

**REGULATION VII
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Rule 700 **Applicable Articles of the Health and Safety Code**

The provisions of Article 2, Chapter 4, Part 4, and Chapter 8, Part 3 of Division 26 of the Health and Safety Code, respectively entitled Variances and Hearing Board, are applicable within the boundaries of the Northern Sierra Air Quality Management District.

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Rule 701 **General**

This regulation shall apply to all hearings before the Hearing Board of the Air Quality Management District.

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Rule 702 **Filing Petitions**

Requests for hearing shall be initiated by the filing of a petition, in triplicate, with the clerk of the Hearing Board, and the payment of the fee as provided for in Regulation VI of these Rules and Regulations, after service of a copy of the petition has been made on the Air Pollution Control Officer and one copy on the holder of the permit or variance, if any, involved. Service may be made in person or by mail, the service may be proved by written acknowledgment of the person served or by the affidavit of the person making the service.

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Rule 703 **Contents of Petitions**

Every petition shall state:

- A. The name, address, and telephone number of the petitioner, or other person authorized to receive service of notices.
- B. Whether the petitioner is an individual, co-partner, corporation, or other entity, and names and addresses of the partners if a co-partnership, names, and addresses of the officers, if a corporation, and the names, and addresses of the persons in control, if other entity.
- C. The type of business or activity involved in the application and the street address at which it is conducted.
- D. A brief description of the article, machine, equipment, or other contrivance, if any involved, in the application.
- E. The Section or Rule under which the petition is filed:
 - 1. To determine whether a permit shall be revoked, or a suspended permit reinstated, under Section 42307, Health and Safety Code;
 - 2. For a variance under Section 42350, Health and Safety Code;
 - 3. To revoke or modify a variance under Section 42356, Health and Safety Code;
 - 4. To review the denial or conditional granting of an Authority to Construct or Permit to Operate under Rule 519 of these Rules and Regulations.
 - 5. To review the denial of certification or withdrawal of certified emission reductions under Rule 412 or to review the withdrawal of approval of innovative technology under Rule 418.
- F. Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner, it shall set forth his authority to sign.
- G. Petitions for revocation of permits shall allege, in addition, the Rule under which permit was granted, the Rule, or Section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violations.

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- H. Petitions for reinstatement of suspended permits shall allege, in addition, the Rule under which the permit was granted, the request and alleged refusal which formed the basis for such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent, and, if so, when it will be furnished.

- I. All petitions shall be typewritten, double spaced, on legal or letter size paper, on one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.

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Rule 704 **Petitions for Variances**

The Petition for Hearing form, as provided, shall be filled out completely.

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Rule 705 Appeal from Denial

A petition to review the denial or conditional approval of a permit shall, in addition to the information required by Rule 703, set forth a summary of the permit application or a copy thereof, and the alleged reasons for the denial or conditional approval and the reasons for appeal.

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Rule 706 **Failure to Comply with Rules**

The clerk of the Hearing Board shall not accept for filing any petition which does not comply with these Rules relating to form, filing, and service of petitions unless the chairman of the Hearing Board directs otherwise and confirms such direction in writing. Such direction need not be made at a meeting of the Hearing Board.

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Rule 707 Answers

Any person may file an answer within ten (10) days after service. All answers shall be served in the same manner as are petitions under the provisions of Rule 702.

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Rule 708 **Dismissal of Petition**

The petitioner may dismiss his petition at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The clerk of the Hearing Board shall notify all interested persons of such dismissal.

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Rule 709 **Place of Hearing**

All hearings shall be held at a place designated by the Hearing Board.

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Rule 710 **Notice of Public Hearing**

- A. For hearings requested under Rule 519, the clerk of the hearing Board shall serve a notice of the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant or permittee affected, not less than ten (10) days prior to such hearing. In addition, such notice shall be published in at least one newspaper of general circulation within the District. The notice shall state the time and place of the hearing and such other information as may be necessary to reasonably apprise the people within the District of the nature and purpose of the hearing.

