

**LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT**

**RULE 5:4 GENERAL ADMINISTRATIVE REQUIREMENTS**

**Adopted 10/01/1971, Amended 03/13/2012**

1. **Filing Petition:** Application for long term variances, permit appeals and accusations for abatement orders or permit revocations shall be initiated by filing of the original and 5 copies of the petition with the Clerk of the Hearing Board of the DISTRICT. If the Petitioner is the APCO, a copy of the petition shall be served upon the party named in the petition. Service may be made in person or by mail, and service may be proven by written acknowledgment of the person served or by the affidavit of the person making the service. A fee, as specified in DISTRICT Rule 5:11 Fees Relating to Hearing Board Matters at the time of filing of a petition.
  
2. **General Contents of Petition:** Every petition shall state:
  - 2.1 The name, address and telephone number of the petitioner, and the person authorized to receive service of notice, if different.
  - 2.2 Whether the petitioner is an individual, partnership, corporation, the names of the partners, if a partnership or other entity, and the names and addresses of the officers, if a corporation; and the names and addresses of the person in control, if some other entity.
  - 2.3 The name, location, and type of business or activity concerned.
  - 2.4 A brief description of the article, machine, equipment or other contrivance, if any involved.
  - 2.5 All petitions shall be typewritten, double spaced, on letter size paper on one side only, leaving a margin at least on inch at the top and left side of each sheet.
  - 2.6 A petition for variance shall be made on forms provided by the Air Pollution Control District.
  - 2.7 Unless the state, or a county, city, or district, or an officer of such in his official capacity is an applicant, the application shall be verified. The form of verification, executed within this State, may be substantially the following form:

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

Date at \_\_\_\_\_, on \_\_\_\_\_

Signature \_\_\_\_\_

- 2.8 The nature of the petition which is being filed, that is:
  - 2.8.1 Variance Petitions
    - 2.8.1.1 Emergency variance - 30 day maximum
    - 2.8.1.2 General variance - 90 days or less (Short - term variance)

- 2.8.1.3 General variance - greater than 90 days (Regular variance)
- 2.8.1.4 Interim variance
- 2.8.1.5 Interim authorization to modify a variance specifying increments of progress
- 2.8.1.6 Variance revocation
- 2.8.1.7 Variance modification
- 2.8.1.8 Product Variance
- 2.8.2 Permit Action Petitions
  - 2.8.2.1 Review of permit denial
  - 2.8.2.2 Petition by an aggrieved party
  - 2.8.2.3 Review of permit suspension
  - 2.8.2.4 Petition to revoke a permit
- 2.8.3 Rehearing Petitions
  - 2.8.3.1 Rehearing of a decision
- 2.8.4 Abatement Order Petitions

3. **Failure to Comply with Rules:** No petition shall be accepted by the Hearing Board which does not comply with these Rules relating to the filing, content, and service of petitions unless the chairperson 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 chairperson 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.
4. **Amendment of Application:** The Hearing Board may in its discretion, upon stipulation or ten days notice, permit the amendment of an application either before or submission on such terms and conditions as it may determine to be proper. The Hearing Board may continue the hearing, or reopen the hearing if the case has been submitted, whenever an amendment to an application makes it necessary to do so.
5. **Response to Application:** The Hearing Board may require the Air Pollution Control Officer to file a response to any or all applications in such a manner as the Hearing Board may from time to time direct. Any such response shall be served on the applicant and any other parties.
6. **Withdrawal of Petition:** The petitioner may, by giving notice to the Hearing Board, withdraw the petition at any time prior to the time set for a hearing thereof, without a hearing or meeting of the Hearing Board. The Hearing Board shall notify all interested persons of such withdrawal.
7. **Place of Hearing:** Hearings shall be held at a place designated by the Hearing Board.
8. **Notice of Hearing:** The Hearing Board shall give notice of the time and place of hearing either by personal service or by mail. If either the identity or address of any person entitled to notice is unknown, notice shall be served as specified in Section 6061 of the Government Code. Notice shall be given to all parties to the petition. The notice shall state the place where the petition and related information,

including, but not limited to proposed conditions or increment of progress schedule, are available for inspection. Additional noticing requirements are indicated in subsequent Sections based on the type of petition filed.

