REGULATION VIII - ORDERS FOR ABATEMENT

RULE 800. GENERAL

Adopted: 09/05/74

Notwithstanding Rule 600, this regulation shall apply to all hearings on orders for abatement before the Air Pollution Control Board of the Great Basin Unified Air Pollution Control District.

RULE 801. ORDER FOR ABATEMENT

Adopted: 09/05/74

In accordance with Health and Safety Code Section 42450, the Air Pollution Control Board, when petitioned as provided herein, is authorized and directed to notice and hold hearings for the purpose of issuing orders for abatement. The Air Pollution Control Board, in holding hearings on the issuance of orders for abatement shall have all powers and duties conferred upon it by Part 1 of Division 26, in the California Health and Safety Code.

RULE 802. FILING PETITIONS

Adopted: 09/05/74

Requests by the Air Pollution Control Officer for a hearing on an order for abatement shall be initiated by the filing of the original and two copies of the petition with the Clerk of the Air Pollution Control Board. One copy of the petition will then be served upon the person against whom the order for abatement is sought (the respondent). Service may be made in person or by mail, and service may be proved by written acknowledgement of the person served or by the affidavit of the person making the service.

RULE 803. CONTENTS OF PETITION

Adopted: 09/05/74

The petition for order for abatement shall contain the following information:

- A. The name, address and telephone number of the respondent.
- B. The type of business or activity involved and the street address at which it is conducted.
- C. A brief description of the article, machine, equipment, or other contrivance, if any, involved in the violation emission.
- D. The section or rule which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation. The permit status and history of the source sought to be abated may be included in the petition. A proposed order for abatement may also be included. All petitions shall be typewritten, double-spaced, on letter-size paper (8 I/2 inches by 11 inches) on one side of the paper only, leaving a margin of at least one inch at the top and each side of the paper.

RULE 804. SCOPE OF ORDER

Adopted: 09/05/74

An order for abatement issued by the Air Pollution Control Board shall include an order to comply with the statute or rule being violated. Such order may provide for installation of control equipment and for a schedule of completion and compliance. As an alternative to an order to comply, the Air Pollution Control Board may order the shutdown of any source of emissions which violates any statute or rule. An order for abatement may also include a directive to take other action determined appropriate to accomplish the necessary abatement.

RULE 805. FINDINGS

Adopted: 09/05/74

No order for abatement shall be granted unless the Air Pollution Control Board makes all of the following findings:

- A. That the respondent is in violation of the California Health and Safety Code, or of any rule or regulation of the Air Pollution Control District;
- B. That the order of abatement will not constitute a taking of property without due process of law; and
- C. That if the order for abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

RULE 806. PLEADINGS

Adopted: 09/05/74

Any person may file a written answer, other responsive pleading, memorandum, or brief not less than five days before the hearing. Said documents shall be served the same as petitions under Rule 802.

RULE 807. 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 or privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

RULE 808. FAILURE TO COMPLY WITH RULES

Adopted: 09/05/74

The Clerk of the Air Pollution Control Board shall not accept for filing any petition which does not comply with these rules relating to the form, filing and service of petitions unless the Chairman or any two members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The Chairman or any two members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

RULE 809. WITHDRAWAL OF PETITION

Adopted: 09/05/74

The Air Pollution Control Officer may withdraw his petition at any time before submission of the case to the Board without a hearing or meeting of the Air Pollution Control Board. The Clerk of the Air Pollution Control Board shall notify all interested persons of such withdrawal.

RULE 810. PLA0 Adopted: 09/05/74 PLACE OF HEARING

All hearings shall be held at the time and place designated by Air Pollution Control Officer.

RULE 811. NOTICE OF HEARING

Adopted: 09/05/74

The Clerk of the Air Pollution Control Board shall mail or deliver a Notice of Hearing to the respondent and to any person entitled to notice under applicable provisions of Division 26 of the Health and Safety Code, not less than 10 days before the date of hearing.

RULE 812. PRELIMINARY MATTERS

Adopted: 09/05/74

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the Chairman or any two members of the Air Pollution Control Board without a hearing or meeting of the Hearing Board and without notice.

RULE 813. OFFICIAL NOTICE Adopted: 09/05/74

The Air Pollution Control Board may take official notice of any matter which may be judicially noticed by the courts of this State.

RULE 814. CONTINUANCE

Adopted: 09/05/74

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

RULE 815. ORDER AND DECISION

Adopted: 09/05/74

The decision shall be in writing, served and filed within 15 days after submission of the cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issues presented and the order of the Air Pollution Control Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the respondent, and to every person who has filed an answer or other pleading or who has applied as a party in person or by counsel at the hearing.

RULE 816. EFFECTIVE DATE OF DECISION

Adopted: 09/05/74

The decision shall become effective 15 days after delivering or mailing a copy of the decision, as provided in Rule 814, or the Air Pollution Control Board may order that the decision shall become effective sooner.

RULE 817. 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.