- B. Except as stated in (A), (C), (D), and (E), in the case of a hearing to consider the application for a variance, the clerk of the Hearing Board shall serve a notice of the time and place of a hearing upon the Air Pollution Control Officer, all other districts within the air basin, the Air Resources Board, the Environmental Protection Agency, the applicant or permittee, and every person who requests such a notice not less than thirty (30) days prior to such hearing. In addition, such notice shall be published in at least one daily newspaper of general circulation in the District at least thirty (30) days prior to the hearing. The notice shall state the time and place of the hearing, and the place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection, and such other information as may be necessary to reasonably apprise the people within the District of the nature and purpose of the hearing.

- C. For an application for a variance, or a series of variances, to be in effect for a period of not more than ninety (90) days, the clerk of the Hearing Board shall serve a notice of the time and place of a hearing to grant such a variance upon the Air Pollution Control Officer, all other districts within the basin, the Air Resources Board, the Environmental Protection Agency, and upon the applicant or permittee, not less than ten (10) days prior to such hearing.

- D. For an application for interim variance, the clerk of the Hearing Board shall serve reasonable notice of the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant.

- E. For an application for an emergency variance, the clerk of the Hearing Board shall serve notice of the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant.

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- F. The clerk of the Hearing Board shall serve a notice of time and place of a hearing either by personal services or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the clerk shall serve such person by publication of notice in the District pursuant to Section 6061 of the Government Code.
- G. Sections 42450 through 42454 of the Health and Safety Code, Orders of Abatement, shall apply.
- H. For an application for an appeal of denial of emission reduction certification or withdrawal, or for an application for an appeal of approval of innovative technology, the clerk of the Hearing Board shall serve reasonable notice of the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant.

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Rule 711 Evidence

- A. Oral evidence shall be taken only on oath or affirmation.
- B. Each party shall have these rights:
 - 1. To call and examine witnesses;
 - 2. To introduce exhibits;
 - 3. To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination;
 - 4. To impeach any witness regardless of which party first called him to testify;
 - 5. To rebut the evidence against him.
- C. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- 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 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 that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- E. All evidence, oral or written, and all exhibits, shall be recorded at the time of the hearing and all records shall be maintained for a period of time as specified by law or as determined by the Air Pollution Control Board.

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Rule 712 Preliminary Matters

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

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Rule 713 **Official Notice**

The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.

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Rule 714 **Continuances**

The chairman of the Hearing Board shall grant any continuance of fifteen (15) days, or less, concurred in by petitioner, the Air Pollution Control Officer and by every person who has filed an answer in the action and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

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Rule 715 **Decision**

The decision shall be in writing, served and filed within fifteen (15) days after submission of the cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issue presented and the order of the Hearing Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the Air Resources Board, the petitioner, and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing.

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Rule 716 **Effective Date of Decision**

The decision shall become effective fifteen (15) days after delivering or mailing a copy of the decision, as provided in Rule 715, or the Hearing Board may order that the decision shall become effective sooner.

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Rule 717 **Lack of Permit**

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any equipment until a permit has been granted or denied by the Air Pollution Control Officer, except that an appeal from a denial of a permit and a petition for a variance may be filed with the Hearing Board in a single petition. A variance granted by the Hearing Board after a denial of a permit by the Air Pollution Control Officer may include a permit for the duration of the variance.

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Rule 718 **Hearing Board Administrative Requirements - Title V Sources**

In addition to the administrative requirements listed in District Rules 700 through 717, the following administrative requirements shall apply to all petitions which are filed during Title V permit issuance, during Title V permit reopening, during significant Title V permit modifications, during Title V permit renewal, and only if these petitions affect a federally enforceable requirement(s) in the Title V permit that is issued pursuant to Rule 522, Title V - Federal Operating Permits.

- A. The Hearing Board's decision shall be incorporated into the Title V permit.

- B. Administrative procedures for initial Title V permit issuance in Part 5.0 of District Rule 522, TITLE V - FEDERAL OPERATING PERMITS, shall apply to the variance conditions that are incorporated into the Title V permit.

- C. If the Hearing Board receives a written notice from EPA, through the Air Pollution Control Officer, objecting to the Hearing Board's decision in a Title V permit, the hearing board shall rehear it's decision.