

ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT

RULE 303 -- HEARING BOARD FEES

(Adopted: 9/2/77; Amended: 5/5/78; Amended: 3/5/82; Amended: 8/5/83; Amended 10/5/84; Amended: 1/6/89; Amended: 6/1/90; Amended 6/6/92; Amended: 6/11/93; Amended: 6/10/94; Amended: 5/12/95; Amended:5/10/96; Amended: 5/9/97)

(a) **Filing Fees**

Every applicant or petitioner in a proceeding before the Hearing Board except a small business shall pay to the Clerk or Deputy Clerk, at the time of filing, a filing fee of \$139.40 for each petition. Small businesses shall pay the fee specified in subdivision (j).

(b) **Filing Fee Refunds**

- (1) In the event the Hearing Board reverses the decision of the Executive Officer in an appeal from denial or a conditional approval of a permit to construct or a permit to operate, the filing fee specified in subdivision (a) shall be refunded to the petitioner.
- (2) In the event that the petition is withdrawn, and the petitioner notifies the Clerk of the Hearing Board in writing not less than four days prior to the scheduled appearance, or the hearing is not held for any other reason, the petitioner shall be entitled to a refund of fifty percent (50%) of the filing fee.

(c) **Daily Appearance Fee**

- (1) In addition to the filing fee, each petitioner or applicant with a proceeding (designated by a case number) before the Hearing Board shall pay a daily appearance fee of \$417.30/day. In addition to the initial appearance, this fee is applicable to all following appearances which pertain to the same proceeding (designated by case number). After the initial appearance, the daily appearance fee shall be waived for any appearance (pertaining to the same proceeding) which has a duration of less than one hour.
- (2) The respondent shall pay the daily appearance fee of \$417.30 regardless of the duration of the Hearing, when requesting a modification to an order for abatement.
- (3) If a petition before the Hearing Board is included on the consent calendar, fifty percent (50%) of the daily appearance fee of \$417.30 shall be due. In the event an item is removed from the consent calendar and an additional appearance is required, the full daily appearance fee shall be due.
- (4) Payment of these fees shall be in accordance to procedures specified in subdivision (n).

(d) **Publication Fees**

Upon demand and in addition to the payment of the foregoing fees, every petitioner for relief which requires published notice shall pay a fee to cover the actual cost of publication(s) of notice of hearing.

(e) **Excess Emission Fee**

- (1) Each applicant or petitioner for a variance from these Rules and Regulations shall pay to the Clerk or Deputy Clerk of the Hearing Board, in addition to the filing fees required in subdivision (a) and the daily appearance fees required in subdivision (c), an emission fee based on the total weight of emissions discharged, per source or product, other than those described in subdivision (f) below, during the variance period in excess of that allowed by these rules in accordance with the schedule set forth in Table I. If the amount of the excess emission fee is less than that specified in subdivision (g), the applicant or petitioner shall pay the higher amount.
- (2) Where the total weight of emission discharged cannot be easily calculated, the petitioner shall work in concert with District staff to establish the amount of excess emissions to be paid. In cases where District staff determines calculations or estimations cannot be made, the petitioner shall pay the amount set forth in subdivision (g).
- (3) In the event that more than one rule limiting the discharge of the same contaminant is violated, the excess emission fee shall consist of the fee for violation which will result in the payment of the greatest sum. For the purposes of this subdivision, opacity rules and particulate mass emissions shall not be considered rules limiting the discharge of the same contaminant.

(f) **Excess Visible Emission Fee**

Each applicant or petitioner for a variance from Rule 401 or Health and Safety Code Section 41701 shall pay to the Clerk or Deputy Clerk of the Hearing Board, in addition to the filing fees required in (a) above, the daily appearance fee required in (c), and the excess emission fees required in (e) above (if any), an emission fee based on the difference between the percent opacity allowed by Rule 401 and the percent opacity of the emissions allowed from the source or sources operating under the variance, in accordance with the schedule set forth in Table II.

In the event that an applicant or petitioner is exempt from the provisions of Rule 401, the applicant or petitioner shall pay a fee calculated as described hereinabove, but such fee shall be calculated based upon the difference between the opacity allowed under the variance and the opacity allowed under the provisions of Health and Safety Code Section 41701, in accordance with the schedule set forth in Table II.

