



AIR POLLUTION CONTROL DISTRICT

POLCY: STAFF SUPPORT FOR HEARING BOARD

DATE: June 18, 1986; November 23, 1999;

Revised September 6, 2022

POLICY NUMBER: 10

REFERENCES: Health and Safety Code Sections §40800 – 40865, §42302, 6, 7, and 9, §42451 – 42452; Government Code Sections 11500 – 11528; APCD Rules 111, 206B.3 and C.7, 211, 301 D.2, 305, and Hearing Board Procedures of Imperial County APCD Dated July 21, 2021.

GENERAL:

The Imperial County Air Pollution Control District Hearing Board is composed of five members appointed by the District Board (ex officio Board of Supervisors). The Hearing Board operates pursuant to the provisions of the California Health and Safety Code and Procedures that the Hearing Board adopts. The Hearing Board Chairman and Clerk are appointed by the Hearing Board.

1. District Staff shall extend courtesy and assistance to the Hearing Board and each of its members in the performance of their official duties.
2. Staff shall take necessary steps to ensure that the due process intended for the public and the District relating to Hearing Board procedures will be provided. Toward this end, the following are to be used, but only to the extent that they are not modified or superseded by actions of the Hearing Board itself:

Attachment A: Designation of "Clerk of the Hearing Board" and Stipends for Hearing Board Members.

Attachment B: Hearing Board Procedures of the Imperial County Air Pollution Control District (Revised May XX, 2022)

Approved


Belen Lopez
Air Pollution Control Officer

IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT

POLICY NUMBER 10 – ATTACHMENT A

CLERK OF THE HEARING BOARD

GENERAL:

An Air Pollution Control Division Manager, usually the Compliance Division Manager, shall perform the duties and assume the responsibilities of the Clerk of the Hearing Board until such a time as the Hearing Board shall appoint some person to that position, or in case of a vacancy in that position.

STIPENDS FOR HEARING BOARD MEMBERS

It is the policy of the Imperial County Air Pollution Control District to pay a stipend when members of the Air Pollution Hearing Board attend meetings. Alternates shall be considered members of the Hearing Board. Stipends shall be paid at a rate of forty-five dollars (\$45) per meeting. For the purpose of paying the stipend, the following shall constitute a meeting:

1. A meeting of the Hearing Board, conforming to the Ralph M. Brown Act (Govt. Code §54950 et. seq.) shall constitute a meeting for which the stipend may be paid.
2. A teleconference or other hearing by the Hearing Board for the purpose of hearing a petition for an Emergency or Interim Variance shall constitute a meeting for which the stipend may be paid.
3. The assembly of the Hearing Board Chair or other Hearing Board member for the purpose of executing the official order granting or denying a Variance shall constitute a meeting for which the stipend may be paid.
4. Attendance by a Hearing Board member at a workshop for the purpose of mandatory training shall constitute a meeting for which the stipend may be paid as long as the Hearing Board member does not receive a stipend or other payment for attendance at such workshop.



**HEARING BOARD
of the
IMPERIAL COUNTY
AIR POLLUTION CONTROL DISTRICT**

ATTACHMENT B

Revised September 6, 2022

**Imperial County Air Pollution Control District
150 South Ninth Street
El Centro, CA 92243
Phone (442) 265-1800
Fax (442) 265-1799**

HEARING BOARD PROCEDURES
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT

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**HEARING BOARD PROCEDURES
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT
ARTICLE 1. General**

- 1.1 Location of Office.** The office of the Hearing Board of the Imperial County Air Pollution Control District is located at 150 South Ninth Street, El Centro, California 92243.
- 1.2. Definitions.** For the purpose of the rules and regulations contained in these Rules:
- 1.2.a.** "Hearing Board" means the Hearing Board of the Imperial County Air Pollution Control District.
- 1.2.b.** "District" means the Imperial County Air Pollution Control District.
- 1.2.c.** "Air Pollution Control Officer" means Air Pollution Control Officer of the Imperial County Air Pollution Control District.
- 1.2.d.** "Clerk" means the Clerk of the Hearing Board of the Imperial County Air Pollution Control District.
- 1.2.e.** "Applicant," "Respondent," "Appellant," or "Party" include an authorized agent of such person, unless the context otherwise requires.
- 1.2.f.** "Action" means any proceeding on an application for variance, appeal, abatement order or permit revocation.
- 1.2.g.** "Class Action" means a proceeding brought by one or more persons, firms, or corporations on behalf of themselves and others, all of whom have an ascertainable common interest in the matter and would be affected similarly by any order of the Hearing Board, and in which there is a question of a common or general interest to such persons and in which the parties are numerous and it is impracticable to bring them all before the Hearing Board.
- 1.2.h.** "Party" includes the District, the applicant, the respondent, the appellant, and any person, other than an officer or an employee of the District in his or her official capacity, who has been allowed to appear in the proceeding, except that a member of the public appearing under 5.8.f shall not be deemed a "party."
- 1.2.i.** "Appeared" A party has appeared in an action before the Hearing Board when the party has filed an application, appeal, petition of any kind, or notice of defense, or when the party has otherwise responded to a petition.
- 1.2.j.** "Interim Variance" means a temporary variance which may be granted pending the decision of the Hearing Board on the full variance application. An interim variance may be granted by the Hearing Board only upon a showing of good cause under the California Health & Safety Code Section 42351 and may not extend beyond the date of the decision of the Hearing Board on the full variance

application or 90 days from the date of issuance of the interim variance, whichever occurs first.

