

Rule 303 Hearing Board Fees

(A) General

(1) Purpose

- (a) To set forth fees required for various proceedings brought before the Hearing Board.

(2) Applicability

- (a) This rule applies to all applicants or petitioners bringing proceedings before the Hearing Board including, but not limited to, Federal, State or local government agencies or public districts.
- (b) This rule shall not apply to petitions filed by the Air Pollution Control Officer (APCO).

(B) Fees

(1) Filing Fees

- (a) Every applicant or petitioner in a proceeding before the Hearing Board shall pay to the Hearing Board, at the time of filing, a Filing Fee of \$464.00 for each petition or application.

(2) Daily Appearance Fee

- (a) 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 \$567.00 per hearing day.
 - (i) This fee shall apply to the initial appearance before the full Hearing Board and all following appearances which pertain to the same proceeding as designated by case number.
 - (ii) After the initial appearance, the Daily Appearance Fee shall be waived for any appearance (pertaining to the same proceeding) which has duration of less than one (1) hour.
 - (iii) This fee shall apply regardless of the duration of the hearing, when the applicant is requesting a modification to an order for abatement.
 - (iv) This fee does not apply to single member hearings provided pursuant to Health & Safety Code §§ 40824, 40285, 42351.5 or 42359.5.

- (3) Publication Fees
 - (a) 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.
- (4) Group Variance Fees
 - (a) Each petitioner included in a petition for a group variance shall pay the Filing Fee and the Excess Emissions Fee.
 - (b) The Daily Appearance Fee and the Publication Fee shall be totaled and divided equally among the petitioners.
 - (c) A Product Variance shall be treated as a single entity variance for the purpose of this section.
- (5) Transcript Fees
 - (a) 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.
- (6) Excess Emission Fee
 - (a) Each applicant or petitioner for a variance from these rules and regulations shall pay to the District, if ordered by the Hearing Board, an Excess Emission Fee based on the total amount of emissions discharged.
 - (i) This fee shall be calculated in accordance with the schedule set forth in Table I.
 - (ii) Where the total excess emissions cannot be readily calculated, the petitioner shall work in concert with District staff to establish the amount of Excess Emission Fees to be paid. In cases where District staff determines calculations or estimations cannot be made the petitioner shall pay the Minimum Excess Emission Fee as set forth in subsection (B)(6)(c).
 - (iii) In the event that more than one (1) rule limiting the discharge of the same contaminant are violated, the Excess Emission Fee shall consist of the fee for violation which will result in the payment of the greater sum. For the purposes of this subsection opacity rules and particulate mass emissions shall not be considered rules limiting discharge of the same contaminant.
 - (iv) The Excess Emission Fee shall be calculated by the petitioner based upon the requested number of days of operation under variance multiplied by the expected excess emissions.

- (v) If the amount of the excess emissions fee is less than the Minimum Excess Emission Fee the applicant or petitioner shall pay the higher amount.
- (vi) The Hearing Board may adjust the Excess Emission Fee based on evidence regarding emissions presented at the time of the hearing.
- (vii) The provisions of this subsection shall apply only to those rules or permit conditions that specify quantitative emission limits.

(b) Excess Visible Emission Fee

- (i) Each applicant or petitioner for a variance from District Rule 401 or Health and Safety Code Section 41701 shall pay to the District, if ordered by the Hearing Board, a Excess Visible Emission Fee based on the difference between the percent opacity allowed by District Rule 401 and the percent opacity of the emissions allowed by the variance from the source or sources operating under variance in accordance with the schedule set forth in Table II.
- (ii) In the event that an applicant or petitioner is exempt from the provisions of District Rule 401, the applicant or petitioner shall pay a fee calculated based upon the difference between the opacity allowed by 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.
- (iii) The Excess Visible Emission Fee shall be calculated by the petitioner based upon the requested number of days of operation under variance multiplied by the expected excess visible emissions.
- (iv) The Hearing Board may adjust the Excess Visible Emissions Fee based on evidence regarding emissions presented at the time of the hearing.

(c) Minimum Excess Emission Fee

- (i) When a variance is granted from a rule or rules which limit the discharge of air contaminants, such that an Excess Emission Fee is due, a fee of at least \$103.00 per day, per source of emissions, shall be imposed and remitted.

