

## REGULATION V - PROCEDURE BEFORE THE HEARING BOARD

### Rule 5.6 Hearing and Decision

- A. All hearings shall be held by three or more members of the Hearing Board, and the concurrence of three members shall be necessary for a decision. Failure to achieve concurrence of at least three members of the Hearing Board shall result in retention of an underlying decision. The decision shall be in writing and shall contain a brief statement of facts found to be true, the determination of the issues presented, and the order of the Hearing Board. A copy of the decision shall be immediately filed with the Hearing Board Clerk and mailed or delivered to the Control Officer, the petitioner, ARB, and every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing.
- B. After a hearing, the Hearing Board may do any of the following:
1. Grant a permit denied by the Control Officer.
  2. Continue the suspension of a permit suspended by the Control Officer.
  3. Remove the suspension of an existing permit invoked by the Control Officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required.
  4. Find that no violation exists and reinstate an existing permit.
  5. Revoke an existing permit if it finds any of the following:
    - a. The permittee has failed to correct any condition required by the Control Officer.
    - b. A refusal of a permit would be justified.
    - c. Fraud or deceit was employed in the obtaining of the permit.
    - d. Any violation of this part, or of any order, rule, or regulation of the district.
  6. Grant a variance in accordance with the conditions as further specified in this rule.
- C. No variance shall be granted unless the Hearing Board makes all of the following findings:
1. That the petitioner for a variance is or will be in violation of a provision of the California Health and Safety Code or of any rule, regulation or order of the District.
  2. That due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of a lawful business.
  3. That such closing or taking would be without a corresponding benefit in reducing air contaminants.
- D. Upon making the specific finding set forth in Rule 5.6.C., the Hearing Board shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the District Board, not more onerous, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of individual person. However, no variance shall be granted if the operation under the variance will result in a violation of Rule 4.2.
- E. In prescribing other and different requirements, in accordance with Rule 5.6.D., the Hearing Board shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the District from the reduction of air contaminants and the disadvantages to any otherwise lawful

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business, occupation, or activity involved, resulting from requiring compliance with such requirements.

- F. The Hearing Board may require, as a condition of granting a variance, that a cash bond or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair or other work required by the terms and conditions of the variance. Such bonds may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the district having jurisdiction, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the district an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.
- G. The Hearing Board, in making any order permitting a variance, shall specify the time during which such order shall be effective, in no event, except as otherwise provided in Rule 5.6.H., to exceed one year, and shall set a final compliance date.
- H. A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.

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