- 1.2.k. "Short Term Variance"** means a variance or series of variances totaling not more than 90 days.
- 1.2.i. "Summary Disposition"** means the disposition of a matter without requiring the attendance of the Applicant at any hearing thereon.
- 1.2.m. "Variance"** is an authorization by the Hearing Board to permit for a specified limited period of time some act contrary to the requirements specified by these rules and regulations. Any person who holds a valid Permit to Operate may apply to the Hearing Board for a variance. A variance will allow a source to continue operating while taking steps to achieve compliance with the rule, regulation or order in question. While a variance may be generally be granted from any rule or regulation of the District, the statutory provisions of the State Health and Safety Code prohibit the granting of a variance from the requirement to obtain an Authority to Construct (Rule 201.A), and for public nuisance (Rule 407). Where the subject of the variance application involves a request for temporary relief from the provisions of a District Rule or Regulation due to recurring conditions or problems, a variance may not be granted unless the source can demonstrate that the conditions or problems are beyond their reasonable control and that all other required findings can be made.
- 1.2.n. "Breakdown"** is an unforeseeable failure or malfunction of 1) any air pollution control Equipment, or related operating Equipment, which causes a violation of any emission limitation or restriction prescribed by the ICAPCD Rules and Regulations, or by State law, or 2) any monitoring Equipment, where such failure or malfunction is not the result of neglect or disregard of any air pollution control law or rules or regulations, is not intentional or the result of negligence, is not the result of improper maintenance, does not constitute a nuisance, and is not a recurrent breakdown of the same Equipment.
- 1.3. Conformance with State Law.** In accordance with Health & Safety Code Section 40807, these Procedures shall be deemed to incorporate provisions of the rules of administrative adjudication by state agencies in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code of the State of California, as written or as amended, after the effective date of these Procedures, as necessary to conform, insofar as practicable, to said provision of the Government Code.
- 1.4. Conformance with Federal Law.** Proceedings conducted by the Hearing Board in order to implement the Clean Air Act, Title 42 (commencing with Section 7401), United States Code, shall be governed by these Procedures and by pertinent procedural requirements established by the California Air Resources Board or the United States Environmental Protection Agency.

ARTICLE 2. Variances

2.1. Form of Papers. Papers filed with the Hearing Board shall be typewritten or printed upon paper 8 ½ x 11 inches in size, on one side of the paper, and double-spaced. The heading for variance applications shall be as follows:

HEARING BOARD
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT
PETITION FOR HEARING

NUMBER _____

Name and Address of Applicant:

2.2. Application for Variance. This article shall apply to the application for a variance, or the revocation or modification of an existing variance. The application shall be submitted using a variance application form provided by the District, and shall be prepared as described below:

2.2.a. An application for variance shall be signed by the applicant or its authorized agent, or by the representative of a class who has submitted a class action application, and shall state the grounds for the application and the specific section(s) of the regulations of the District, as well as the specific dates, for which a variance is requested.

2.2.b. An application for variance shall contain a concise statement of the facts constituting the reasons for the application. If a class action is asserted, facts support the need for class relief shall be stated. The application shall also identify briefly the basis for each of the findings under Health & Safety Code Section 42352.

2.2.c. An application shall contain a description of the property sufficient for its identification, the name of the owner thereof and the nature of the title or interest of the applicant. A map showing the location of the property and a line diagram of the process, where applicable, shall be included with the application.

2.2.d. An application should state, to the extent possible, the number and types of emissions points and measured values or estimates of the quantity and nature of emissions. The application should also state the estimated quantity of emissions in excess of the maximum allowed during the period of the requested variance.

2.2.e. An application for variance shall contain a statement of the "increments of progress" towards compliance proposed by applicant and shall include the following, as applicable:

2.2.e.1. The dates by which contracts for emission control systems or process modifications will be awarded or orders will be issued for

the purchase of component parts to accomplish emissions control or process modification;

