



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

DATE: June 21, 2000
TO: San Diego County Air Pollution Control Board
SUBJECT: **ADOPTION OF AMENDMENTS TO RULE 25 - APPEALS** (District: All)
SUMMARY:

Overview

Rule 25 specifies requirements and procedures for appealing and requesting a stay of a permit-related action of the Air Pollution Control Officer to the Air Pollution Control District Hearing Board. Permit-related actions include granting or denying applications for Emission Reduction Credit (banking) Certificates. Rule 25 currently specifies that an appeal must be filed within 10 days of notice of a permit-related action. Health and Safety Code Sections 42302 and 42302.1 were recently revised to extend the applicant and public appeal time from 10 to 30 days. The proposed amendments to Rule 25 reflect these changes of state law and make other minor clarifications.

Recommendation(s)

AIR POLLUTION CONTROL OFFICER

Adopt the resolution amending Rule 25 of the District Rules and Regulations and make appropriate findings:

- (i) of necessity, authority, clarity, consistency, non-duplication and reference as required by Section 40727 of the State Health and Safety Code;
- (ii) that amending Rule 25 will alleviate a problem and will not interfere with attainment of ambient air quality standards (Section 40001 of the State Health and Safety Code);
- (iii) that an assessment of the socioeconomic impact is not required by Section 40728.5 of the State Health and Safety Code because amending Rule 25 will not affect air quality or emission limitations; and
- (iv) that it is certain there is no possibility that amending Rule 25 may have a significant adverse effect on the environment, and this action is exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15061(b)(3).

SUBJECT: ADOPTION OF AMENDMENTS TO RULE 25 (APPEALS) (District: All)

Fiscal Impact

The recommended action will have no fiscal impact on the District.

Advisory Board Statement

The Air Pollution Control Advisory Committee recommended amending Rule 25 at its May 24, 2000, meeting.

BACKGROUND:

Compliance with Board Policy on Adopting New Rules

On February 2, 1993, the Board directed that, with the exception of a regulation requested by business or a regulation for which a socioeconomic impact assessment is not required, no new or revised regulation shall be implemented unless specifically required by federal or state law. The proposed adoption of amended Rule 25 is consistent with this Board directive.

Socioeconomic Impact Assessment

Section 40728.5 of the State Health and Safety Code requires the District to perform a socioeconomic impact assessment for new and revised rules and regulations significantly affecting air quality or emission limitations. Adopting amended Rule 25 will not affect air quality or emission limitations because this is an administrative rule. Therefore, a socioeconomic impact assessment is not required.

California Environmental Quality Act

The California Environmental Quality Act requires an environmental review for certain actions. It is certain there is no possibility that adopting amended Rule 25 may have a significant adverse effect on the environment. Therefore, adoption of amended Rule 25 is exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15061(b)(3).

Comparison to Existing Requirements

Health and Safety Code Section 40727.2(a) requires that whenever the District proposes adopting or amending a rule or regulation, an analysis be prepared to identify and compare the air pollution control elements of the proposal with corresponding elements of existing or proposed federal or District requirements. Rule 25 is an administrative rule that contains no air pollution control elements. Therefore, the analysis described in Health and Safety Code Section 40727.2(a) is not required.

SUBJECT: ADOPTION OF AMENDMENTS TO RULE 25 (APPEALS) (District: All)

Attachment I contains the Resolution amending Rule 25 of the District's Rules and Regulations and Change Copy.

Attachment II contains the report on the public workshop held on April 19, 2000.

Respectfully submitted,

ROBERT R. COPPER
Deputy Chief Administrative Officer



R. J. SOMMERVILLE
Air Pollution Control Officer

SUBJECT: ADOPTION OF AMENDMENTS TO RULE 25 (APPEALS) (District: All)

AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

COUNTY COUNSEL REVIEW

☒ Yes *UD 6/1/00*

CHIEF FINANCIAL OFFICER

☐ Yes ☒ N/A

Requires Four Votes

☐ Yes ☒ No

GROUP/AGENCY FINANCE DIRECTOR

☐ Yes ☒ N/A

CHIEF TECHNOLOGY OFFICER

☐ Yes ☒ N/A

DEPARTMENT OF HUMAN RESOURCES

☐ Yes ☒ N/A

Other Concurrence(s): N/A

ORIGINATING DEPARTMENT: Air Pollution Control District County of San Diego

CONTACT PERSON(S):

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AUTHORIZED REPRESENTATIVE:



R. J. Sommerville, Air Pollution Control Officer

SUBJECT: ADOPTION OF AMENDMENTS TO RULE 25 (APPEALS) (District: All)

AGENDA ITEM INFORMATION SHEET
(continued)

PREVIOUS RELEVANT BOARD ACTIONS: 02/06/81 (APCB #2); 09/18/90 (APCB #2A); 10/22/97 (APCB #1); 12/17/97 (APCB #2)

