modification of increments of progress. In order for the Board to grant a Variance, the Standards for Variance Findings in Attachment A-4 must be made. The Hearing Board may require emission offsets and/or other mitigation as a condition for the granting of a variance. A performance bond may be required of applicants pursuant to Health and Safety Code §42355. If a member of the public contests a decision made by a single member within ten (10) days of the decision of the Hearing Board, the application shall be reheard by the full Hearing Board within ten (10) days of the decision. Decisions of the Hearing Board are final. Any petition for judicial review shall be filed within thirty (30) days pursuant to Health and Safety Code §40864.

All exhibit materials submitted and accepted in appropriate form at hearings will be held for two (2) years pursuant to Government Code §26202 by the Clerk.

4. **Effective Time Span** – An Interim Variance is in effect for a maximum of ninety (90) days or date of decision on the 90-Day or Regular application.
5. **Processing** – If the Interim Variance petition is heard by an individual Board member, it is the responsibility of the District to prepare the Variance Findings and Order. The District will transmit the original of the executed copy to the Clerk for filing and inclusion on the next Hearing Board Administrative Agenda. Final rulings of the Hearing Board may be drafted by the petitioner, District and/or County Counsel for approval and signature by the Chair or designee within ten (10) days after the hearing, or longer period if deemed necessary by the Board member. Said ruling shall include reasons for the decision. The Clerk will send a copy of the executed document to the California Air Resources Board within 30 days, pursuant to Health and Safety Code §42360, and a copy will be sent to the petitioner.

C. **90-day (N) Variance and Application for Modification of a Schedule of Increments of Progress (MS):**

1. **Filing** – An original of the applicant's variance petition accompanied by the required filing fee shall be filed with the Clerk of the Hearing Board, 260 San Antonio Road, Suite A, Santa Barbara, CA 93110. The Clerk shall assign a case number which will be used on all subsequent documents referring to the same underlying incident.

The applicant and the District are to submit to the Clerk, at least twenty-one (21) days prior to the hearing date, all documentary evidence and support materials which they wish to include in the Board packet and propose to introduce at the hearing. The Hearing Board will not accept documents submitted late unless good cause is shown. All District briefing documents and evidentiary support materials

must be mailed to the applicant and all applicant briefing documents and evidentiary support materials must be mailed to the District on the date of submittal to the Clerk. The Chair may require a briefing schedule where appropriate and necessary. If the Hearing Board determines that for good cause the above described submittal procedures are not or cannot be followed, or additional review and/or analysis is required, the matter may be continued. If at least eight (8) calendar days are not available to file a response to a petition in a timely manner, this may constitute good cause.

2. **Noticing** – The Clerk shall schedule said application on the next Hearing Board Agenda for which noticing requirements may be complied with, and shall serve not less than ten (10) days notice prior to the hearing to the Control Officer, all other districts within the South Central Coast air basin, the California Air Resources Board, the Environmental Protection Agency, and the applicant (Health and Safety Code §40825).
3. **Hearing** – 90-Day Variance applications will normally be scheduled for hearing before the full Hearing Board. The Chair, or any member of the Hearing Board designated by the Board, may hear an application for a 90-day Variance. In order for the Board to grant a Variance, the Variance Findings in Attachment A-4 must be made. The Hearing Board may require emission offsets and/or other mitigation as a condition for the granting of a variance. A performance bond may be required of applicants pursuant to Health and Safety Code §42355. Decisions of the Hearing Board are final. If a member of the public contests a decision made by a single member of the Hearing Board, the application shall be reheard by the full Hearing Board within ten (10) days of the decision. Any petition for judicial review shall be filed within thirty (30) days pursuant to Health and Safety Code §40864.

All exhibit materials submitted and accepted in appropriate form at hearings will be held for two (2) years pursuant to Government Code §26202 by the Hearing Board Clerk.

