



Dear Applicant:

This packet is designed to help you in applying for a petition for hearing before the Butte County Air Quality Management District (BCAQMD) Hearing Board. Types of petitions include: Variance; Variance Revoked or Modified; Appeal from a Denial, Suspension, or Condition of Permit; Permit Revoked, Suspended, or Modified; Order for Abatement; and Suspended Permit Reinstated.

This packet includes:

- Application for a Petition for Hearing before Hearing Board
- Hearing Board Rule 600-Hearing Board Rule and Procedures
- Hearing Board Fee Rule 504-Hearing Board Petition Fees
- Hearing Board HSC Statute
- Variance Quick Reference Chart
- Public Records Policy and Trade Secrets

The Hearing Board is appointed by the BCAQMD Governing Board and is composed of community members with backgrounds in health, law and technical fields. These individuals are experienced in many issues involving air quality and will hear your petition; however, you should not assume that they have an in-depth knowledge of the issue you are bringing before the Hearing Board. The information you provide needs to be clear and complete. If necessary, you may submit the application in letter form; however, all of the information requested in the application form must be included. You may complete the application and appear before the Hearing Board yourself, or you may hire an attorney or consultant to assist you.

The appropriate application fee must accompany the application form. The fee can be determined by referring to the enclosed fee rule. Your request for a petition cannot be heard unless the fee is paid when the application is submitted. Assistance for filling out the application form is available for small businesses.

Hearing procedures are codified in BCAQMD Rule 600-Hearing Board Rules and Procedures (attached).

Please feel free to contact Bob McLaughlin, Assistant Air Pollution Control Officer, David Lusk, Senior Air Quality Engineer, or Terry Bayer, Clerk of the Hearing Board, should you have any questions.

**PETITION FOR HEARING BEFORE
HEARING BOARD, AIR QUALITY MANAGEMENT DISTRICT
COUNTY OF BUTTE, CALIFORNIA**

SECTION I

Petitioner:	Telephone:
Address:	
Person(s) to receive notices, or to appear: Names, addresses, telephone numbers:	
Name:	Telephone:
Address:	

SECTION II

Type of Business Involved	
Location of Business	Telephone:
Brief description of particular machine, equipment, article, or other contrivance involved in petition:	

SECTION III – Type of Petition

Status of Petitioner: (Regulatory agency, individual, co-partnership, corporation in connection with business involved; or, as an interested party)	
Type of Petition: (Please complete the appropriate section)	
<input type="checkbox"/> Petition for a Variance	Section IV
<input type="checkbox"/> Petition to have a Variance Revoked or Modified	Section IV
<input type="checkbox"/> Petition for Appeal from a Denial, Suspension, or Conditions of Permit.....	Section V
<input type="checkbox"/> Petition to have a Permit Revoked, Suspended, or Modified	Section VI
<input type="checkbox"/> Petition for an Order for Abatement	Section VI
<input type="checkbox"/> Petition to have a Suspended Permit Reinstated.....	Section VII

SECTION IV – Facts constituting the reasons for granting variance

(a) THAT THE PETITIONER FOR A VARIANCE IS, OR WILL BE, IN VIOLATION OF SECTION 41701 OR OF ANY RULE, REGULATION OR ORDER OF THE DISTRICT.

(b) THAT, DUE TO CONDITIONS BEYOND THE REASONABLE CONTROL OF THE PETITIONER, REQUIRING COMPLIANCE WOULD RESULT IN EITHER (1) AN ARBITRARY OR UNREASONABLE TAKING OF PROPERTY, OR (2) THE PRACTICAL CLOSING AND ELIMINATION OF A LAWFUL BUSINESS.

(c) THAT THE CLOSING OR TAKING WOULD BE WITHOUT A CORRESPONDING BENEFIT IN REDUCING AIR CONTAMINANTS.

(d) THAT THE APPLICANT FOR THE VARIANCE HAS GIVEN CONSIDERATION TO CURTAILING OPERATIONS OF THE SOURCE IN LIEU OF OBTAINING A VARIANCE.

(e) DURING THE PERIOD THE VARIANCE IS IN EFFECT, THAT THE APPLICANT WILL REDUCE EXCESS EMISSION TO THE MAXIMUM EXTENT FEASIBLE.

(f) DURING THE PERIOD THE VARIANCE IS IN EFFECT, THAT THE APPLICANT WILL MONITOR OR OTHERWISE QUANTIFY EMISSION LEVELS FROM THE SOURCE, IF REQUESTED TO DO SO BY THE DISTRICT, AND REPORT THESE EMISSION LEVELS TO THE DISTRICT PURSUANT TO A SCHEDULE ESTABLISHED BY THE DISTRICT.