(g) **Minimum Excess Emission Fees**

When a variance is granted from a rule or rules which limits the discharge of air contaminants, an excess emission fee shall be imposed upon and remitted by the source. The excess emission fee remitted, regardless of calculations, shall be no less than \$22.00 per day, per source.

(h) **Applicability**

The provisions of subdivision (e) shall apply only to those rules or permit conditions that specify quantitative emission limits.

(i) **Fee Determination**

- (1) The excess emission fees shall be calculated by the petitioner based upon the requested number of days of operation under variance multiplied by the expected excess emissions as set forth in subdivisions (e) and (f) above. The calculations and proposed fees shall be set forth in the petition.
- (2) The Hearing Board may adjust the excess emission fee required by subdivisions (e) and (f) of this rule based on evidence regarding emissions presented at the time of the hearing.

(j) **Small Businesses**

- (1) A small business shall pay a filing fee of \$83.80. The petitioner shall be assessed twenty percent (20%) of the fees required by subdivisions (c), (e), and (f), or (g), whichever is applicable. "Small business" is defined in Rule 102, Small Business.
- (2) Request for exception as a small business shall be made by the petitioner under penalty of perjury on a declaration form provided by the Executive Officer which shall be submitted to the Clerk or Deputy Clerk of the Hearing Board at the time of filing a petition for variance.

(k) **Group Variance Fees**

- (1) Each petitioner included in a petition for a group variance shall pay the filing fee specified in subdivision (a), and the excess emission fees specified in subdivisions (e), and (f), or (g), whichever is applicable.
- (2) The Daily Appearance Fee required by subdivision (c) and the Publication Fee required by subdivision (d) shall be totaled and divided equally among the petitioners.

(l) **Adjustment of Fees**

If after the term of a variance for which emission fees have been paid, petitioner can establish, to the satisfaction of the Executive Officer, that emissions were actually less than those upon which the fee was based, a pro rata refund shall be made.

(m) **Emission Fee Refunds**

In the event that the petition is withdrawn or the variance is not granted, petitioner shall be entitled to a full refund of the unused excess emission fees.

(n) **Fee Payment/Variance Invalidation**

- (1) Excess emission fees required by subdivisions (e), (f), and (g), based on an estimate provided during the variance Hearing, are due and payable within fifteen (15) days of the granting of the variance. The petitioner shall be notified in writing of any adjustment to the amount of excess emission fees due, following District staff's verification of the estimated emissions. Fee payments to be made as a result of an adjustment are due and payable within fifteen (15) days of notification of the amount due.
- (2) Daily appearance fees and publication fees required in subdivisions (c) and (d), respectively, are due and payable within fifteen (15) days of notification of the amount due. Petitioners shall be notified in writing of the amount due.
- (3) Failure to pay the excess emission fees required by subdivisions (e), (f), (g), publication fees required by subdivision (d), and daily appearance fees required in subdivision (c) of this rule within fifteen (15) days of notification that a fee is due shall automatically invalidate the variance. Such notification may be given by personal service or by deposit, postpaid, in the United States mail and shall be due fifteen (15) days from the date of personal service or mailing. For the purpose of this rule, the fee payment shall be considered to be received by the District if it is postmarked by the United States Postal Service on or before the expiration date stated on the billing notice. If the expiration date falls on a Saturday, Sunday, or a state holiday, the fee payment may be postmarked on the next business day following the Saturday, Sunday, or the state holiday with the same effect as if it had been postmarked on the expiration date.

(o) **Request for Time Extension of Payment Due**

Whenever this rule requires fees to be paid by a certain date, in order to avoid invalidation of a variance or refusal of acceptance of other petitions, the petitioner may, for good cause, request the Executive Officer to grant an extension of time, not to exceed ninety (90) days, within which the fees shall be paid. Any request for extension of time shall be presented in writing, and accompanied by a statement of reasons why the extension should be granted.