4. **Effective Time Span** – A 90-Day Variance is in effect for a maximum of ninety (90) days.
5. **Processing** – If the 90-Day Variance petition is heard by an individual Board member, it is the responsibility of the District to prepare the Variance Findings and Order. The District will transmit the original of the executed copy to the Clerk for filing and inclusion on the next Hearing Board Administrative Agenda. Final rulings of the Hearing Board may be drafted by the petitioner, District and/or County Counsel for approval and signature by the Chair or designee within ten (10) days after the hearing, or longer period if deemed necessary by the Board member. Said ruling shall include reasons for the decision. The Clerk will send a copy of the executed document to the California Air Resources Board within 30 days, pursuant to Health and Safety Code §42360, and a copy will be sent to the

petitioner.

D. **Regular (R) Variance and Application for Modification of Final Compliance Date (MF) of Existing Variance:**

1. **Filing** – An original of the applicant's variance petition accompanied by the required filing fee shall be filed with the Clerk, 260 San Antonio Road, Suite A, Santa Barbara, CA 93110. The Clerk shall assign a case number which will be used on all subsequent documents referring to the same underlying incident. In order to comply with public noticing requirements, the petition must be filed no later than twenty-one (21) days prior to the next regularly scheduled hearing date (first Wednesday of the month) to be included on that hearing's agenda.

The applicant and the District are to submit to the Hearing Board Clerk, at least twenty-one (21) days prior to the hearing date, all documentary evidence and support materials which they wish to include in the Board packet and propose to introduce at the hearing. The Hearing Board will not accept documents submitted late unless good cause is shown. All District briefing documents and evidentiary support materials must be mailed to the applicant and all applicant briefing documents and evidentiary support materials must be mailed to the District on the date of submittal to the Clerk. The Chair may require a briefing schedule where deemed appropriate and necessary. If the Hearing Board determines that for good cause the above described submittal procedures are not or cannot be followed, or additional review and/or analysis is required, the hearing on the case may be continued. If at least eight (8) calendar days are not available to file a response to a petition in a timely manner, this may constitute good cause.

- ■ **Noticing** – The Clerk shall schedule said application on the next Hearing Board Agenda for which noticing requirements may be complied with, and shall publish a public notice of the hearing in at least one newspaper of general circulation not less than fifteen (15) days prior to the hearing, and to serve notice to the Control Officer, all other districts within the South Central Coast air basin, the California Air Resources Board, the Environmental Protection Agency, and the applicant. (Health and Safety Code §40825).
3. **Hearing** –Regular Variance applications are scheduled for hearing before the full Hearing Board. In order for the Board to grant a Variance, the applicant must submit sufficient evidence in order for the Board to make the Variance Findings in Attachment A-4. The Hearing Board may require emission offsets and/or other mitigation as a condition for the granting of a variance. A performance bond may be required of applicants pursuant to Health and Safety Code §42355. Decisions of the Hearing Board are final. Any petition for judicial review shall be filed within thirty (30) days pursuant to Health and Safety Code §40864.

All exhibit materials submitted and accepted in appropriate form at hearings will be held for two (2) years pursuant to Government Code §26202 by the Clerk.

4. **Effective Time Span** – A Regular Variance is in effect for a maximum of one (1) year unless a schedule of increments of progress is included.
5. **Processing** – Final rulings of the Hearing Board may be drafted by the petitioner, District and/or County Counsel for approval and signature by the Chair within ten (10) days after the hearing, or longer period if deemed necessary by the Chair. Said ruling shall include reasons for the decision. The Clerk will send a copy of the executed document to the California Air Resources Board within 30 days, pursuant to Health and Safety Code §42360, and a copy will be sent to the petitioner.

E. **Product Variance**

Any person who manufactures a product may petition the Hearing Board for a product variance from a rule or regulation of the district pursuant to Article 2.5. See Health and Safety Code §42366 - §42372 for procedures.

F. **Abatement (A) Order or Application for Revocation:**

1. **Filing** – An original of the Petitioner's abatement order shall be filed with the Clerk, 260 San Antonio Road, Suite A, Santa Barbara, CA 93110. The Clerk shall assign a case number which will be used on all subsequent documents referring to the same underlying incident.

