

REGULATION VI – PROCEDURE BEFORE THE HEARING BOARD

RULE 600. GENERAL

Adopted: 09/05/74

This regulation shall apply to all hearings before the Hearing Board of the Great Basin Unified Air Pollution Control District.

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RULE 601. FILING PETITIONS

Adopted: 10/31/77 Revised: 04/24/91

Request for hearing shall be initiated by the filing of a petition in triplicate with the Clerk of the Hearing Board and the payment to said Clerk of a filing fee pursuant to Rule 306, after service of a copy of the petition has been made on the Air Pollution Control Officer, and one (1) copy on the holder of the permit or variance, if any involved. Service may be made in person or by mail and service may be approved by written acknowledgement of the person served or by the affidavit of the person making the service.

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RULE 602. CONTENTS OF PETITIONS

Adopted: 09/05/74

Every petition shall state:

- A. The name, address and telephone number of the petitioner, or other person authorized to receive service of notices.
- B. Whether the petitioner is an individual, co-partnership, corporation or other entity, and names and addresses of partners, if a co-partnership; names and addresses of the managing officers, if a corporation; and the names and addresses of the persons in control, if other entity.
- C. The type of business or activity involved in the application and the street address at which it is conducted.
- D. 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:
- E. The section or rule under which the petition is filed, that is, whether petitioner desires a hearing:
 - 1. To determine whether a permit shall be revoked or suspended or reinstated;
 - 2. For an emergency variance;
 - 3. For a short term variance;
 - 4. For a regular variance and approval of a compliance schedule;
 - 5. For an interim variance in conjunction with a petition for a short or regular term variance;
 - 6. For a variance and/or approval of a compliance schedule for a rule not yet effective;
 - 7. To revoke or modify a variance; and
 - 8. To review the denial or conditional granting of an authority to construct or permit to operate under Rule 214 of these Rules and Regulations.
- F. 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 this authority to sign.
- G. Petitions for revocation of permits shall allege in addition the rule under which permit was granted, the rule or section which is alleged to have been violated together with a brief statement of the facts constituting such alleged violations.
- H. Petitions for reinstatement of suspended permits shall allege in addition the rule under which the permit was granted, the request and alleged refusal which formed the basis for

such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent, and, if so, when it will be furnished.

- I. All petitions shall be typewritten, double spaced, on legal or letter size paper, on one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.

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RULE 603. PETITIONS FOR VARIANCES

Adopted: 09/05/74

In addition to the matters required by Rule 602, petitions for variance 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. Except in a petition for an interim or emergency variance, a final compliance date specifying when petitioner will be in compliance with the section or rule from which a variance is sought;
6. If the final compliance date required in subsection (E) is one year or more after the date set for hearing (other than the hearing for an emergency or interim variance) then petitioner shall attach to his petition a proposed schedule of increments of progress as defined by Rule 106;
7. Both the advantages and disadvantages to the residents of the district resulting from requiring compliance or resulting from granting a variance; and
8. Whether or not operations under such variance, if granted, would constitute a nuisance.

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RULE 604. APPEAL FROM DENIAL

Adopted: 09/05/74

A petition to review a denial or conditional approval of an authority to construct or permit to operate shall, in addition to the matters required by Rule 602, set forth a summary of the application or a copy thereof and the alleged reasons for the denial or conditional approval and the reasons for appeal.

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RULE 605. FAILURE TO COMPLY WITH RULES

Adopted: 09/05/74

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 three 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 three members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

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RULE 606. ANSWERS

Adopted: 09/05/74

Any person may file an answer within 10 days after service. All answers shall be served the same as petitions under Rule 601.

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RULE 607. WITHDRAWAL OF PETITION

Adopted: 09/05/74

The petitioner may withdraw petition at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such withdrawal.

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RULE 608. PLACE OF HEARING

Adopted: 09/05/74

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

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RULE 609. NOTICE OF HEARING

Adopted: 09/05/74 Revised: 03/10/76

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 in the Health and Safety Code under Sections 40823 through 40827 inclusive.

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RULE 610. EVIDENCE

Adopted: 09/05/74

- A. Oral evidence shall be taken only on oath or affirmation.
- B. 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.
- 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.