**9. Depositions and Request for Admission of Facts and Genuineness of Documents:** For the purpose of discovery or for use as evidence in any proceedings, or for both purposes, and in addition to the methods of discovery provided in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, any party may conduct discovery as to any other party, including an employee or agent of a party, by any of the following methods:

- 9.1 Depositions upon oral examination; or
- 9.2 Written request for admission of the genuineness of any relevant documents described in the request, or of the truth of any matter of fact set forth in the requests.
- 9.3 Inspection and production of documents, tangible things, land, and other property.

**10. Procedures and Practices:** Procedures and practices for taking of depositions, or for admission of facts, and of genuineness of documents shall follow, so far as compatible, Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code and the procedures and practices of the Code of Civil Procedure, Sections 2025.010 through 2027.010, 2033.010 through 2033.420, and 2031.010 through 2033.420. The Hearing Board, in its discretion, may decide disputes between the parties concerning the availability or conduct of discovery and may set a schedule for discovery in any proceeding.

**11. Conduct of Hearing**

- 11.1 Hearings on Emergency Variances may be heard by a single Hearing Board member at the discretion of the Hearing Board Chair.
- 11.2 Hearings on Short-term Variances and Interim Variances may be heard by a single Hearing Board member at the discretion of the Hearing Board Chair. If any 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 10 (ten) days of the decision.
- 11.3 Hearing on applications for Regular Variances, Abatement Orders, permit revocations and permit appeals as well as any matter which does not qualify for a hearing before one board member shall be heard by a quorum of the full Hearing Board, sitting as a single body at the DISTRICT office or at such other place as the Hearing Board shall direct and as law may allow.

**12. Subpoenas**

- 12.1 The Chairperson of the Hearing Board shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance of witnesses or production of documents at the hearing.
- 12.2 Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum.

- 12.3 After the hearing has commenced the Hearing Board may issue subpoenas and subpoenas duces tecum.
- 12.4 The process pursuant to Section 3.8.1 above shall be valid for all parts of the state and shall be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure.
- 12.5 No witness shall be obliged to attend at a place out of the county in which he resides unless the distance is less than 150 miles from his place of residence, except that the Hearing Board, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

**13. Representation by Counsel:** A party in any Hearing Board proceeding may be represented by legal counsel, but this is not mandatory. If a party elects to proceed without legal counsel, this does not entitle such party to a rehearing. A party requesting relief in a Hearing Board proceeding must appear in person or by legal counsel or other qualified representative. Appearing without counsel does not relieve the party from any requirement of the Rule.

**14. Affidavits**

- 14.1 At any time ten (10) or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit, which he proposes to introduce in evidence, together with proper notice.
- 14.2 Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his or her right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally.
- 14.3 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.
- 14.4 Notice shall be given substantially in the following form: "The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him or her unless you notify (here insert name of proponent or his or her attorney) at (here insert address) that you wish to cross-examine him or her. To be effective, your request must be mailed or delivered to (here insert name of proponent or his or her attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party.)"

**15. Rules of Evidence:**

- 15.1 The hearing need not be conducted according to technical rules relating to evidence and witnesses.
- 15.2 Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
- 15.3 Hearsay evidence may be used but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- 15.4 The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
- 15.5 Irrelevant and unduly repetitious evidence shall be excluded. The Hearing Board in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, or confuse the issues, or where matter sought to be proved are otherwise established.
- 15.6 The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to the matter under consideration, and the Hearing Board shall consider such testimony in making its decision. Such testimony shall be relevant to the matter being heard, shall be under oath, and shall be subject to cross examination and any appropriate evidentiary objections, the same as any other testimony.

**16. Failure to Appear**

- 16.1 Where an Applicant for a variance fails to appear for a hearing after notice of time and place has been given all parties, the Hearing Board may decide the matter upon the application and any briefs of the absent party, and any other evidence received, if any, or dismiss the application.
- 16.2 Nothing herein shall be construed to deprive the party of the right to make any showing by way of mitigation.

**17. Evidence**

- 17.1 Oral evidence shall be taken only on oath or affirmation.
- 17.2 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 the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to present rebuttal evidence. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.
- 17.3 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 type of evidence upon 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 admitted

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. Irrelevant and unduly repetitious evidence shall be excluded.