SECTION VI – (continued)

Facts of violations(s):
Proposed order for abatement:

SECTION VII – Suspended Permit Reinstated

Permit No.(s)
Rule(s) under which the permit was granted:
Information, analysis, plans, or specifications required by the Air Quality Management District:
Why such information, analyses, plans, or specifications were not furnished:
Why such information, analyses, plans, or specifications are not pertinent, or when such will be furnished:

SECTION VIII - Verification

I, THE UNDERSIGNED, DO HEREBY DECLARE UNDER PENALTY OF PERJURY THAT I HAVE READ THE FOREGOING DOCUMENT; THAT I KNOW ITS CONTENTS, AND THAT IT IS TRUE.
SIGNED THIS _____ DAY OF _____ 20_____
NAME: _____ TITLE: _____
SIGNATURE OF PETITIONER _____

ASSISTANCE FOR FILLING OUT THIS APPLICATION IS AVAILABLE FOR SMALL BUSINESSES.

ONE SIGNED COPY OF THE PETITION WITH THE FILING FEE OF \$300.00 TO BE SUBMITTED TO THE BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT, 629 Entler Avenue, SUITE 15, CHICO, CALIFORNIA 95928

FEE _____ Receipt No. _____ Date Received _____

Rule 600 Hearing Board Rules and Procedures
(Adopted by the Hearing Board on June 12, 2003; Amended December 18, 2008)

RULE 600 CONTENTS

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Rule 600**1 GENERAL**

- 1.1 Applicability:** The requirements of this Rule apply to any action before the Butte County Air Quality Management District (DISTRICT) Hearing Board.
- 1.2 Purpose:** This Rule specifies the procedures applicable to hearings before the DISTRICT Hearing Board.
- 1.3 Location of Office:** The office of the Hearing Board and that of its Clerk is located at DISTRICT offices.
- 1.4 Election of Officers:** The Chairperson and Vice Chairperson shall be elected by the Hearing Board members at the first Hearing Board meeting of each calendar year.
- 1.5 Hearing Calendar and Case Docket:** The Clerk of the Hearing Board shall maintain the docket of petitions filed and a calendar of petitions set for hearing. Each petition shall be assigned a docket number. This docket and calendar shall be available for public inspection at the office of the Hearing Board Clerk. Copies of the docket and calendar may be obtained from the Clerk of the Hearing Board upon payment of any required fee pursuant to DISTRICT Rule 508, *Document Copy Fees*.
- 1.6 Case Records**
- 1.6.1** Material, which comprises the Hearing Board's record in the docket cases, is available for study and review by the public and the DISTRICT staff in the office of the Hearing Board Clerk during normal office hours. Copies of records and exhibits may be obtained at the Clerk's office by paying the copying costs pursuant to DISTRICT Rule 508, *Document Copy Fees*.
- 1.6.2** The Hearing Board will not permit withdrawal of evidence so long as any issue concerned in the hearing is still pending a final decision either before the Hearing Board or before the courts of California. If after a final decision by the Hearing Board no further proceeding for review has been taken within the time prescribed by law, exhibits may be withdrawn at the request of the party which submitted them, or his or her counsel, and upon order of the Hearing Board.

2 DEFINITIONS

- 2.1 Abatement Order Petition:** An order to any person found to be constructing or operating any article, machine, equipment, or other contrivance without a required permit or in violation of California Health & Safety Code (HSC) Sections 41700 or 41701, or of any Rule, Regulation or permit adopted or

administered by the DISTRICT prohibiting or limiting the discharge of air contaminants into the air. (HSC Section 42451)

- 2.2 Clerk of the Hearing Board:** The DISTRICT staff person assigned and responsible for correspondence, records, and accounts for any action before the Hearing Board.
- 2.3 Effective Date of Decision:** The decision shall become effective upon affirmative vote of the Hearing Board unless otherwise specified.
- 2.4 Emergency Variance:** Variance granted for a period of 30 days or less from the effective date of the decision with no extension allowed. One (1) Hearing Board member may determine eligibility for emergency and grant the variance. (HSC Section 42359.5)
- 2.5 Emission Reduction Credits (ERCs):** Reductions of actual emissions from an emission source that are registered with the DISTRICT in accordance with DISTRICT Rule 431, *Emission Reduction Credits and Banking*.
- 2.6 Interim Authorization to Modify a Variance with Increments of Progress:** An authorization granted to a person previously granted a variance which includes a schedule of increments of progress to continue operating when that schedule cannot be met and prior to a duly noticed public hearing to modify the schedule of increments. (HSC Section 42351.5)
- 2.7 Interim Variance:** Variance granted a source that has submitted a petition for a variance and wishes to continue operating pending the decision of the Hearing Board at a duly noticed public hearing. An Interim Variance may be granted for up to 90 days from the effective date of the decision. (HSC Section 42351)
- 2.8 Modification of a Schedule of Increments of Progress or Final Compliance Date:** Petition before the Hearing Board to modify a schedule of increments of progress or a final compliance date in such a schedule. (HSC Section 42357)
- 2.9 Permit Revocation:** Petition from the Air Pollution Control Officer (APCO) for the Hearing Board to decide whether a permit should be revoked when the APCO finds that the permit holder is violating an applicable Order, Rule or Regulation of the DISTRICT, or an applicable provision of the California Health & Safety Code. (HSC Section 42307)
- 2.10 Petition by an Aggrieved Party:** Petition from a party who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in a permitting or ERC action before the DISTRICT, requesting that the Hearing Board hold a hearing to determine whether that permit or