The Petitioner can be the District Board, Hearing Board, or the Control Officer. All documentary evidence and support materials which they wish to include in the Board packet and propose to introduce at the hearing are to be submitted to the Clerk, at least twenty-one (21) days prior to the hearing date. Late submittals will not be accepted by the Hearing Board unless good cause is shown. All Petitioner's briefing documents and evidentiary support materials must be mailed to the Respondent and all Respondent's briefing documents and evidentiary support materials must be mailed to the Petitioner on the date of submittal to the Clerk. The Chair may require a briefing schedule to be submitted by the parties where deemed appropriate and necessary. If the above described submittal procedures are not or cannot be followed, or additional review and/or analysis is required, the hearing on the case may be continued to a subsequent date, provided, however, that the Hearing Board may permit later submission of documentary evidence for good cause shown. If at least eight (8) calendar days are not available to file a response to a petition in a timely manner, this may constitute good cause.

2. **Noticing** – The Clerk shall schedule said petition on the next Hearing Board Agenda for which noticing requirements may be complied with, and shall serve not less than ten (10) days notice prior to the hearing to the Control Officer, all other districts within the South Central Coast air basin, the California Air Resources Board, the Environmental Protection Agency, the Respondent, and shall publish a notice of the hearing in one newspaper of general circulation and shall send a notice

to every person who requests such a notice (Health and Safety Code §40823).

3. **Hearing** – An Abatement Order will normally be scheduled for hearing before the full Hearing Board, and can also be heard by the District Board. The District Board and/or Hearing Board can issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit, or for violations of district rules (Health and Safety Code §42450, 42451(a)).

All exhibit materials submitted and accepted in appropriate form at hearings will be held for two (2) years pursuant to Government Code §26202 by the Clerk.

4. **Effective Time Span** – The Hearing Board determines the effective time span of an Abatement Order. Any person who intentionally or negligently violates any order of abatement is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs (Health and Safety Code §42401).
5. **Processing** – The order for abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met. (Refer to Health and Safety Code §42453 and §42454 for injunction proceedings.) The Clerk will send a copy of the executed document to the California Air Resources Board within 30 days, pursuant to Health and Safety Code §42360, and a copy will be sent to all parties involved in the proceedings.

G. **Appeal (P) from Denial of Authority to Construct, Permit to Operate, Suspension, or Conditions of Approval:**

1. **Filing** – 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 Control Officer. An appeal from a denial of a Permit to Operate and a petition for a variance may be filed with the Hearing Board in a single petition. An original of the applicant's Permit Appeal petition accompanied by the required filing fee shall be filed with the Clerk, 260 San Antonio Road, Suite A, Santa Barbara, CA 93110. The Clerk shall assign a case number which will be used on all subsequent documents referring to the same underlying incident. In order to comply with public noticing requirements, the petition must be filed twenty-one (21) days prior to the next regularly scheduled hearing date (first Wednesday of the month) to be included on that hearing's agenda.

Unless a briefing schedule is ordered by the Chair, the applicant and the District are

to submit to the Clerk, at least twenty-one (21) days prior to the hearing date, all documentary evidence and support materials which they wish to include in the Board packet and propose to introduce at the hearing. The Hearing Board will not accept last minute documents on the day of the hearing unless good cause is shown.

All District briefing documents and evidentiary support materials must be mailed to the applicant and all applicant briefing documents and evidentiary support materials must be mailed to the District on the date of submittal to the Clerk. The Chair may require a briefing schedule to be submitted by the parties where deemed appropriate and necessary. If the above described submittal procedures are not or cannot be followed, or additional review and/or analysis is required, the hearing on the case may be continued to a subsequent date, provided, however, that the Hearing Board may permit later submission of documentary evidence for good cause shown. If at least eight (8) calendar days are not available to file a response to a petition in a timely manner, this may constitute good cause.

2. **Noticing** – The Clerk shall schedule said application on the next Hearing Board Agenda for which noticing requirements may be complied with, and shall publish a public notice of the hearing in at least one newspaper of general circulation not less than ten (10) days prior to the hearing, and to serve notice to the Control Officer, all other districts within the South Central Coast air basin, the California Air Resources Board, the Environmental Protection Agency, and the applicant. (Health and Safety Code §40823).
3. **Hearing** – Permit Appeal applications are scheduled for hearing before the full Hearing Board. Any petition for judicial review shall be filed within thirty (30) days pursuant to Health and Safety Code §40864.

All exhibit materials submitted and accepted in appropriate form at hearings will be held for two (2) years pursuant to Government Code §26202 by the Clerk.

