



Air Pollution Control Board
Greg Cox District 1
Dianne Jacob District 2
Pam Slater District 3
Ron Roberts District 4
Bill Horn District 5
Air Pollution Control District
R. J. Sommerville Director

NOTICE OF WORKSHOP
FOR DISCUSSION OF PROPOSED AMENDMENTS TO
DISTRICT RULE 25 - APPEALS

The San Diego County Air Pollution Control District will hold a public meeting to consider comments concerning proposed amendments to District Rule 25 - Appeals. Comments concerning the proposed amendments may be submitted in writing before, or made at, the workshop, which is scheduled as follows:

DATE: **April 19, 2000**
TIME: **1:00 p.m. to 3:00 p.m.**
PLACE: **San Diego Air Pollution Control District**
 9150 Chesapeake Drive
 Conference Room 139

Rule 25 specifies the requirements and procedures for appealing an action of the Air Pollution Control Officer regarding issuance or denial of an Authority to Construct, Permit to Operate, renewal of a Permit to Operate with new or modified conditions, Certificate of Registration, or Emission Reduction Credit (ERC) Certificate; and requirements and procedures for filing a request for stay of such permit or certificate. Health and Safety Code Sections 42302 and 42302.4 were recently revised to extend the applicant and public appeal time from 10 to 30 days. The proposed amendments to Rule 25 reflect these revisions and make other minor clarifications. Specifically, amended Rule 25 will:

- Extend the time allowed for filing an appeal, including a request for stay, from 10 to 30 days.
- Clarify the time requirement for serving a copy of the request for stay on the holder of the permit or certificate and the Air Pollution Control Officer. Copies must be served prior to the time the request is filed with the Hearing Board.
- Clarify Rule 25 structure and wording.

If you would like a copy of the proposed amendments to Rule 25, please contact Luann Serbesku at (858) 495-5208, or access the District's Web Site at www.sdapcd.co.san-diego.ca.us under Rules and Regulations, Workshop Notices.

For questions regarding the proposed amendments, please contact Camqui Nguyen at (858) 694-3316 or Laura Yannayon at (858) 694-3326.

RICHARD J. SMITH
Assistant Director

RJSm:LY:ls
9150 Chesapeake Drive • San Diego • California 92123-1096 • (619) 694-3307
FAX (619) 694-2730 • Smoking Vehicle Hotline 1-800-28-SMOKE

SAN DIEGO AIR POLLUTION CONTROL DISTRICT

PROPOSED AMENDED RULE 25

Proposed amendments to Rule 25 are to read as follows:

RULE 25. APPEALS

(a) APPEALS OF DENIAL OF PERMIT OR CERTIFICATE

(1) Within ~~10~~ 30 days after ~~notice~~, by the Air Pollution Control Officer has notified the applicant, of denial or conditional approval of ~~an Authority to Construct, Permit to Operate, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit (ERC) Certificate~~ a Permit or Certificate, the applicant may file a petition with the Hearing Board, in writing, for a public hearing.

(2) Such ~~request~~ petition shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury.

(3) Within 30 days of filing such a petition, ~~The the~~ Hearing Board, ~~after notice and a public hearing held within 30 days after filing the petition, may~~ shall hold a noticed public hearing and render a decision on whether to sustain, reverse or modify the action of the Air Pollution Control Officer. Such order may be made subject to specified conditions.

(b) APPEALS OF ISSUANCE OF PERMIT OR CERTIFICATE

(1) Within ~~10~~ 30 days of any decision or action pertaining to the issuance of ~~an Authority to Construct, Permit to Operate, temporary authorization, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit Certificate~~ a Permit or Certificate, an aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the District ~~connection with the issuance of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~, may request the Hearing Board to hold a hearing to determine whether the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~ Permit or Certificate was properly issued.

(2) ~~A~~ The request to the Hearing Board shall be made by filing ~~of~~ a petition in accordance with the Rules and Regulations of the Hearing Board and payment of fees provided for in Rule 42 of the Rules and Regulations of the Air Pollution Control District.

(3) The ~~request~~ petition shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury.

(4) A copy of such ~~request~~ petition shall be served on the holder of the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~ Permit or Certificate, and the Air Pollution Control Officer no later than the day the request is filed with the Hearing Board.

(5) Within 30 days of the ~~request~~, filing of such a petition, the Hearing Board shall hold a noticed public hearing and render a decision on whether the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~, Permit or Certificate was properly issued in accordance with District Rules and Regulations.

(c) **REQUEST FOR STAY**

(1) An aggrieved person who has filed a petition pursuant to Section (b) of this Rule may request the Hearing Board to stay the effect of the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~ Permit or Certificate, pending a decision of the Hearing Board on the petition.