ERC was properly issued, and shall be referred to as “intervenor”. (HSC Section 42302.1)

- 2.11 Petitioner:** Any person who files a petition with the Clerk of the Hearing Board of the DISTRICT for a hearing before the Hearing Board.
- 2.12 Product Variance:** Variance granted and attached to a particular product which does not comply with DISTRICT Rules or Regulations and the variance is necessary for the sale, supply, distribution or use of the product. (HSC Sections 42365 & 42366)
- 2.13 Regular Variance:** Variance granted for a period of one (1) year or less from the effective date of the decision by the Hearing Board at a duly noticed public hearing unless a schedule of increments of progress is included. (HSC 42358)
- 2.14 Review of Permit Denial or Emission Reduction Credit Denial:** A hearing before the Hearing Board requested by a source within 30 days of receiving the notice of permit or ERC denial and requesting the Hearing Board to decide whether the permit was properly denied. (HSC Section 42302)
- 2.15 Schedule of Increments of Progress:** A statement of dates when various steps are to be taken to bring a source of air contaminants into compliance with emission standards. (HSC Section 39051)
- 2.16 Short-term (90-Day) Variance:** A Variance, or series of variances, to be in effect for a period of not more than 90 days from the effective date of the decision, granted by the Hearing Board at a duly noticed public hearing. (HSC 40825).
- 2.17 Variance:** Temporary dispensation granted to a source from DISTRICT Rules and Regulations, an Airborne Toxic Control Measures adopted by the California Air Resources Board pursuant to the Tanner Act (HSC 39650 et. seq.), or HSC Section 41701.
- 2.18 Variance Modification or Revocation:** A written Order issued by the Hearing Board which modifies or revokes an order permitting a variance. A petition may be filed by the APCO for the Hearing Board to determine whether a variance should be modified or revoked. (HSC Section 42356).

3 GENERAL ADMINISTRATIVE REQUIREMENTS

- 3.1 Filing Petition:** A request for a hearing shall be initiated by filing a petition with the Clerk of the Hearing Board of the DISTRICT. If the Petitioner is the APCO, a copy of the petition shall be served upon the party named in the petition. Service may be made in person or by mail, and service may be

proven by written acknowledgment of the person served or by the affidavit of the person making the service. A fee, as specified in DISTRICT Rule 504, *Hearing Board Petition Fees*, shall be paid at the time of filing of a petition.

- 3.2 General Contents of Petition:** Every petition shall state:
- 3.2.1** The name, address and telephone number of the petitioner, and the person authorized to receive service of notice, if different.
 - 3.2.2** Whether the petitioner is an individual, partnership, corporation, the names of the partners, if a partnership or other entity, and the names and addresses of the officers, if a corporation; and the names and addresses of the person in control, if some other entity.
 - 3.2.3** The name, location, and type of business or activity concerned.
 - 3.2.4** A brief description of the article, machine, equipment or other contrivance, if any involved.
 - 3.2.5** The nature of the petition which is being filed, that is:
 - 3.2.5.1 Variance Petitions**
 - a. Emergency variance - 30 days maximum
 - b. Short-term variance - 90 days or less
 - c. Regular variance - greater than 90 days
 - d. Interim variance - 90 days or less
 - e. Interim authorization to modify a variance specifying increments of progress
 - f. Variance revocation
 - g. Variance modification
 - h. Product Variance
 - 3.2.5.2 Permit Action Petitions**
 - a. Review of permit denial
 - b. Petition by an aggrieved party
 - c. Review of permit suspension
 - d. Petition to revoke a permit
 - 3.2.5.3 Rehearing Petitions**
 - a. Rehearing of a decision
 - 3.2.5.4 Abatement Order Petitions**
- 3.3 Failure to Comply with Rules:** No petition shall be accepted by the Hearing Board which does not comply with these Rules relating to the filing, content, and service of petitions unless the chairperson or any two (2) 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 chairperson or any two (2) members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.
- 3.4 Withdrawal of Petition:** The petitioner may, by giving notice to the Hearing Board, withdraw the petition at any time prior to the time set for a hearing thereof, without a hearing or meeting of the Hearing Board. The Hearing

Board shall notify all interested persons of such withdrawal.