- 17.4 The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements at the hearing; however, it is desirable that written statements be submitted to the Hearing Board five (5) days before the hearing. Statements need not conform to formal rules of evidence. The chairperson may impose reasonable limits on the duration of oral presentations.
- 17.5 As deemed necessary by the Hearing Board or Hearing Board member, the Hearing Board may examine any person relevant to a particular hearing.
- 18. Record of Hearing:** Each Hearing Board hearing shall be electronically recorded by the Clerk of the Hearing Board. Any party to the hearing may arrange for a court reporter at the party's expense. The DISTRICT shall retain tapes for at least three (3) years. When a party requests a court reporter, the party shall make a copy of the transcript available for the Hearing Board or Hearing Board member conducting the hearing (Hearing Officer).
- 19. Preliminary Matters:** Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, permitting amendments thereto and other preliminary matters not determinative of the merits of the case may be determined by the Chairperson or any two members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.
- 20. Continuances:**
- 20.1 Authority for scheduling cases before the Hearing Board or continuing cases before the Hearing Board rests with the Chairperson of the Hearing Board or, in his absence, the Vice Chairperson. The Chairperson or any two members of the Hearing Board shall grant any continuance of up to 45 days, which is concurred in by petitioner, the APCO and by all other persons who are party to the action. This action may be taken without a meeting of the Hearing Board and without prior notice. This does not preclude the Hearing Board from continuing a petition for a period longer than 45 days during or after the duly noticed hearing.
- 20.2 Requests for continuance of cases scheduled before the Hearing Board must be received by the Clerk of the Hearing Board 72 hours prior to the time set for the hearing, excluding Sundays and Holidays. For hearings which are set for a Monday, the request must be received by the Clerk of the Hearing Board prior to 3:00 p.m. of the preceding Thursday.
- 20.3 It is the responsibility of the parties before the Hearing Board to notify the Clerk of the Hearing Board when they request continuance of a hearing.
- 20.4 Continuance requests made after the required 72 hour period will be ruled on by the Hearing Board during the scheduled hearing.

**21. Prehearing Conference:**

- 21.1 For the purposes of expediting hearings, reducing expense and delay in Hearing Board procedures, eliminating excessive presentation of non-controversial matters, defining disputed issues, deciding discovery questions, making evidentiary rulings which will streamline the conduct of hearings, or deciding any preliminary matter not determinative of the merits, the Hearing Board may conduct a pre-hearing conference.
- 21.2 Any party or any Hearing Board member may request a prehearing conference by submitting a written request prior to any hearing in the case to the Clerk.
- 21.3 The Chairman shall then instruct the Clerk to set a prehearing conference either just prior to a Hearing Board meeting at some other specified date and time and to give written notice of such setting to the parties and to all Hearing Board members.

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

**23. Official Notice. Putting Noticed Matter upon Record: Manner of Refutation:**

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

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

**25. Stipulations:**

- 25.1 The parties to an action may stipulate to any matter which is in controversy, whether factual or an issue of law, either orally or in writing.
- 25.2 A stipulation is an agreement by the parties as to the existence of certain facts, the manner in which the law applies to the facts in the case, or the manner in which the controversy should be resolved.
- 25.3 While a stipulation expresses the agreement of the parties, it is not binding upon the Hearing Board, which can either issue a decision in accordance with the stipulation or take any other action which is warranted by the evidence. A stipulation as to factual matters, however, conclusively establishes facts stipulated to and removes such facts from issue.

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

**26. Validity of Class Action:**

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

**27. 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.

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

**28. Decision:** A quorum of not less than three members of the Hearing Board is required for all decisions. No decision shall be made except in the presence of a quorum and upon affirmative vote by at least three members of the Hearing Board. The decision shall be in writing, served and filed within 30 days after signature by the Hearing Board members and shall contain: a brief statement of facts found by the Hearing Board to support the findings required in Rules 5:5 Emergency Variances, 5:6 Variances Other Than Emergency Variances, 5:7 Product Variances, and 5:8 Petitions Regarding Permits, a determination of the issues presented, and the Order of the Hearing Board. A copy shall be mailed or delivered to APCO, the petitioner and to every person who has appeared as a party in person or by counsel at the hearing. Decisions granting, modifying, or otherwise affecting a variance shall be mailed to the California Air Resources Board (CARB) within 30 days after signature by the Hearing Board members.

29. **Effective Date of Decision:** The decision shall become effective upon affirmative vote of the Hearing Board unless otherwise specified.
30. **Appeal:** Any appeal of the decision shall proceed and shall be governed by the provisions of Health and Safety Code section 40864, including, but not limited to, the applicable time for appeal and the costs of preparation of the record.