- 2.2.e.2.** The date of initiation of onsite construction or installation of emission control equipment or process change;
 - 2.2.e.3.** The date by which onsite construction or installation of emission control equipment or process modification is to be completed;
 - 2.2.e.4.** Such additional increments of progress as may be necessary or appropriate to permit close and effective supervision of progress toward timely compliance; and
 - 2.2.e.5.** The date by which final compliance is to be achieved.
 - 2.2.f.** An application for variance shall include a statement of the applicant's evaluation as to whether the granting of the requested variance will adversely affect the attainment and maintenance of pertinent state and federal ambient air quality standards.
 - 2.2.g.** An application shall include a statement of whether or not the applicant intends to file additional written material.
 - 2.2.h.** An Application shall close with a request for a variance, which shall set forth the starting and ending dates and any condition of the desired variance. No variance relief will be granted for a period preceding the date of filing of an application for variance.
 - 2.2.i.** The Hearing Board may adopt a suggested form of Application for Variance and/or Interim Variance.
- 2.3. Application for Intervention.** Any person who claims that he or she has an interest relating to the subject of a proceeding, and that the disposition of the proceeding may impair or impede his or her ability to protect that interest, may file a written application for intervention in that proceeding. The application shall be timely, shall set forth the grounds and purpose of such intervention, and shall be served by mail or in person upon the parties to the proceeding. In exercising its discretion as to whether to grant or deny such an application, the Hearing Board shall consider whether intervention would unduly delay or prejudice the adjudication of the rights of the parties. In all cases involving permit regulations, an Application for Intervention filed by the permit applicant or permit holder shall be granted as a matter of right.
- 2.4. Response to Applications.** 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 who have appeared in the case.
- 2.5. Emergency Variance.**
- 2.5.a.** The procedures set forth in this Section are to be used in applying for an emergency variance when a breakdown condition exceeds the end of the production run or 24 hours, whichever is sooner; when vapor recovery system components are marked "Out of Order" pursuant to Health & Safety Code Section 41960.2; or when any other emergency, as determined by the Hearing Board, occurs under Health & Safety Code Sections 42359 and 42359.5.

- 2.5.b.** An applicant for an emergency variance is required to pay the appropriate filing fee, whether or not the requested variance relief is granted.
- 2.5.c.** An emergency variance shall remain in effect for up to thirty (30) days and shall not be granted when sought to avoid the public noticing provisions of H&SC §40824 or §40351. Emergency Variances following a District Rule 111 breakdown are limited to fifteen (15) calendar days. If additional time is needed, the petitioner may instead file for a 90-Day or Regular Variance.
- 2.5.d.** An applicant shall convey a request for an emergency variance to the Air Pollution Control Officer by telephone or in person. This initial request does not in itself constitute a variance and provides no assurance of protection from penalty action. However, if a variance is subsequently granted, it may become effective as early as the date and time of the initial request.
- 2.5.d.1** At the time of making the request for an emergency variance, the applicant shall explain in detail the grounds for the request, including such information as the foreseeability of the cause of the emergency and whether the applicant has used good maintenance practices.
- 2.5.d.2** Upon receipt of a request for an emergency variance, the Air Pollution Control Officer shall contact the chairperson of the Hearing Board, or other designated member(s) of the Hearing Board, to establish a time and place for consideration of the request. The Air Pollution Control Officer shall inform the owner or operator of the source of such time and place. During consideration of the emergency variance the Air Pollution Control Officer shall recommend whether an emergency variance should be granted, and the owner or operator of the source shall be entitled to present testimony and evidence. The burden shall be on the owner or operator to establish that a breakdown condition exists.
- 2.5.d.3.** The Hearing Board member who receives the request and recommendation may, without notice or hearing, grant with conditions or deny the request at that time, may obtain further information orally or in writing from the applicant or the Air Pollution Control Officer before acting on the request, or shall defer the matter for later consideration by the Hearing Board.
- 2.5.d.4.** No emergency variance shall be granted unless the chairperson or other designated member(s) 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; and 3) the requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met.
- 2.5.d.5.** If the request for an emergency variance is granted by the individual member, the applicant shall be advised of this by telephone or in person. After an emergency variance has been granted, a written order granting the emergency variance shall be issued under such terms and conditions as the Hearing Board Member deems warranted; however, no such order will be entered unless the applicant has submitted the appropriate filing fee to the Clerk,

except any State or local governmental agency or public agency exempted pursuant to District Rule 305.A.1. Failure to submit the filing fee by the end of the fourth full working day following the initial request will prevent the emergency variance protection orally granted from having any legal effect whatsoever and may constitute a violation of District rules.

2.5.e. If an application for emergency variance is denied, an applicant may submit an application for variance. The Hearing Board Member may deem the application for variance filed as of the date the request for emergency variance was initially conveyed to the Air Pollution Control Officer. In this case, the application for variance must be delivered to the Clerk by the end of the fourth working day following notification of the denial of the emergency variance.

2.5.e.1. The application for variance should include the material normally contained in a variance application, as specified in 2.2. of the Hearing Board Procedures, and in particular should describe in detail the unforeseeable circumstances leading to the emissions, indicate the expected time within which to reach compliance, and give an estimate of the quantity of emissions during these circumstances.

2.5.e.2. An application must state whether or not the additional emissions during this time contain any hazardous or odorous substances.

2.5.f. At any time after an emergency variance has been granted, the Air Pollution Control Officer may request that the chairperson or designated member(s) 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.