- 3.5 Place of Hearing:** Hearings shall be held at a place designated by the Hearing Board.
- 3.6 Notice of Hearing:** The Hearing Board shall give notice of the time and place of hearing either by personal service or by mail. If either the identity or address of any person entitled to notice is unknown, notice shall be served as specified in Section 6061 of the Government Code. Notice shall be given to all parties to the petition, including the APCO. The notice shall state the place where the petition and related information, including, but not limited to proposed conditions or increment of progress schedule, are available for inspection. Additional noticing requirements are indicated in subsequent Sections based on the type of petition filed.
- 3.7 Conduct of Hearing**
- 3.7.1** Hearings on Emergency Variances may be heard by a single Hearing Board member at the discretion of the Hearing Board Chair.
- 3.7.2** Hearings on Short-term Variances and Interim Variances may be heard by a single Hearing Board member at the discretion of the Hearing Board Chair. If any member of the public contests a decision made by a single member of the Hearing Board, the petition shall be reheard by the full Hearing Board within 10 (ten) days of the decision.
- 3.7.3** Hearings on petitions for Regular Variances, Abatement Orders, permit revocations and permit appeals as well as any matter which does not qualify for a hearing before one board member shall be heard by a quorum of the full Hearing Board, sitting as a single body at the DISTRICT office or at such other place as the Hearing Board shall direct and as law may allow.
- 3.8 Subpoenas**
- 3.8.1** The Chairperson of the Hearing Board shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance of witnesses or production of documents at the hearing.
- 3.8.2** 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.
- 3.8.3** After the hearing has commenced the Hearing Board may issue subpoenas and subpoenas duces tecum.
- 3.8.4** The process pursuant to Section 3.8.1 above shall be valid for all parts of the state and shall be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure.
- 3.8.5** No witness shall be obliged to attend at a place out of the county in which he resides unless the distance is less than 150 miles from his

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.

3.9 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. A party requesting relief in a Hearing Board proceeding must appear in person or by legal counsel or other qualified representative. Appearing without counsel does not relieve the party from any requirement of this Rule.

3.10 Affidavits

3.10.1 At any time ten (10) or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit, which he proposes to introduce in evidence, together with proper notice.

3.10.2 Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his or her 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 orally.

3.10.3 If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

3.10.4 Notice shall be given substantially in the following form: "The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him or her unless you notify (here insert name of proponent or his or her attorney) at (here insert address) that you wish to cross-examine him or her. To be effective, your request must be mailed or delivered to (here insert name of proponent or his or her attorney) on or before (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party.)"

3.11 Failure to Appear

3.11.1 Where a Petitioner for a variance fails to appear for a hearing after notice of time and place has been given all parties, the Hearing Board may decide the matter upon the application and any briefs of the absent party, and any other evidence received, if any, or dismiss the application.

3.11.2 Nothing herein shall be construed to deprive the party of the right to make any showing by way of mitigation.

3.12 Evidence

3.12.1 Oral evidence shall be taken only on oath or affirmation.

3.12.2 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 the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to present rebuttal evidence. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

3.12.3 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 type of evidence upon 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 admitted 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 of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

3.12.4 The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements at the hearing; however, it is desirable that written statements be submitted to the Hearing Board five (5) days before the hearing. Statements need not conform to formal rules of evidence. The chairperson may impose reasonable limits on the duration of oral presentations.

3.12.5 As deemed necessary by the Hearing Board or Hearing Board member, the Hearing Board may examine any person relevant to a particular hearing.

3.13 Record of Hearing: Each Hearing Board hearing shall be electronically recorded by the Clerk of the Hearing Board. Any party to the hearing may arrange for a court reporter at the party's expense. The DISTRICT shall retain recordings for at least three (3) years. When a party requests a court reporter, the party shall make a copy of the transcript available for the Hearing Board or Hearing Board member conducting the hearing (Hearing Officer).

3.14 Preliminary Matters: Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, permitting amendments thereto and other preliminary matters not determinative of the merits of the case may be determined by the Chairperson or any two (2) members of the Hearing Board without a hearing or meeting of the Hearing Board and

without notice.

- 3.15 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 Hearing Board.

- Announcement of pending matters;
- Enter appearances;
- Opening statement of moving party;
- Opening statement of intervenor(s);
- Opening statement of responding party;
- Evidence produced by moving party;
- Evidence produced by intervenor(s);
- Evidence produced by responding party;
- Public testimony;
- Rebuttal evidence produced by moving party;
- Rebuttal evidence produced by intervenor(s);
- Rebuttal evidence produced by responding party;
- Closing argument of moving party;
- Closing argument of intervenor(s);
- Closing argument of responding party;
- Rebuttal argument of moving party;
- Matter decided, taken under submission or continued.

- 3.16 Continuance:** The Chairperson or any two members of the Hearing Board shall grant any continuance of up to 45 days, which is concurred in by the petitioner, the APCO and by all other persons who are party to the action. This action may be taken without a meeting of the Hearing Board and without prior notice. This does not preclude the Hearing Board from continuing a petition for a period longer than 45 days during or after the duly noticed hearing.

- 3.17 Decision:** A quorum of not less than three members of the Hearing Board is required for all decisions. No decision shall be made except in the presence of a quorum and upon affirmative vote by at least three members of the Hearing Board. The decision shall be in writing, served and filed within 30 days after signature by the Hearing Board members and shall contain: a brief statement of facts found by the Hearing Board to support the findings required by Sections 4.3, 5.3, 6.3, and 7.3 of this Rule, a determination of the issues presented, and the Order of the Hearing Board. A copy shall be mailed or delivered to the APCO, the petitioner and to every person who has appeared as a party in person or by counsel at the hearing. Decisions granting, modifying, or otherwise affecting a variance shall be mailed to the California Air Resources Board (CARB) within 30 days after signature by the Hearing Board members.