4. **Effective Time Span** – A Regular Variance is in effect for a maximum of one (1) year unless a schedule of increments of progress is included. A variance granted by the Hearing Board after a denial of a Permit to Operate by the Control Officer may include a Permit to Operate for the duration of the variance (Rule 519).
5. **Processing** – Final rulings of the Hearing Board may be drafted by the petitioner, District and/or County Counsel for approval and signature by the Chair within ten (10) days after the hearing, or longer period if deemed necessary. Said ruling shall include reasons for the decision. The Clerk will send a copy of the executed document to the California Air Resources Board within 30 days, pursuant to Health and Safety Code §42360, and a copy will be sent to the petitioner.

H. **Standards for Variance Findings by Hearing Board:**

In order for the Hearing Board to grant a Variance, the Board must make the findings required by the Health and Safety Code §42352, as may be amended. (See Attachment A-4, which shall be updated by the Clerk consistent with statutory requirements.) The following is intended as guidelines only.

1. The source for a variance is, or will be in violation of Health and Safety Code §41701, or any rule, regulation or order of the District.
2. Conditions causing the violation were beyond the reasonable control of the applicant and that requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing or elimination of a lawful business.
3. The closing or taking would be without a corresponding benefit in reducing air contaminants.
4. The applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
5. During the period the variance is in effect, the applicant will reduce excess emissions to the maximum extent feasible.
6. Petitioner must quantify or monitor excess emissions while variance is in effect, if required to do so by the District, and report these emission levels to the District pursuant to a schedule established by the District.

In order to make finding H-2, the Hearing Board shall consider the following:

1. The extent to which applicant took actions to comply or seek a variance which were timely and reasonable under the circumstances, including actions taken by the applicant since the adoption of the rule, regulation or order from which the variance is sought;
2. Whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

If the Hearing Board finds that the applicant is a small business², the Hearing Board shall consider the following:

². Pursuant to Health and Safety Code §42352.5, a "Small Business" is defined as an enterprise that is independently owned and operated, i.e., is not a subsidiary or division of another entity that would not qualify as a small business, whose total annual gross receipts are less than \$500,000.00, which employs no more than ten employees, and emits no more than ten (10) tons per year of contaminants.

1. The reasons for any claimed ignorance of the requirement for which the variance is sought;
2. The applicant's financial and other abilities to comply;
3. The impact on the applicant's business and the benefit to the environment if the applicant is required to immediately comply;

If the Hearing Board finds that the applicant is a "Public Agency"³, it shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an "essential public service."⁴

If an applicant is seeking approval of an Emergency Variance for a "breakdown condition" as defined in Rule 505.A, the Hearing Board must find that:

1. The occurrence constitutes a breakdown condition;
2. Continued operation of the source is not likely to create an immediate threat or hazard to public health or safety, and;
3. The continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national primary ambient air quality standard.

The Hearing Board must also provide Findings for Orders for Abatement:

The Hearing Board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is in violation of §41700 or §41701 of Health and Safety Code or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air. On its own motion, or upon the motion of the district board or the air pollution control officer, the hearing board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is in violation. As an alternative, the Hearing Board may issue an order for abatement pursuant to the stipulation of the air pollution control officer and the person or persons accused of violating §41700 or §41701, or any order, rule, or regulation prohibiting or limiting the discharge of contaminants into the air, without making the finding required under §45451 (a). The Hearing Board shall, however, include a written explanation of its action in the order for abatement.

³. A "Public Agency" is defined as any State Agency, Board or Commission, any County, City and County, regional agency, public district, or other political subdivision.

⁴. An "Essential Public Service" is defined as a prison, detention facility, police or firefighting facility, school, health care facility, landfill, gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

III. **Hearing Procedures**

A. **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 Hearing Board.

1. Announcement of pending matters;
2. Appearances of parties;
3. Opening statement of moving party;
4. Evidence produced by moving party;
5. Opening statement of responding party;
6. Evidence produced by responding party;
7. Public testimony;
8. Rebuttal evidence produced by moving party;
9. Surrebuttal evidence produced by responding party;
10. Closing argument of moving party;
11. Closing argument of responding party;
12. Board discussion and questions.
13. Matter decided, taken under submission or continued.