2.6. Verification. Unless the state, or a county, city or district thereof, or an officer of such in his or her official capacity is an applicant or complainant or a party, the application, complaint or paper shall be verified. The form of verification, executed within this State, may be in substantially the following form:

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

Dated at _____, on _____

(signature)

2.7. Filing Fees. The application shall be accompanied by the filing as set by District Rule 305, Hearing Board Fees.

2.8 Public Notice. All applications for variance, except an Emergency Variance, shall be noticed in accordance with the noting requirements as defined in Section 40827 of the State Health and Safety Code. Variance duration and noticing should be as follows:

<u>TYPE OF HEARING</u>	<u>DURATION</u> <u>H&SC</u> <u>REFERENCE</u>	<u>DAYS NOTICE</u> <u>REQUIRED PRIOR</u> <u>TO HEARING</u> <u>H&SC REF</u>	<u>CONSIDERATIONS</u> <u>H&SC</u> <u>REFERENCE</u>
<u>Emergency Variance</u>	<u>30 Day Maximum</u> <u>H&SC 42359.5</u>	<u>None</u> <u>H&SC 42359.5</u>	<u>One Board member</u> <u>can issue. Cannot be</u> <u>issued to avoid</u> <u>H&SC 40824/42351.</u> <u>H&SC 42359.5</u>
<u>Short Variance</u>	<u>90 Day Maximum</u> <u>H&SC 40825</u>	<u>10 Day Minimum to</u> <u>APCO, Applicant,</u> <u>ARB, and EPA.</u> <u>H&SC 40825</u>	<u>One Hearing Board</u> <u>member may hear (6</u> <u>Findings Required)</u> <u>H&SC 40825, 42352</u>
<u>Interim Variance</u>	<u>90 Day Maximum or</u> <u>date of decision on</u> <u>the short or regular</u> <u>application</u> <u>H&SC 42351(b)</u>	<u>Reasonable Notice to</u> <u>APCO and Applicant.</u> <u>Cannot be granted to</u> <u>avoid notice required.</u> <u>H&SC 40824 &</u> <u>42351 (c)</u>	<u>One Hearing Board</u> <u>member may hear.</u> <u>May be granted for</u> <u>“good cause”.</u> <u>Cannot be granted</u> <u>after regular hearing.</u> <u>H&SC 40826 &</u> <u>42352</u>
<u>Regular Variance</u>	<u>One Year Maximum</u> <u>unless schedule of</u> <u>increments of</u> <u>progress is included</u> <u>H&SC 42358</u>	<u>15 Day Minimum to</u> <u>APCO, Applicant,</u> <u>ARB, EPA, and</u> <u>Other Districts within</u> <u>the Air Basin, every</u> <u>person who requests</u> <u>notice</u> <u>H&SC 40826</u>	<u>Entire Hearing Board</u> <u>shall hear or quorum.</u> <u>Public Notice of</u> <u>Hearing in at least</u> <u>one newspaper of</u> <u>general circulation. (6</u> <u>Findings required)</u> <u>H&SC 40826 &</u> <u>42352</u>
<u>Modification of Final</u> <u>Compliance Date of</u> <u>Existing Variance</u>	<u>Determined by the</u> <u>Hearing Board</u>	<u>15 Day to APCO,</u> <u>Applicant, ARB,</u> <u>EPA, and Other</u> <u>Districts within the</u> <u>Air Basin, every</u> <u>person who requests</u> <u>notice.</u> <u>H&SC 40826</u>	<u>May be granted for</u> <u>“good cause”</u> <u>H&SC 40826 &</u> <u>42357</u>
<u>Modification of</u> <u>Increments of</u> <u>Progress</u>	<u>Determined by the</u> <u>Hearing Board</u>	<u>10 Days Minimum to</u> <u>APCO, Applicant,</u> <u>ARB, EPA.</u> <u>H&SC 40825</u>	<u>One Hearing Board</u> <u>Member may hear</u> <u>H&SC 40825</u>
<u>Interim Authorization</u>	<u>30Day Maximum</u> <u>H&SC 42351.5</u>	<u>Reasonable Notice to</u> <u>APCO and Applicant</u> <u>H&SC 40824</u>	<u>H&SC 42351;</u> <u>One Hearing Board</u> <u>member may hear;</u> <u>Cannot be use to</u> <u>extend Final</u> <u>Compliance Date.</u> <u>H&SC 42351</u>

2.9 **Explicit Findings.** No variance shall be granted unless the Hearing Board makes all of the following explicit findings, except emergency and interim variances:

2.9.a. The source is or will be in violation of any Rule, Regulation, Order of the District or H&SC Section 41701 (Visible Emissions);

2.9.b. Conditions causing the violation were beyond the reasonable control of the source; and requiring compliance would result in (a) unreasonable taking of property, or (b) practical closing of a lawful business. Requiring immediate compliance would impose a severe unreasonable economic burden on petitioner.

2.9.c. The reduction in air pollution resulting from a shutdown would not justify closing the facility, such taking would be without a corresponding benefit in reducing pollution;

2.9.d. The applicant has given consideration to curtailing operations of the source in lieu of obtaining a variance;

2.9.e. During the period the variance is in effect, the applicant will reduce excess emissions to the maximum extent feasible; and

2.9.f. During the period the variance is in effect, the applicant will monitor or otherwise quantify emission levels from the source, if requested to so do by the District, and report these emission levels to the District pursuant to a schedule established by the District.