4 EMERGENCY VARIANCES: Notwithstanding the above, the following specific items apply to Emergency Variances.

4.1 Specific Contents of Petition: A Petitioner may file a petition for an Emergency Variance by filing a written petition to the Clerk of the Hearing Board and paying a filing fee as set forth in Rule 504 of these Rules and Regulations. The filing shall explain in detail the grounds for the request, including such information as the foreseeability of the cause of the emergency, whether the Petitioner has used good maintenance practices and whether the Petitioner's violations are due to conditions beyond its reasonable control. This initial filing does not in itself constitute a variance and provides no assurance of protection from enforcement action.

4.2 Notice of Hearing: An Emergency Variance may be granted without notice and hearing or, at the discretion of the Hearing Board, a hearing may be held.

4.3 Determination of Variance Findings

4.3.1 When a written notification requesting an Emergency Variance has been received, the Clerk of the Hearing Board shall, as soon as is practicable, schedule a telephone conference call or hearing on the petition with one (1) member of the Hearing Board.

4.3.2 The Hearing Board member conducting the hearing (Hearing Officer) will call the meeting to order, will obtain the names of persons participating in the hearing for the record and will swear in all persons wishing to provide testimony.

4.3.3 After receiving testimony and other evidence, the Hearing Officer may grant the request based on good cause, or deny the request at that time, may obtain further information orally or in writing from the Petitioner or the APCO before acting on the request, or may defer the matter for later consideration by the full Hearing Board. Such hearing shall be held within 30 calendar days.

4.3.4 If the Petitioner is not a participant in the hearing, the Petitioner will be notified orally by the Hearing Board Clerk of the decision on the request for Emergency Variance. If an Emergency Variance is granted, the Clerk will notify all other Hearing Board members as soon as possible but no later than 48 hours from the time of the decision.

4.3.5 If, within this 48-hour period, any Hearing Board member notifies the Clerk of the Hearing Board that he or she wishes to convene a hearing upon the Emergency Variance so granted, the Clerk, after consultation with the Chairman, shall schedule a hearing within 30 calendar days and shall notify all Hearing Board members, the Petitioner, and the DISTRICT. The purpose of such hearing shall be to review the issuance of the Emergency Variance and to consider whether it should remain in effect as ordered, be modified, or be terminated. Any such modification or termination, however, shall

not be retroactive.

5 VARIANCES OTHER THAN EMERGENCY VARIANCES: Notwithstanding the above, the following specific items apply to Variances other than Emergency Variances.

5.1 Specific Contents of Petition: In addition to the requirements set forth in Section 3.2 of this Rule, petitions for variances shall state briefly:

- 5.1.1** The Section, Rule or Order that will be violated if a variance is not granted.
- 5.1.2** That due to conditions beyond the reasonable control of the petitioner, requiring compliance with the Sections, Rule, or Order will result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of lawful business.
- 5.1.3** The facts showing that the closing or taking will be without corresponding benefit in reducing air contaminants.
- 5.1.4** The consideration given to curtailing operations in lieu of obtaining a variance.
- 5.1.5** The final compliance date and increments of progress if the requested variance period exceeds one (1) year, or if requested by the APCO.
- 5.1.6** The conditions associated with the individual increments of progress; including, but not limited to, increments of progress schedules, operating parameters, and reporting requirements.
- 5.1.7** Estimation of excess emissions and proposed actions which will reduce excess emissions to the maximum extent feasible during the variance period.
- 5.1.8** The advantages and disadvantages to the residents of the district resulting from requiring compliance or resulting from granting a variance.
- 5.1.9** Procedures, methods, and equipment used to quantify emission levels from the source during the variance period, subject to approval and reporting requirements of the APCO.
- 5.1.10** Whether or not operations under such variance, if granted, will constitute a nuisance.
- 5.1.11** Facts demonstrating past diligence in trying to comply with applicable standards.

5.2 Notice of Hearing

5.2.1 Regular Variance Petitions Longer than 90 Days and Final Compliance Date Modifications

- 5.2.1.1** Notice shall be given to all other districts in the Sacramento Valley Air Basin, CARB, the U.S. Environmental Protection Agency (EPA), and every other person requesting such notice, not less than 15 days prior to such hearing.

- 5.3.7** As used in this Section, a public agency means any State agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision (HSC Section 42352).
- 5.3.8** That an effective variance period has been specified including:
- 5.3.8.1** Initial effective date,
 - 5.3.8.2** final compliance date, and
 - 5.3.8.3** schedule of increments of progress for variance periods exceeding one year, and, if requested by the APCO at the discretion of the Hearing Board, variance periods less than one (1) year. The Hearing Board may also impose reporting requirements showing compliance with a schedule of increments of progress, or compliance with an emissions curtailment or reporting plan.
- 5.3.9** That the Petitioner agrees to post a bond, if required by the Hearing Board as a condition of the variance, to assure performance of any construction, alteration, repair, or other work required by the variance. The bond may provide that, if failure to perform the required work by the agreed date, the bond shall be forfeited as provided in HSC Section 42355.