BOARD POLICIES APPLICABLE: N/A

BOARD POLICY STATEMENTS: N/A

CONTRACT NUMBER(S): N/A

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County)

No. 00-226 **RESOLUTION AMENDING RULE 25 OF REGULATION II
OF THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT**

On motion of Member Slater, seconded by Member Roberts, the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

1. Proposed amendments to Rule 25 are to read as follows:

RULE 25. APPEALS

(a) APPEALS OF DENIAL OF PERMIT OR CERTIFICATE

(1) Within 30 days after the Air Pollution Control Officer has notified the applicant of denial or conditional approval of a Permit or Certificate, the applicant may file a petition with the Hearing Board, in writing, for a public hearing.

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5/12/00

(2) Such 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 Hearing Board shall hold a noticed public hearing 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 30 days of any decision or action pertaining to the issuance of a Permit or Certificate or within 30 days after mailing of the Notice of Issuance of the 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, may request the Hearing Board to hold a hearing to determine whether the Permit or Certificate was properly issued.

(2) The request to the Hearing Board shall be made by filing 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 petition shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury.

(4) A copy of such petition shall be served on the holder of the 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 filing of such a petition, the Hearing Board shall hold a noticed public hearing and render a decision on whether the Permit or Certificate was properly issued in accordance with District Rules and Regulations.

(c) REQUEST FOR STAY

(1) (i) 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 Permit or Certificate, pending a decision of the Hearing Board on the petition.

(ii) 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.

(iii) A copy of the request for stay shall be served personally on the holder of the Permit or Certificate and the Air Pollution Control Officer prior to the time the request is filed with the Hearing Board; provided, however, that service of the request for stay on a holder 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 the Permit or Certificate must accompany any request for a stay at the time such request is filed with the Hearing Board.

(2) A request for stay served and filed pursuant to Subsection (c)(1) shall be heard, notice requirements permitting, at the next meeting of the Hearing Board. At this meeting, the Hearing Board shall determine whether the Permit or Certificate should be stayed until the final decision of the Hearing Board on the propriety of the issuance of the Permit or Certificate is rendered. If the notice requirements cannot be met for the next meeting of the Hearing Board, the request for stay shall be heard at the following meeting of the Hearing Board. The person requesting the stay, the holder of the 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) The Hearing Board shall stay the effect of 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 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.

(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 rule or a request for stay pursuant to Section (c) of this rule, the Air Pollution Control Officer or his designee shall attempt to schedule a meeting with the appellant and the 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.

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

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

(f) **EXEMPTIONS**

The provisions of this rule 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 rule 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 rule 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 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 Permit or 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.

IT IS FURTHER RESOLVED AND ORDERED that the subject amendments to Rule 25 of Regulation II, shall take effect upon adoption.

100-11052-1 JUL

BY *H. Dutton*
SENIOR DEPUTY

Passed and adopted by the Members of the Air Pollution Control Board, County of San Diego, State of California, on this 21st day of June, 2000, by the following vote:

AYES: Cox, Jacob, Slater, Roberts, Horn

STATE OF CALIFORNIA)
County of San Diego)^{SS}

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors

By Marion Egan
Marion Egan, Deputy



RECEIVED

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AIR POLLUTION
CONTROL DISTRICT

Resolution No. 00-226
6/21/00 (APCD 2)

AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO

CHANGE COPY
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 ~~40~~ 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 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 ~~40~~ 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 or within 30 days after mailing of the Notice of Issuance of the 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) (i) An aggrieved person who has filed a petition pursuant to Section (b) of this ~~R~~ 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.

(ii) ~~Any~~s 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.

(iii) 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) A request for stay served and filed pursuant to Subsection (c)(1) ~~of Section (e)~~ 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) 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.

**AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO**

**RULE 25 - APPEALS
WORKSHOP REPORT**

A workshop notice was mailed to each permit holder in San Diego County. Notices were also mailed to all Economic Development Corporations and Chambers of Commerce in San Diego County, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other interested parties.

The workshop was held on April 19, 2000, and was attended by one person. The workshop comment and District response are as follows:

1. WORKSHOP COMMENT

Rule 25 is being amended to extend the time period allowed for appeals from 10 to 30 days. Will the time period allowed to respond to a Notice of Violation or Notice to Comply also be extended from 10 to 30 days?

DISTRICT RESPONSE

No. Consistent with state law, Rule 25 specifies the time frame in which an affected source or an aggrieved person may appeal a decision made by the Air Pollution Control Officer in relation to granting or denying a permit or banking application. Rule 25 does not address issues related to compliance actions. The 10 days currently allowed to respond to a Notice of Violation or Notice to Comply is sufficient in most cases. If additional time is needed, the affected source may request an extension from the Compliance Division.