Also, no variance shall be issued unless the source demonstrates compliance with the following implicit findings (H&SC 42353 and 42362):

2.9.g. Operation under variance will not result in a nuisance; and

2.9.h. Variance conditions guarantee expeditious compliance with emissions standards or increments of progress.

All sources submitting an application for a variance will be informed by the inspector or the Compliance Division Manager that it is their responsibility to demonstrate to the satisfaction of the Hearing Board that all the findings required for the granting of a variance can be made. Applicants should be encouraged to include complete information in their variance application which specifically addresses each of the required findings. Furthermore, applicants should be informed that they and/or their legal representative should be present at the variance hearing to provide testimony related to the facts and findings of the variance application.

2.10 **Interim Variance.**

Any person who has submitted an application for a short or regular variance and who desires to commence or continue operation pending the decision of the hearing board on the application, may submit an application for an interim variance to cover the time until a noticed hearing can be held on their application for a short variance or a regular variance.

An interim variance is valid for 90 days from the date of issuance or the date of hearing for a short or regular variance, whichever occurs first. Eligible sources should be informed that they can apply for an interim variance in conjunction with a short or regular variance. The source is required to pay fees for both: interim and short or regular variance.

The Chair of the Hearing Board, or any member of the Hearing Board designated by the Board, may hear an application for an interim variance. It is the responsibility of the District Division Manager to coordinate with the applicant and Board member(s) as to the time and place for consideration of the application, to prepare the interim variance order (approval with findings and conditions, or denial), and transmit the variance order to the Clerk of the Hearing Board for distribution to other board members and affected persons. A copy of the variance order shall be retained in the District's Variance files for a minimum of five years.

2.11 Short Variance and Regular Variance.

If an eligible source is or will be in violation of any Rule, Regulation or Order of the District, and the required time necessary to achieve full compliance will be less than or equal to 90 days, the source should submit an application for a Short Variance. If the source anticipates that the time required to achieve compliance will exceed 90 days, they should submit an application for a Regular Variance.

The District shall prepare and submit a staff report to the Hearing Board at least three days prior to the scheduled hearing for the variance petition. The staff report shall include the District's recommendation to the Hearing Board on whether or not the variance should be granted and provide enough information to determine if the variance requested would meet the required findings.

The Chair of the Hearing Board, or any member of the Hearing Board designated by the Board, may hear an application for a Short Variance. A Regular Variance can only be heard by a quorum of the entire Hearing Board. It is the responsibility of the District Division Manager to coordinate with the applicant and Hearing Board member(s) as to the time and place for consideration of the application, to prepare the Short or Regular Variance order (approval with findings and conditions, or denial), and transmit the variance order to the Clerk of the Hearing Board for distribution to other Hearing Board members and affected persons. A copy of the variance order shall be retained in the District's Variance files for a minimum of five years.

ARTICLE 3. Appeals

- 3.1. Who May Bring an Appeal.** An applicant for a permit or any other person dissatisfied with the decision of the Air Pollution Control Officer regarding a permit, or any other person authorized by law, may appeal to the Hearing Board for an order modifying or reversing a decision of the Air Pollution Control Officer.
- 3.2. Form of Papers.** Papers filed with the Hearing Board shall be typewritten or printed upon paper 8¹/₂ x 11 inches in size, on one side of the paper, and double-spaced. The heading for permit appeals shall be as follows:

HEARING BOARD
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT
PETITION FOR HEARING

NUMBER _____

Name and Address of Applicant:

- 3.3. Appeal.** Appeals in accordance with the District's Permit Regulations or statutory provisions shall include a copy of the permit or permit application, supporting documents, and the decision of the Air Pollution Control Officer. A map showing the location of the subject property and a line diagram of the process, where applicable, shall be included with the appeal.

The appeal shall set forth the issues raised by the appeal and the principal facts in support thereof. The appeal shall be submitted in written form to the Air Pollution Control Officer and shall be signed by the applicant or an authorized representative.

- 3.4. Application for Intervention.** Any person who claims that he or she has an interest relating to the subject of a proceeding, and that the disposition of the proceeding may impair or impede his or her ability to protect that interest, may file a written application for intervention in that proceeding. The application shall be timely, shall set forth the grounds and purpose of such intervention, and shall be served by mail or in person upon the parties to the proceeding. In exercising its discretion as to whether to grant or deny such an application, the Hearing Board shall consider whether intervention would unduly delay or prejudice the adjudication of the rights of the parties. In all cases involving permit regulations, an Application for Intervention filed by the permit applicant or permit holder shall be granted as a matter of right.
- 3.5. Response to Applications.** 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 who have appeared in the case.