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RULE 611. RECORD OF PROCEEDINGS

Adopted: 09/05/74

A record of all proceedings had before the Hearing Board shall be made. The record shall be prepared in accordance with one of the following methods:

1. A written summary of all the evidence, testimony and proceedings had and presented at the hearing shall be made by a person designated by the Hearing Board for that purpose; or
2. A tape recording may be made of the proceedings; or
3. Any interested person, including the District, may at his own cost provide a certified shorthand reporter satisfactory to the Hearing Board who shall prepare a verbatim transcript of all the evidence, testimony and proceedings had and presented at the hearing.

The Hearing Board may require that the original and one copy of such transcript, each certified to by the reporter as to its accuracy, be filed with the Hearing Board within 30 days from the closing date of the hearing unless required by the Board prior to that time.

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RULE 612. PRELIMINARY MATTERS

Adopted: 09/05/74

Preliminary matters such as setting a date for hearings, granting continuances, approving petitions for filing, allowing amendments, issuing subpoenas, and other preliminary rulings not determinative of the merits of the case may be made by the Chairman or any three members of the Hearing Board prior to that time.

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RULE 614. CONTINUANCES

Adopted: 09/05/74

The Chairman or any three members of the Hearing Board shall grant any continuance of 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.

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RULE 615. DECISION

Adopted: 09/05/74

The decision shall be in writing, served and filed within 30 days after submission of the cause by the parties thereto and shall contain 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. A copy shall also be mailed to the Air Resources Board and interested parties within 30 days.

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RULE 616. EFFECTIVE DATE OF DECISION

Adopted: 09/05/74

The decision shall become effective 15 days after delivery or mailing a copy of the decision, as provided in Rule 615, or the Hearing Board may order that the decision shall become effective sooner.

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RULE 617. EMERGENCY VARIANCE

Adopted: 07/20/77 Revised: 01/18/79, 06/25/79

- A. If the breakdown conditions will either require more than twenty-four (24) hours to correct or persists longer than the end of the production run (except for continuous monitoring equipment, for which the period shall be ninety-six (96) hours), the owner or operator may, in lieu of shutdown, file a petition, pursuant to Rule 601, for an emergency variance.
- B. Upon receipt of the petition for an emergency variance, the Air Pollution Control Officer shall contact the Chairperson of the hearing board, or other designated members of the hearing board and make a recommendation to grant or deny emergency variance, and the owner or operator of the source shall be entitled to present testimony or evidence. The burden shall be on the owner or operator to establish that a breakdown condition exists. Thereafter, the Chairperson or other designated members of the hearing board may, without notice or hearing grant or deny an emergency variance. Reasonable conditions may be included in the variance. The Chairperson or other designated members of the hearing board shall, within five (5) working days, issue a written order confirming the decision, with appropriate findings.
- C. No emergency variance shall be granted unless the Chairperson or other designated members of the hearing board determines that:
1. The occurrence constitutes a breakdown condition;
 2. Continued operation is not likely to create an immediate threat or hazard to public health or safety;
 3. The requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met; and
 4. The continued operation in a breakdown condition will not interfere with the attainment or maintenance of the national ambient air quality standards.
- D. At any time after an emergency variance has been granted, the Air Pollution Control Officer may request that the Chairperson or designated members of the hearing board reconsider and revoke, modify or further condition the variance if the Air Pollution Control Officer has good cause to believe that:
1. Continued operation is likely to create an immediate threat or hazard to public health or safety;
 2. The owner or operator is not complying with all applicable conditions of the variance;
 3. A breakdown condition no longer exists; or
 4. Final compliance is not being accomplished as expeditiously as practicable.

The procedures set forth in paragraph B shall govern any further proceedings conducted under this subparagraph.

- E. An emergency variance shall remain in effect only for as long as necessary to repair or remedy the breakdown condition, but in no event after a regularly noticed hearing to consider an interim or 90 day variance has been held, or fifteen (15) days from the date of the subject occurrence, whichever is sooner.
- F. An emergency variance shall be exempt from filing fees as required by Rule 601.

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