B. **Evidence**

1. Oral evidence shall be taken only on oath or affirmation. Written or documentary evidence shall be taken only if submitted in affidavit form and in accordance with Hearing Board procedures.
2. Each party shall have the right to introduce witnesses and examine evidence. Cross examination of witnesses shall only be allowed upon direct order of the Chair. The Chair may limit the scope of the cross examination as deemed necessary and appropriate.

3. Affidavits:

- a. At least ten days prior to the hearing, or to a continued hearing, any parties that propose to introduce an affidavit into evidence shall deliver a copy of such affidavit to all other parties together with a notice as provided in Section 3b (below). Unless another party, within seven days after such mailing or delivery, delivers to the proponent a request to cross-examine an affiant, the right to cross examine such affiant by such party is waived. If an opportunity to cross examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.
- b. The notice referred to in section III.B.3.a shall be substantially in the following form:

The accompanying affidavit of [name of affiant] will be introduced as evidence at the hearing in [title of proceeding]. [Name of affiant] will not be called to testify in person and you will not be entitled to question the affiant unless you notify [name of proponent or attorney] at [address] that you wish to cross-examine. To be effective, your request must be delivered to [name of proponent or attorney] on or before [a date seven days after the date of mailing or delivering the affidavit to the opposing party].

- c. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may 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 other 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 extent that they are otherwise required by statute to be recognized at the hearing.
- d. 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 matters sought to be proved are otherwise established.
- e. Pursuant to Health and Safety Code Section 40828(a), 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 determination, provided however, that such testimony and evidence shall be relevant and material to

the matter being heard by the Hearing Board.

- f. Affidavits shall be in substantially the following form and shall contain the following affirmation and oath:

I, _____ (name), state:

_____ [set forth facts]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that, if sworn as a witness, I could competently testify to the foregoing.

_____ (Date and Place)

_____ (Signature and Title)

4. 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, referred to therein, 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.

C. **Withdrawals**

Pursuant to Rule 510, the petitioner may withdraw a petition at any time before submission of the case to the Hearing Board without a hearing or meeting of the Hearing Board. For all cases other than appeals by a member of the public, a petition shall be considered submitted to the Hearing Board after the Hearing Board has convened a formal hearing on the petition.

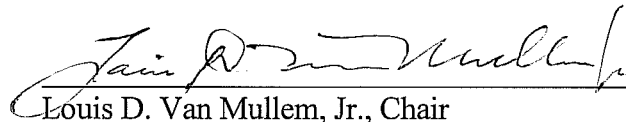
In the case of public member appeals, an appeal shall be considered submitted to the Hearing Board after the petition has been publicly noticed and the agenda has been released to the public. After a public member petition has been so submitted, the petitioner may file a written request for withdrawal of the action, or the parties may file with the Clerk a stipulation requesting withdrawal by the Hearing Board. The request must be received by the Clerk no later than 5:00 p.m. of the evening preceding the hearing. The Chair, or in his or her absence, the Vice Chair may approve a request for withdrawal. If neither the Chair nor Vice Chair approves the request for dismissal, the matter shall be considered by the full Hearing Board.

When the Clerk has obtained approval for a withdrawal of a public member appeal, the Clerk will notify the members of the Hearing Board and the other parties to the matter. In the event that the request for withdrawal is not approved, the Clerk will notify the party making the request. The Hearing Board, in its discretion, in furtherance of justice and for good cause, may allow the withdrawal of an action, or on its own motion, order an action dismissed.

IV. **Interpretation and Application of these Policies and Procedures**

- A. Noncompliance by the Hearing Board with those procedures and policies not mandated by state or federal legislation shall not invalidate any action taken by the Hearing Board, nor shall such noncompliance constitute a cause of action against the Hearing Board and/or Air Pollution Control District concerning any matter.
- B. All questions regarding the proper interpretation and application of these policies and procedures shall be resolved by the Hearing Board where interpretation of such questions is final and binding.

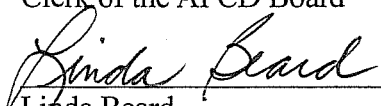
ADOPTED this 1st day of November, 2006.