ARTICLE 4. Permit Revocation and Abatement Order

- 4.1. Who May File a Petition.** A petition for permit revocation or abatement order may be brought on the motion of the Air Pollution Control Officer, pursuant to Health & Safety Code Section 42307 or 42451; or on the motion of the District Board of Directors or by the Hearing Board, on its own motion, pursuant to Health & Safety Code Section 42451; or on the motion of any person authorized by law. A facility owner or operator may petition for modification of an existing abatement order.
- 4.2. Form of Papers.** Papers filed with the Hearing Board shall be typewritten or printed upon paper 8 4 x 11 inches in size, on one side of the paper, and double-spaced. The heading shall be as follows:

HEARING BOARD
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT
PETITION FOR HEARING

NUMBER _____

(NAME)
Complainant,
Vs.
(NAME)
Respondent

4.3. Content of Petition. The petition shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes and rules which the respondent has violated, and information documenting the violation. The petition shall request an order for abatement or permit revocation.

4.4. Form, Manner and Proof of Petition.

4.4.a. Upon the filing of the petition, the District Counsel shall serve a copy thereof on the respondent as provided in 4.4.c. The District Counsel may include with the petition any information which he or she deems appropriate, but he or she shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the Hearing Board, will acknowledge service of the petition and constitute a notice of defense. The copy of the petition shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense within 15 days after service upon him of the petition, and that failure to do so will constitute a waiver of his right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7 of the Government Code.

4.4.b. The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying petition is delivered or mailed to the Hearing Board within 15 days after the petition was personally served on you or mailed to you, the Imperial County Air Pollution Control District may proceed upon the petition. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to the Hearing Board, Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, California, 92243. You may, but need not, be represented by counsel at any or all stages of these proceedings. If the respondent to a petition fails to file a notice of defense, affidavits and respondent's express admissions may be used as evidence without any notice thereof to respondent, and the Hearing Board may decide the matter or dismiss the action.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact the District Counsel at the above address.

4.4.c. The petition and all accompanying information may be sent to respondent by any means selected by the District Counsel. But no order adversely affecting the rights of the respondent shall be made by the Hearing Board in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be provided in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or rule or regulation requires respondent to file his address with the District and to notify the District of any change, and if a registered letter containing the petition and accompanying material is mailed, addressed to respondent at the latest address on file with the District as required thereby.

4.5. Notice of Defense.

4.5.a. Within 15 days after service of the petition, the respondent may file with the Hearing Board a notice of defense in which respondent may:

- 4.5.a.1.** Request a hearing;
- 4.5.a.2.** Object to the petition upon the ground that it does not state acts or omissions upon which the Hearing Board may proceed;
- 4.5.a.3.** Object to the form of the petition on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare its defense;
- 4.5.a.4.** Agree with the petition in whole or in part;
- 4.5.a.5.** Present new matter by way of defense.

Within the time specified, the respondent may file one or more notices of defense upon any or all of these grounds, but all such notices shall be filed within that period unless the Hearing Board in its discretion authorizes the filing of a later notice.

4.5.b. Any such notice shall be deemed a specific denial of all parts of the petition not expressly admitted. Unless objection is made as provided in 4.5.a.3, all objections to the form of the petition shall be deemed waived.

4.5.c. The notice of defense shall be in writing signed by or on behalf of the respondent and shall state its mailing address. The notice of defense need not be verified or follow any particular form.

4.5.d. Even if the respondent does not file a notice of defense, the respondent may:

- 4.5.d.1.** File a statement of mitigation, or

4.5.d.2. File a request for a variance, which includes the matters required by 2.2.

- 4.6. Application for Intervention.** Any person who claims that he or she has an interest relating to the subject of a proceeding, and that the disposition of the proceeding may impair or impede his or her ability to protect that interest, may file a written application for intervention in that proceeding. The application shall be timely, shall set forth the grounds and purpose of such intervention, and shall be served by mail or in person upon the parties to the proceeding. In exercising its discretion as to whether to grant or deny such an application, the Hearing Board shall consider whether intervention would unduly delay or prejudice the adjudication of the rights of the parties. In all cases involving permit regulations, an Application for Intervention filed by the permit applicant or permit holder shall be granted as a matter of right.
- 4.7. Response to Applications.** 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 who have appeared in the case.

ARTICLE 5. Hearing Procedure

- 5.1. Time and Place of Hearing.** The Hearing Board shall determine the time and place of hearing. The hearing on a petition for permit revocation or abatement order shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense. The hearing shall be held at the offices of the Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, California, unless otherwise determined. All hearings shall be held in a location readily accessible to the public. Preliminary matters such as setting a date for hearing, granting continuances, approving applications for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case, may be made by the Chairperson or by any two members of the Hearing Board without a hearing or a meeting or the Hearing Board and without prior notice to the parties.
- 5.2. Notice of Hearing.** In all cases, the notice of hearing shall be substantially in the following form but may include additional information:

You are hereby notified that a hearing will be held before the Hearing Board of the Imperial County Air Pollution Control District at 150 South Ninth Street, El Centro, California, on the [day] day of [month], [year], at the hour of [time](upon the charges made in the petition served upon you) (upon the issues raised by the application). You should be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Clerk of the Hearing Board.

- 5.3. Attendance at Hearing.** A party requesting relief in a Hearing Board proceeding must appear in person or by legal counsel or other qualified representative in any hearing scheduled on the request, unless specifically notified otherwise by the Hearing Board or the matter is scheduled for Summary Disposition.