(C) Payments Adjustments and Refunds

(1) Adjustment of Fees

- (a) If after the term of a variance for which emissions fee have been paid, the applicant or petitioner can establish, to the satisfaction of the APCO, that the emissions were actually less than those upon which the fee was based, or the Excess Emissions Fee calculations are otherwise incorrect, a pro rata refund shall be made.

- (i) If the adjusted Excess Emissions Fee is less than the Minimum Excess Emission Fee then the applicant or petitioner shall pay the higher amount, unless otherwise ordered by the Hearing Board.
- (2) Discretionary Powers
 - (a) 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 Hearing Board, in its discretion, determines after hearing evidence thereon that payment of such fees would cause financial or other unreasonable hardship to the applicant or petitioner.
- (3) Emission Fee Refund
 - (a) In the event that the petition is withdrawn or the hearing is not held for any other reason, or the variance is denied, the applicant or petitioner shall be entitled to a full refund of the emission fees.
- (4) Fee Payment
 - (a) Filing Fees are due upon the filing of the petition.
 - (b) Daily Appearance Fees and Publication Fees and Transcript are due and payable within fifteen (15) days of notification of the amount due. Petitioners shall be notified in writing of the amount due.
 - (c) Excess Emissions Fees, Excess Visible Emissions Fees and Minimum Excess Emissions Fees as calculated on the petition, or ordered by the Hearing Board at the variance hearing, are due and payable within fifteen (15) days of notification of calculation and amount of such fee. Applicants or petitioners shall be notified in writing of the calculation and the amount due.
 - (d) Adjustments increasing the amount of the Excess Emissions Fee, Excess Visible Emission Fee or Minimum Excess Emission Fee, following District staff's verification of the emissions are due and payable within fifteen (15) days of notification of the amount due. Petitioners shall be notified in writing of the amount due.
 - (e) Notification may be given by personal service or by deposit in the First Class mail and shall be considered effective upon the date of personal service or five (5) days from the date of mailing.

- (f) 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.
- (g) Invalidation for Failure to Pay Fees
 - (i) Failure to pay any fee when due shall automatically invalidate the variance.
- (h) Request for Time Extension of Payment Due
 - (i) 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 applicant or petitioner may, for good cause, request the APCO 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.
- (i) The Hearing Board, upon good cause shown, may authorize incremental payments of Excess Emission Fees, Excess Visible Emission Fees or Minimum Excess Emission Fees.
- (j) Service Charge for Returned Check
 - (i) 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.
- (5) Filing Fee Refunds
 - (a) The Filing Fee or a portion of the Filing Fee may be refunded to the petitioner in the following circumstances:
 - (i) When the Hearing Board reverses the decision of the APCO in an appeal from denial or a conditional approval of a Authority to Construct or a Permit to Operate.
 - (ii) When the petition is withdrawn, and the applicant or petitioner notifies the Hearing Board in writing not less than four (4) days prior to the scheduled appearance, or the hearing is not held for any other reason, the applicant or petitioner shall be entitled to a refund of fifty percent (50%) of the filing fee.

(6) Waiver of Fees

- (a) 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.

TABLE I

SCHEDULE OF EXCESS EMISSIONS FEES

<u>AIR CONTAMINANT</u>	<u>DOLLARS PER TON</u>
Total organic gases, except those containing sulfur	\$103.00
Carbon monoxide	\$2.00
Oxides of nitrogen (expressed as nitrogen dioxide)	\$103.00
Oxides of sulfur (expressed as sulfur dioxide)	\$103.00
Particulate matter	\$103.00

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TABLE II
SCHEDULE OF EXCESS VISIBLE EMISSION FEE

For each source with opacity emissions in excess of twenty (20) percent, the allowable limit set forth in District Rule 401, or Section 41701 of the State Health and Safety Code, the fee is calculated as follows:

DISTRICT RULE 401

$$Fee = (Opacity^* \text{ equivalent} - 20) \times \text{number of days allowed by variance} \times \$3.00$$

HEALTH AND SAFETY CODE SECTION 41701

$$Fee = (Opacity^* \text{ equivalent} - 40) \times \text{number of days allowed by variance} \times \$3.00$$

*Where "Opacity" equals maximum opacity of emissions, in percent of equivalent opacity in terms of Ringelmann numbers, allowed by the variance.

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