6 PRODUCT VARIANCES: Notwithstanding the above, the following specific items apply to Product Variances.

- 6.1 Specific Contents of Petition:** In addition to the requirements set forth in Section 3.2 and 5.1 of this Rule, petitions for Product Variances shall state briefly:
- 6.1.1** The facts showing that the petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with DISTRICT Rules and Regulations (HSC Section 42368).
 - 6.1.2** A proposed written notice that is to be furnished to any retailer, distributor or purchaser of the product for the duration of the variance. The notice shall contain the following information (HSC Section 42368):
 - 6.1.2.1** That the product is being sold pursuant to a Product Variance granted by the DISTRICT Hearing Board.
 - 6.1.2.2** The beginning and ending dates of the Product Variance.
 - 6.1.2.3** Any conditions to be set forth in the Product Variance which might reduce excess emissions to the extent feasible.
- 6.2 Notice of Hearing:** Notice shall be given in accordance with Section 5.2.1 or 5.2.2 of this Rule, whichever is applicable.
- 6.3 Determination of Variance Findings:** No Product Variance shall be granted

unless the Hearing Board makes all of the following findings (HSC Section 42368):

- 6.3.1** The facts substantiating that the manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a Rule, Regulation, or Order of the DISTRICT.
- 6.3.2** Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.
- 6.3.3** The taking or closing would be without a corresponding benefit in reducing air contaminants.
- 6.3.4** The petitioner exercised due diligence in attempting to locate, research or develop a product that is in compliance with DISTRICT Rules and Regulations.
- 6.3.5** During the period that the Product Variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission level to the DISTRICT, if requested by the DISTRICT.
- 6.3.6** Verification that during the duration of the variance the appropriate and approved notice shall be provided to any retailer, distributor or purchaser of the product who is located in the district.

7 PETITIONS REGARDING PERMITS AND ERCs: Notwithstanding the above, the following specific items apply.

- 7.1 Specific Contents of Petition:** In addition to the requirements set forth in Section 3.2 of this Rule, petitions for permit or ERC actions shall state briefly:
 - 7.1.1** The Section, Rule or Order which is the basis for conditional approval, suspension, denial, or revocation; or which is alleged to have been violated or is the basis of the grievance.
 - 7.1.2** Statement as to why the petition is being sought.
 - 7.1.3** The facts illustrating the potential impact on the source, public, and aggrieved party if the permit or ERC action is sustained by the Hearing Board.
 - 7.1.4** The Hearing Board action requested.
- 7.2 Notice of Hearings:** In addition to the notice requirements set forth in Section 3.6 of this Rule the following shall apply:
 - 7.2.1** For petitions regarding permits, notice shall be published in at least one daily newspaper of general circulation not less than ten (10) days prior to such hearing.
 - 7.2.2** For petitions regarding ERCs, reasonable notice shall be given prior to such hearing. The DISTRICT defines reasonable notice as a written notice displayed in a place accessible to the public on

DISTRICT premises at least three (3) days prior to the public hearing.

7.3 Findings and Decision

7.3.1 A permit may be revoked pursuant to HSC Section 42309 if the Hearing Board finds any of the following:

7.3.1.1 The permittee has failed to correct any conditions required by the APCO.

7.3.1.2 A refusal of a permit would be justified.

7.3.1.3 Fraud or deceit was employed in obtaining the permit.

7.3.1.4 Any violation of Part 4 of Division 26 of the Health and Safety Code or any Rule, Regulation, or Order of the DISTRICT.

7.3.2 Permit or ERC Denial Findings: In order to deny a permit or ERC the Hearing Board must find that the permit or ERC was improperly issued. (HSC Section 42302.1)

8 REHEARINGS

8.1 Specific Contents of Petitions: In addition to the requirements set forth in Section 3.2 of this Rule, petitions for rehearing shall state briefly:

8.1.1 The original petition number and hearing date.

8.1.2 The reasons and additional facts, which merit rehearing the petition.

8.1.3 The Hearing Board action requested.

8.2 Notice of Hearings: In addition to the requirements set forth in Section 3.6 of this Rule notice shall be published in at least one daily newspaper of general circulation not less than ten (10) days prior to such hearing.

8.3 Findings and Decision

8.3.1 Pursuant to HSC Section 40861, the Hearing Board may rehear a decision if a party petitions for a rehearing within ten (10) days after a copy of the decision has been mailed to said party.

8.3.2 Pursuant to HSC Section 40821, the Hearing Board may, in its discretion, with not fewer than four (4) members present, within 30 days of the effective date of the decision, rehear any matter.

9 ABATEMENT ORDERS

9.1 Specific Contents of Petition: In addition to the requirements set forth in Section 3.2 of this Rule, petitions for abatement orders shall state briefly:

9.1.1 The Section, Rule, or Order, which is alleged to have been violated.

9.1.2 A statement of the facts constituting the violation, or alleged violation, and a description of the potential impacts.

9.1.3 Permit status and history of the source sought to be abated.

9.1.4 The particular act or operation sought to be abated, together with

conditions, if applicable.

9.1.5 Facts showing that abatement are necessary to prevent future violations.

9.2 **Notice of Hearings:** In addition to the requirements set forth in Section 3.6 of this Rule, notice shall be published in at least one daily newspaper of general circulation not less than ten (10) days prior to such hearing.