5.4 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.

5.5 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 board.

- a. Announcement of pending matters;
- b. Appearances of parties;
- c. Opening statement of moving party;
- d. Opening statement of responding party;
- e. Evidence produced by moving party;
- f. Evidence produced by responding party;
- g. Rebuttal evidence produced by moving party;
- h. Surrebuttal evidence produced by responding party;
- i. Public testimony;
- j. Closing argument of moving party;
- k. Closing argument of responding party;
- l. Matter decided, taken under submission or continued.

5.6. Class Action Determination. 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.

5.7.Subpoenas.

5.7.a. Before the hearing has commenced the Chairperson of the Hearing Board shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents at the hearing. 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. After the hearing has commenced, the Hearing Board may issue subpoenas and subpoenas duces tecum.

5.7.b. Subpoenas shall be served as provided in Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he/she resides unless the distance be less than 150 miles from his/her 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.

5.7.c. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Fees, mileage and expenses

of subsistence shall be paid by the party at whose request the witness is subpoenaed.

5.8. Evidence.

5.8.a. Oral evidence shall be taken only on oath or affirmation.

5.8.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 the witness to testify; and to rebut any evidence.

5.8.c. Affidavits.

5.8.c.1. At least 10 days prior to a hearing, or a continued hearing, any parties that propose to introduce an affidavit into evidence shall mail or deliver a copy of such affidavit to all other parties together with a notice as provided in 5.8.c.2, except as provided in 5.11.b. Unless another party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, the 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 in person. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

5.8.c.2. The notice referred to in 5.8.c.1 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 mailed or 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].

5.8.d. 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 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.

5.8.e. 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.

5.8.f. Pursuant to Health & 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.

5.9. 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.

5.10. Withdrawal, Abandonment or Dismissal of Actions.

5.10.a. At any time before a hearing is scheduled on calendar, the moving party may file in the office of the Hearing Board a written abandonment of the action, or the parties may file a stipulation for abandonment. The filing of either document shall operate to terminate the action.

5.10.b. After a hearing has been scheduled on calendar, the moving party may file in the office of the Hearing Board a written request for dismissal of the action, or the parties may file a stipulation requesting dismissal by the Hearing Board.

5.10.c. Requests for abandonment or withdrawal for hearings must be received by the Clerk 72 hours prior to the time set for the hearing, excluding Sundays and holidays. When the Clerk has obtained approval for an abandonment or withdrawal from the Chair of the Hearing Board or, in his or her absence, the Vice Chair, the Clerk will notify the other members of the Hearing Board and the parties involved in the case of the change in the schedule. When the abandonment or withdrawal is not approved, the Clerk will notify the party making the request.

5.10.d. The Hearing Board may, on its own motion, in the furtherance of justice and for good cause, order an action dismissed.

5.10.e. If the Chairperson of the Hearing Board, or any two members of the Hearing Board, determine that an application does not state sufficient information to serve as the basis for a hearing, they may, without

conducting a meeting, require the applicant to state further facts or reframe his application prior to setting the matter for hearing.

- 5.10.f.** When the Air Pollution Control Officer or Hearing Board wish to initiate action, which will lead to hearing by the Hearing Board, they need not comply with the formal requirements of these rules. Either must, however, initiate any such action with documents that will apprise interested parties of the proposed action.

5.11. Failure to Appear for Hearing or to File a Notice of Defense.

- 5.11.a.** Where a party fails to appear for a hearing after notice of time and place has been given to all parties by the Hearing Board, the Hearing Board may upon its own motion decide the matter or dismiss the action.
- 5.11.b.** If the respondent to a petition fails to file a notice of defense, affidavits and respondent's express admissions may be used as evidence without any notice thereof to respondent, and the Hearing Board may decide the matter or dismiss the action.
- 5.11.c.** Nothing herein shall be construed to deprive the party of the right to make any showing by way of mitigation.

- 5.12. Amendment of Petition before Submission.** At any time before the matter is submitted for decision, the Hearing Board may file or permit the filing of an amended petition. All parties shall be notified thereof. If the amended petition presents new charges, the Hearing Board shall afford the respondent the reasonable opportunity to prepare its defense thereto, but it shall not be entitled to file further pleadings unless the Hearing Board so orders. Any such new charges shall be deemed controverted, and any objections to the amended petition may be made orally and shall be noted in the record.

- 5.13. Amendment of Petition after Submission.** The Hearing Board may order amendment of the petition after submission of the case for decision. Each party shall be given notice of the intended amendment and an opportunity to show that it will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in its behalf. If such prejudice is shown, the Hearing Board shall reopen the case to permit the introduction of additional evidence.

- 5.14. Amendment of Application for Variance or Appeal.** The Hearing Board may in its discretion, upon stipulation or ten days notice, permit the amendment of an application for variance or appeal either before or after 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 for variance or appeal makes it necessary to do so.

- 5.15. Quorum.** Three members of the Hearing Board shall constitute a quorum. Concurrence of at least three members of the Hearing Board is required to grant a request in any matter.