(p) **Discretionary Powers**

Any person may allege that payment of any of the fees within this rule, excluding publication fees, will cause an unreasonable hardship and may be excused from payment of such fees or a portion of such fees by order of the Hearing Board if the Board in its discretion determines after hearing evidence thereon that payment of such fees would cause financial or other unreasonable hardship to the petitioner.

(q) **Transcript Fees**

Any person requesting a transcript of the hearing shall pay the cost of such transcript. The parties to hearings and prehearing proceedings may be directed by the Hearing Board to pay the cost of transcripts necessary for the Hearing Board's determination of the matter, in such proportion as the Hearing Board may order.

(r) **Government Agencies**

- (1) This rule shall not apply to petitions filed by the Executive Officer.
- (2) Federal, state or local government agencies or public districts shall pay all fees.

(s) **Waiver of Fees**

All fees associated with this rule shall be waived for any petition for a variance filed as the result of any event declared to be a "state of emergency" by the local, state, or federal authorities.

(t) **Service Charge for Returned Check**

Any person who submits a check to the District on insufficient funds or on instructions to stop payment on the check, absent an overcharge or other legal entitlement to withhold payment, shall be subject to a \$25.00 service charge.

[SIP: Submitted as amended 6/10/94 on 7/13/94; Approved 11/18/83, 48 FR 52451, 40 CFR 52.220(c)(127)(vii)(A); Approved _____, _____, 40 CFR 52.220(c)(125)(ii)(B); Approved _____, _____, 40 CFR 52.220(c)(47)(i)(A)]

**TABLE I
SCHEDULE OF EXCESS EMISSIONS FEES**

<u>Air Contaminants</u>	<u>Dollars Per Ton</u>	
Organic gases, except methane and those containing sulfur	\$666.90	
Carbon Monoxide	\$6.60	
Oxides of nitrogen (expressed as nitrogen dioxide)	\$400.60	
Gaseous sulfur compounds (expressed as sulfur dioxide)	\$466.60	
Particulate matter	\$466.60	
<u>Toxic Air Contaminants</u>	<u>Dollars Per Pound</u>	
	<u>FY 1996-97</u>	<u>FY 1997-98</u>
Asbestos	\$2.17	\$3.00
Benzene	\$0.90	\$1.00
Cadmium	\$2.17	\$3.00
Carbon tetrachloride	\$0.90	\$1.00
Chlorinated dioxins and dibenzofurans (15 species)	\$3.17	\$5.00
Ethylene dibromide	\$0.90	\$1.00
Ethylene dichloride	\$0.90	\$1.00
Ethylene oxide	\$0.90	\$1.00
Formaldehyde	\$0.21	\$0.21
Hexavalent chromium	\$2.67	\$4.00
Methylene chloride	\$0.05	\$0.05
Nickel	\$1.67	\$2.00
Perchloroethylene	\$0.21	\$0.21
1,3-Butadiene	\$1.50	\$3.00
Inorganic arsenic	\$1.50	\$3.00
Beryllium	\$1.50	\$3.00
Polynuclear aromatic hydrocarbons (PAH)	\$1.50	\$3.00
Vinyl chloride	\$0.50	\$1.00
Lead	\$0.50	\$1.00
1,4-Dioxane	\$0.11	\$0.21
Trichloroethylene	\$0.05	\$0.10

TABLE II
SCHEDULE OF EXCESS VISIBLE EMISSION FEE

For each source with opacity emissions in excess of twenty percent (20%), but less than forty percent (40%) (where the source is in violation of Rule 401), the fee is calculated as follows:

$$\text{Fee} = (\text{Opacity* equivalent} - 20) \times \text{number of days allowed in variance} \times \$1.10.$$

For each source with opacity emissions in excess of forty percent (40%) (where the source is in violation of Rule 401 and California Health and Safety Code Section 41701), the fee is calculated as follows:

$$\text{Fee} = (\text{Opacity* equivalent} - 40) \times \text{number of days allowed by variance} \times \$1.10.$$

- Where "Opacity" equals maximum opacity of emissions in percent (not decimal equivalent) allowed by the variance. Where the emissions are darker than the degree of darkness equivalent to the allowed Ringelmann number, the percentage equivalent of the excess degree of darkness shall be used as "opacity."

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