9.3 **Findings and Decision:** The Hearing Board may:

9.3.1 Issue an abatement order if it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit required by DISTRICT Rule 400, *Permit Requirements*; or is in violation of HSC Section 41700 or 41701, or of any Rule, Regulation, or Order prohibiting or limiting the discharge of air contaminants into the atmosphere; or

9.3.2 Pursuant to HSC Section 42451(b), issue an abatement order pursuant to the stipulation of the APCO and the person or persons accused of violations specified in Section 9.3.1 above. The stipulation shall set forth terms and conditions.

BUTTE COUNTY AIR MANAGEMENT DISTRICT

RULE 504 - HEARING BOARD PETITION FEES

*(Adopted January 4, 1972; Amended and Recodified August 6, 1985;
Amended and Recodified June 24, 1999; Recodified August 22, 2002)*

RULE 504 CONTENTS

1. FILING FEE
2. HEARING FEE
3. TRANSCRIPT FEE
4. FEE WAIVER

RULE 504

- 1 **FILING FEE:** Each person filing a petition to the Butte County Air Quality Management District Hearing Board pursuant to Regulation VI of these Rules and Regulations or the California Health and Safety Code (HSC) shall pay a filing fee in the amount of \$300.00 to the Clerk of the Hearing Board. Said fees shall be credited to the Butte County Air Quality Management District's account.
- 2 **HEARING FEE:** Each petitioner shall pay an additional fee as specified in the following schedule:
 - 2.1 Emergency Variance (HSC 42359.5)..... (no additional charge)
 - 2.2 Interim Variance (HSC 42351).....\$150.00
 - 2.3 Short Term Variance (HSC 40825.).....\$150.00
 - 2.4 Regular Variance (HSC 42358).....\$300.00
 - 2.5 Modification of increments of progress (HSC 42356).....\$150.00
 - 2.6 Petition to appeal permit issuance or denial (HSC 42302, 42302.1)....\$300.00
- 3 **TRANSCRIPT FEE:** Any person requesting a transcript of a Hearing Board proceeding shall pay the actual costs of generating said transcript. Such request must be presented in writing to the Air Pollution Control Officer a minimum of five (5) working days prior to the scheduled hearing.
- 4 **FEE WAIVER:** Pursuant to HSC Section 42311.2, notwithstanding Rule 504 fee requirements, the Hearing Board may waive all or part of these fees if it determines that circumstances warrant that waiver.

HEALTH AND SAFETY CODE

SECTION 42350-42364

42350. (a) Any person may apply to the hearing board for a variance from Section 41701 or from the rules and regulations of the district.

(b) (1) If the district board has established a permit system by regulation pursuant to Section 42300, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

(2) Title V sources shall not be granted a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use.

(3) In districts with emission-capped trading programs, no variance shall be granted from the emission cap requirement.

42350.5. Any form developed by a district board for use in filing an application for a variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

42351. (a) Any person who has submitted an application for a 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.

(b) An interim variance may be granted for good causes stated in the order granting such a variance. The interim variance shall not be valid beyond the date of decision of the hearing board on the application of the variance or for more than 90 days from date of issuance of the interim variance, whichever occurs first.

(c) The hearing board shall not grant any interim variance (1) after it has held a hearing in compliance with the requirements of Section 40826, or (2) which is being sought to avoid the notice and hearing requirements of Section 40826.

42351.5. If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing board sufficiently in advance to allow the hearing board to schedule a public hearing on the application, the hearing board may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application. In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests such a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision. The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

42352. (a) 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 Section 41701 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 (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

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

(b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

42352.5. (a) The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 42352 or paragraph (2) of subdivision (a) of Section 42368, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(2) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider

the factors specified in subdivision (a) in the following manner:

(A) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining the extent to which the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

42353. Upon making the specific findings set forth in Section 42352, 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 persons. However, no variance shall be granted if the operation, under the variance, will result in a violation of Section 41700.

42354. In prescribing other and different requirements, in accordance with Section 42353, the hearing board, insofar as is consonant with the Legislature's declarations in Sections 39000 and 39001, 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 business, occupation, or activity involved, resulting from requiring compliance with such requirements.

42355. (a) The hearing board may require, as a condition of granting a variance, that a bond 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. The bond may provide that, if the party granted the variance fails to perform the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or the 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.

(b) The provisions of this section do not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

42356. The hearing board may modify or revoke, by written order, any order permitting a variance.

42357. The hearing board may review and for good cause, such as a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in such a schedule.

42358. (a) 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 subdivision (b), to exceed one year, and shall set a final compliance date.

(b) 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.

42359. Except in the case of an emergency, as determined by the hearing board, the hearing board shall hold a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 to determine under what conditions, and to what extent, a variance shall be granted.

42359.5. (a) Notwithstanding any other provision of this article or of Article 2 (commencing with Section 40820) of Chapter 8 of Part 3, the chairman of a district hearing board, or any other member of the hearing board designated thereby, may issue, without notice and hearing, an emergency variance to an applicant.