- 5.16. Participation by Previously Absent Member.** A Hearing Board member who is unable to attend all the hearings in a matter may participate in the decision of the matter,

provided such member has read the transcripts or heard a tape recording of the missed proceedings, or upon the stipulation of all parties.

- 5.17. Disqualification of Hearing Board Members.** A Hearing Board member shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any member by filing an affidavit before the submission of the case, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue raised by the request shall be determined by the other members of the Hearing Board, except that such Hearing Board member may voluntarily withdraw.
- 5.18. Hearing Board Discretion to Rehear.** The Hearing Board, with not fewer than four members present, may, in its discretion, within 30 days of the effective date of the decision, rehear any matter.
- 5.19. Request for Rehearing.** A party may file a written petition for a rehearing of a decision within ten days after a copy of the decision has been mailed to it. The Hearing Board may, with or without a response from the parties, grant or deny the request for rehearing.
- 5.20. Presentation and Filing of Record.** All proceedings of the Hearing Board shall be recorded by a court reporter. Proceedings will not be transcribed unless a request for a transcription is made.
- 5.21. Continuances.** Authority for scheduling cases before the Hearing Board or continuing cases before the Hearing Board rests with the Chair of the Hearing Board or, in his or her absence, the Vice Chair. Requests for continuance of cases scheduled before the Hearing Board must be received by the Clerk 72 hours prior to the time set for the hearing, excluding Sundays and holidays. It is the responsibility of the parties before the Hearing Board to notify the Clerk when one or more of them request continuance of a hearing. When the Clerk has obtained approval for a continuance from the Chair of the Hearing Board, or in his or her absence, the Vice Chair, the Clerk shall notify the other members of the Hearing Board and other parties involved in the case of the change in the schedule. When the continuance is not approved, the Clerk shall notify the party making the request. The Chairperson or any two members of the Hearing Board shall have the power to grant continuances of any hearing, on request of any interested party or at the request of any member of the Hearing Board, with conducting a meeting of the Hearing Board and without prior notice. Written notice of the continuance shall be given to all persons who were given notice of the hearing.
- 5.22. Orders.** The decision of the Hearing Board shall be in writing, containing a brief statement of facts found to be true, the determination of the issues presented and the order of the Hearing Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the applicant, and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing and the California Air Resources Board. The decision of the Hearing Board shall become effective immediately unless otherwise provided in the decision.

ARTICLE 6. Discovery

- 6.1. Depositions and Requests for Admission of Facts and of Genuineness of Documents.** For the purpose of discovery or for use as evidence in any proceeding, 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:

6.1.a. Depositions upon oral examination; or

6.1.b. Written requests for admission of the genuineness of any relevant documents described in the requests or of the truth of any relevant matters of fact set forth in the requests.

6.2. Practice and Procedure.

6.2.a. Practice and Procedure 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 procedure and practice of the Code of Civil Procedure, unless otherwise ordered by the Hearing Board.

6.2.b. Notwithstanding 6.2.a, the Hearing Board in its discretion may set a schedule for discovery in any proceeding.

ARTICLE 7. File Docket and Hearing Calendar

- 7.1. Filing of Papers.** All papers filed with or submitted to the Hearing Board shall be in an original and six copies. The Clerk shall file the original in the original case file. One copy shall be filed in each member's case file and one copy shall be forwarded to District staff. If conformed copies are requested by the party filing a document, the party shall provide sufficient additional copies for this purpose. Papers presented in proper form, accompanied with the required number of copies, and the required fee, if any, shall be deemed filed on the day presented, except as otherwise provided in 2.5.e.
- 7.2. File Docket.** The Clerk shall maintain in the office of the Hearing Board, for a minimum of five years, a docket of all applications for variance, petitions, and appeals and shall be assigned a number. The docket shall be available for public inspection at the principal office of the Hearing Board during office hours.
- 7.3. Hearing Calendar.** The Clerk shall maintain a calendar of matters scheduled for hearing. The calendar shall be available for public inspection at the office of the Hearing Board. A Copy of the calendar may be obtained from the Clerk.
- 7.4. Case Records.** Material, which comprises the Hearing Board's records in cases on the docket, is available for inspection by the public and the District staff in the office of the Clerk during normal office hours. This material will not be available outside the Clerk's office. Copies of records may be obtained at the Clerk's office upon payment of the actual cost of preparation. Records of the Hearing Board do not necessarily include records of the District. When a transcript of a hearing is ordered, the original shall be delivered to the Clerk and shall be included in the pertinent case file. Withdrawal of evidence shall not be permitted while any issue concerned in the hearing is still pending a final decision either before the Hearing Board or before the courts. If after a final decision by the Hearing Board no further proceeding for review has

been initiated within the time prescribed by law, exhibits may be withdrawn at the request of the party which submitted them and upon order of the Hearing Board.

ARTICLE 8. Officers of The Hearing Board

8.1. Election of Officers. The Chair and Vice Chair of the Hearing Board shall be elected by secret ballot annually.