Louis D. Van Mullem, Jr., Chair
Santa Barbara County Air Pollution Control District Hearing Board

ATTEST:

TERENCE E. DRESSLER
Clerk of the APCD Board



Linda Beard
Deputy Clerk of the Hearing Board

QUICK REFERENCE ATTACHMENTS

Amended: August 5, 2009

VARIANCE QUICK REFERENCE CHART

Type of Variances	Effective Time Span	Noticing Requirements	Further Considerations
EMERGENCY (E)	30 Day Maximum HSC § 42359.5	None HSC § 42359.5	**One Hearing Board member may issue. Cannot be issued to avoid the provisions of HSC 40824 & 42351 HSC § 42359.5
90-DAY (N)	90 Day maximum HSC § 40825	10 Day minimum to APCO, Districts within Air Basin, ARB, EPA and Petitioner HSC § 40825	** One Hearing Board member may hear. Six findings are required. HSC § 40825 & 42352
INTERIM (I) (For persons who submitted application for a variance and wish to operate in interim)	90 Day maximum or date of decision on the 90-Day or Regular application HSC § 42351(b)	Reasonable notice to APCO and Petitioner. Cannot be granted to avoid other notice requirements. HSC § 40824 & 42351(c)	** One Hearing Board member may hear. May be granted for “good cause” Cannot be granted after Regular hearing. HSC § 40824 & 42351(b)(c)
REGULAR (R)	1 year maximum unless schedule of increments of progress is included HSC § 42358	*30 Day minimum to APCO, Districts within Air Basin, District, ARB, EPA, Petitioner and any interested member of the public HSC § 40826	Public notice of hearing in at least one newspaper of general circulation. Six findings are required. HSC § 40826 & 42352
MODIFICATION OF FINAL COMPLIANCE DATE (EXTENSION)	Determined by Hearing Board	Same as Regular Variance HSC § 40826	Same as Regular Variance HSC § 40826 & 42352
MODIFICATION OF SCHEDULE OF INCREMENTS OF PROGRESS	Determined by Hearing Board	10 Days minimum to APCO, Air Basin, District, ARB, EPA and Petitioner HSC § 40825	**One Hearing Board member may hear. HSC § 40825
INTERIM AUTHORIZATION (Modifications to Schedule of Increments of Progress)	30 Day maximum HSC § 42351.5	Reasonable notice to APCO and Petitioner HSC § 40824	No more than one granted per application if modification of schedule **One Hearing Board member may hear. Cannot be used to extend final compliance date. HSC § 42351.5
PRODUCT VARIANCE	2 year maximum if Increments of Progress Schedule is included HSC § 42365 et. seq.	Notice according to type of variance (I, N, R, etc.) No Emergency variance allowed	Variance granted for and attached to a product (42366). Any conditions must be provided to end user (42368). No emergency product variances are allowed (42369[b]). Can initiate a rule change (42372[c]).

*Modified January 1, 1993 – Reduces 30-day notice to 15 days if District population is 750,000 or less. 15 Days applies for Santa Barbara County.

**Chairperson or designated Hearing Board member may hear if District population is 750,000 or less. Must be reheard by the Board within 10 days of decision if a member of the public objects.

NOTES:

HSC § 40862: The decision of Hearing Board shall include the reasons for the decision.

HSC § 42301.3(g): Can petition for a variance from requirement to install a/p control equipment if there is a delay not due to lack of due diligence on part of the applicant in permit approval.

HSC § 42350: A variance may not be obtained from the requirement for a permit to build, alter erect or replace. Title V sources may not be granted a variance from the requirement for a permit to operate or use.

HSC § 42351: A regular variance application must be filed before an interim variance can be granted. Good causes for granting an interim variance must be stated in the order. No interim shall be granted after a regular hearing has been held.

HSC § 42352: No variance can be granted unless the Hearing Board makes all the following findings:

1. In violation of HSC § 41701 or District Rules and Regulations
2. Due to conditions beyond the reasonable control of the petitioner, requiring compliance would, result in either
 - a. an unreasonable taking of property, or
 - b. the closing or elimination of a lawful business.
3. Closing or taking would not have a corresponding benefit in reducing air contaminants,
4. Petitioner has considered curtailing operations in lieu of applying for a variance,
5. During the variance, petitioner will reduce excess emissions to the maximum level feasible,
6. Petitioner must quantify or monitor excess emissions while variance is in effect, if requested by the District.