(2) ~~Any~~ Such request for stay shall be in writing, shall state with reasonable particularity the grounds in support of the request and shall be signed under penalty of perjury.

(3) A copy of the ~~Petition and~~ request for stay shall be served personally on the holder of the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~, Permit or Certificate and the Air Pollution Control Officer ~~on the same day the request for stay is filed with the Hearing Board~~, but prior to the time the request is filed with the Hearing Board; provided, however, that service of the request for stay on a holder of an ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~, a Permit or Certificate, who does not maintain a fixed place of business within the District, may be accomplished by mail. Proof of service on the holder of an ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate~~, the Permit or Certificate must accompany any request for a stay at the time such request is filed with the Hearing Board.

~~(2)-(4)~~ (4) A request for stay served and filed pursuant to ~~Subsection (1) of~~ Section (c) of this rule shall be heard, notice requirements permitting, at the next meeting of the Hearing

Board ~~at which time~~. At this meeting, the Hearing Board shall determine whether the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, Permit or Certificate~~ should be stayed until the final decision of the Hearing Board on the propriety of the issuance of the ~~p~~ Permit or Certificate is rendered. If the notice requirements cannot be met for the next meeting of the Hearing Board, the ~~stay~~ request for stay shall be heard at the following meeting of the Hearing Board. The person requesting the stay, the holder of the ~~Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, Permit or Certificate~~ and the Air Pollution Control Officer shall be given an opportunity to present evidence and arguments on the request for stay. A request for stay shall have priority over other matters on the Hearing Board calendar.

~~(3)~~(5) The Hearing Board shall stay the effect of an ~~Authority to Construct or permit or temporary authorization~~ the Permit or Certificate pending a final decision by the Hearing Board only if the Hearing Board finds that denial of the stay would likely result in ~~the~~ great or irreparable injury to an aggrieved person or the public. The decision of the Hearing Board on the stay shall be served by the Clerk of the Hearing Board immediately on all parties and the Air Pollution Control Officer.

~~(e)~~(d) **CONSULTATION MEETING REQUIREMENTS**

Not later than three business days after receipt by the Air Pollution Control Officer of an appeal pursuant to Section (b) of this ~~R~~ rule or a request for stay pursuant to Section (c) of this ~~R~~rule, the Air Pollution Control Officer or his designee shall attempt to schedule a meeting with the appellant and the ~~p~~ Permit or Certificate holder to resolve the issues identified in the appeal or request for stay. If there is a resolution of the issues by the parties, the matter before the Hearing Board shall be withdrawn or dismissed. If all the issues are not resolved at the meeting, the District shall file a report with the Hearing Board detailing the resolved and unresolved issues and the District position on the unresolved issues.

~~(d)~~(e) **REQUEST FOR STAY OF A MODIFIED PERMIT**

With respect to an Authority to Construct, ~~or p~~ Permit to Operate, or temporary authorization for a modification of an existing permitted operation, any appeal or stay provided for in this ~~R~~ rule shall apply only to the modification and not to the existing operation.

(f) **EXEMPTIONS**

The provisions of this ~~R~~ rule ~~25~~ do not apply to:

(1) Annual renewal of permits or transfer of ownership provided permit conditions are not modified or revised. In the event permit conditions are modified or revised at the time of renewal, the provisions of this ~~R~~ rule 25 shall apply only to the modification or revision.

(2) A Permit to Operate required solely because of a change in permit exemptions stated in Rule 11 provided the article, machine, equipment or contrivance was installed at the time the applicable revisions to Rule 11 became effective and provided no modifications to the equipment are necessary to comply with District Rules and Regulations or applicable state and federal law. In the event a modification is necessary, the provisions of this ~~R~~ rule 25 shall apply only to the modification.

(g) **DEFINITIONS**

For the purposes of this rule, the following definitions shall apply:

(1) **“Aggrieved Person”** means any person, including a person or group representing the interest of the public in air quality, who alleges that the issuance of an Authority to Construct or permit or temporary authorization will infringe upon or deny such person’s legal rights or the legal rights of the general public in respect to air quality.

(2) **“Appeared, Submitted Written Testimony, or Otherwise Participated”** means communicating specific substantive or procedural air pollution issues to the Air Pollution Control District staff members who are responsible for ~~Authority to Construct, or~~ ~~p~~ Permit or Certificate issuance. Participation, wherever possible, should be documented in writing by the participant. The term does not include merely expressing general interest or concern or communicating orally, whether by telephone or otherwise, with Air Pollution Control District staff members who are not directly responsible for issuance of the ~~Authority to Construct or p~~ Permit or temporary authorization-Certificate.

(3) **“Permit or Certificate”** means Authority to Construct , Permit to Operate, Temporary Authorization, renewal of a Permit to Operate with new or modified conditions, Certificate of Registration, or Emission Reduction Credit (ERC) Certificate.