(b) An emergency variance may be issued for good cause, including, but not limited to, a breakdown condition. The district board in consultation with its air pollution control officer and the hearing board may adopt rules and regulations, not inconsistent with this subdivision, to further specify the conditions, and to what extent, an emergency variance may be granted.

The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 40824 or 42351.

42360. Within 30 days of any order granting, modifying, or otherwise affecting a variance by the hearing board, or a member thereof pursuant to Section 42359.5, either the air pollution control officer or the hearing board shall submit a copy of the order to the state board.

42361. Any variance granted by the hearing board of a county district or a unified district, or any member of such a hearing board pursuant to Section 42359.5, applicable in an area which subsequently becomes included within a regional district, including the bay district, shall remain valid for the time specified therein or for one year, whichever is shorter, or, unless prior to the expiration of such time, the hearing board of the regional district modifies or revokes the variance.

42362. The state board may revoke or modify any variance granted by any district if, in its judgment, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of this article.

42363. Prior to revoking or modifying a variance pursuant to Section 42362, the state board shall conduct a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 on the matter. The person to whom the variance was granted shall be given immediate notice of any such hearing by the hearing board, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if he were a party to the hearing.

42364. (a) The district board may adopt, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this article and for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by the schedule, including, notwithstanding the provisions of Section 6103 of the Government Code, an applicant that is a publicly owned public utility.

(b) All such fees shall be paid to the district treasurer to the credit of the district.

VARIANCE QUICK REFERENCE CHART

Type of Variance	Effective Time Span	Noticing Requirements	Further Considerations
Emergency	30 Day Maximum No Extension Allowed HSC 42359.5	None HSC 42359.9	1 member may issue the variance Hearing Board determines eligibility for Emergency HSC 42359.5
Short	90 Day Maximum Final Compliance Date Extensions Are Ok HSC 40825	10 Day Minimum to APCO, Air Districts, ARB, EPA and Petitioner HSC 40825	1 Hearing Board Member may hear if District population is less than 0.75 million, unless any member of the public objects HSC 40825
Interim	90 Day Maximum or until the next Hearing Board Meeting, whichever occurs first HSC 42351(b)	Reasonable Notice to APCO and Petitioner HSC 40824	Same as Short Variance HSC 40825 Can not be granted to avoid Public Notice Requirements HSC 42351(c)
Regular	1 Year Maximum unless schedule of increments of progress is included HSC 42358	30 Day Minimum (15 Day in Districts with less than 0.75 million population) to APCO, Air Basin, District, ARB, EPA and any interested member of the public HSC 40826	Public Notice of hearing in at least one newspaper of general circulation in the District HSC 40826
Modification of Final Compliance Date (Extension)	Determined by Hearing Board	Same as Regular Variance HSC 40826	Same as Regular Variance HSC 40826
Modification Of Schedule Of Increments Of Progress	Determined by Hearing Board	10 Day Minimum to APCO, Air Basin, District, ARB, EPA and Petitioner HSC 40825	Same as Interim Variance HSC 40825
Interim Authorization	30 Day Maximum Only good for Increments of Progress – Not Final Compliance Date HSC 42351.5	Reasonable Notice to APCO and Petitioner	No more than one granter per application if modification of schedule (May be heard by 1 Hearing Board member if District population is less than 0.75 million) HSC 42351.5

BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT

629 ENTLER AVENUE, SUITE 15, CHICO, CALIFORNIA 95928

TELEPHONE: (530) 332-9400 FAX: (530) 332-9417

PUBLIC RECORDS POLICY AND TRADE SECRETS

It is the policy of the Butte County Air Quality Management District (District) that all District records, including records submitted by an applicant for a permit to operate or authority to construct, shall be considered public records and open to public inspection with the least possible delay, unless said records are exempt from disclosure by statutory or case law or authorized as exempt from disclosure due to ongoing District investigation or potential litigation. The complete District Public Record Information Disclosure Policy is available upon request.

Permit applicants should be aware that any information submitted to the District is subject to release upon written request pursuant to the District's policy:

- to the public upon request, except for trade secrets which do not constitute emissions data:
- to the California Air Resources Board; and
- to the Federal Environmental Protection Agency, which protects trade secrets as provided in the Clean Air Act, Section 114[c], as amended in 1970 in 40 Code of Federal Regulations, Chapter 1, Part 2.

Permit applicants may be required to disclose information to the District which are trade secrets pursuant to Government Code Section 6254.7(d). Trade secrets are not public records and are not subject to disclosure under the District's public records policy. Trade secrets may include, but are not limited to, any formula, plan, patterns, process, tool, mechanism, compounds, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound and article or trade of a service having commercial value, and which gives user an opportunity to obtain a business advantage over competitors who do not know or use it.

Any person or source from whom the District obtains any records may label "trade secret" any part of those records which is entitled confidentiality pursuant to Government Code Section 6254.7 and District requirements. Written justification for the "trade secret" designation shall be furnished to the District together with the records so designated. The justification shall be as detailed as possible without disclosing the trade secret. Be advised that this justification will be released if the documents designated as "trade secret" are later requested. The person or source may submit additional information to support the justification, and such information, upon request, shall be kept confidential in the same manner as the record sought to be protected.