HSC § 42352.2: Considerations in determining whether petitioner has presented sufficient evidence.

HSC § 42353: The Hearing Board shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the district board, not more onerous. However, no variance shall be granted if the operation under a variance will result in a nuisance.

HSC § 42355: The Hearing Board can require the posting of a bond by the petitioner to assure performance of work/construction or repairs.

HSC § 42356: The Hearing Board may modify or revoke, by written order, any order permitting a variance.

HSC § 42358: Variance must specify an effective time and final compliance date. Variances over one year must have a schedule of increments of progress.

HSC § 42360: Copy of the order must be submitted to ARB within 30 days of granting the variance.

HSC § 42362: ARB can modify or revoke variance if, in its judgment, the compliance schedule is not as expeditious as practicable or the variance does not meet requirements of Article 2 of the Health & Safety Code.

HSC § 42366: Product variances are only available if in order to provide relief, the variance is granted for, and attached to, the product.

HSC § 42368: No “product” variance can be granted unless 5 specific findings are made.

HSC § 42369: No emergency product variance shall be granted.

This table is for quick reference only.

Please refer to the Health and Safety Code for complete variance information.

ABATEMENT ORDER REFERENCE CHART

Type of Abatement Orders	HSC Provisions	Noticing Requirements	Further Considerations
<p style="text-align: center;">ABATEMENT ORDER (A)</p>	<p>Hearing Board can issue on finding that a person is: in violation of HSC 41700 (NUISANCE) OR 41701 (OPACITY); operating without a permit; or violating district rules prohibiting or limiting air pollution. Petitioner is normally the APCO, but can also be the district board, or hearing board.</p> <p style="text-align: center;">HSC § 42450, 42451(a)</p>	<p>10 Day minimum notice to APCO, applicant and anyone requesting such notice. Must publish in at least one daily newspaper in circulation within the district.</p> <p style="text-align: center;">HSC § 40823</p>	<p>Can be issued if a threat of air contaminant release near schools exists. (Strict “cease and desist”.) Hearing Board determines effective time span. HSC § 42301.7(c)(2)</p> <p>Abatement Order can be conditional and requires a respondent to refrain from a particular act unless certain conditions are met. HSC § 42452</p> <p>The order shall not have the effect of granting a variance. HSC § 42451(b) and 42452</p>
<p style="text-align: center;">ABATEMENT ORDER Issued Pursuant to Stipulation (SA)</p>	<p>Abatement Order can be conditional and requires a respondent to refrain from a particular act unless certain conditions are met.</p> <p style="text-align: center;">HSC § 42451(b)</p>	<p style="text-align: center;">Same</p>	<p style="text-align: center;">Same</p>
<p style="text-align: center;">CONDITIONAL ABATEMENT ORDER - ACTS AS A VARIANCE</p>	<p>Abatement Order may have the effect of granting a variance if all of the conditions for granting a variance are met, including findings.</p> <p style="text-align: center;">HSC § 42452</p>	<p>Depending on duration of the order – 10-day and *30-day notice required as prescribed for 90-Day and Regular variance orders.</p> <p style="text-align: center;">HSC § 40825 and 40826</p>	<p>Six Findings required – cannot have the effect of permitting a variance unless all conditions for a variance are met.</p> <p style="text-align: center;">HSC § 42301.7(c)(2), 42451(b) and 42452</p>

*Modified January 1, 1993 – Reduces 30-day notice to 15 days if District population is 750,000 or less. 15 Days applies for Santa Barbara County.

§ 42352. Findings Prerequisite to Grant of Variance

- (a) No variance shall be granted unless the hearing board makes all of the follow findings:
1. That the petitioner for a variance is, or will be in violation of Health and Safety Code §41701, or any rule, regulation or order of the district.
 2. That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (a) an arbitrary or unreasonable taking of property, or (b) the practical closing or elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, “essential public service” means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.
 3. That the closing or taking would be without a corresponding benefit in reducing air contaminants.
 4. That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
 5. During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
 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 emission levels to the district pursuant to a schedule established by the district.
- (b) As used in this § “public agency” means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.