

RULE 1425. APPEALS AND JUDICIAL REVIEW (Adopted 1/18/94; Revised 3/7/95)
(Rev. 8/13/03; Eff. 2/27/04)

(a) PLACE FOR APPEALS (Rev. 8/13/03; Eff. 2/27/04)

Any proposed decision by the Air Pollution Control Officer to deny or partially deny a permit or modification, and any proposed decision to approve a permit or modification may be appealed to the Hearing Board, provided the appeal is filed within 30 days after receipt of the notice of the proposed decision by the Air Pollution Control Officer and is within the jurisdiction of the Hearing Board and notice of the appeal is given to the Air Pollution Control Officer.

(b) APPEAL BY APPLICANT TO THE HEARING BOARD
(Rev. 8/13/03; Eff. 2/27/04)

Within 30 days after notice by the Air Pollution Control Officer of a proposed denial or conditional approval of a permit to operate or modification, or prior to submission of any other proposed determination to the federal EPA for review, the applicant may petition the Hearing Board, in writing, for a public hearing to appeal the proposed decision. Such petition shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury.

The Hearing Board, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer. Such order may be made subject to specified conditions. The Air Pollution Control Officer shall notify the federal EPA of any action taken by the Hearing Board on any permit required by this regulation.

(c) APPEALS BY OTHERS TO THE HEARING BOARD

Any proposed decision to issue a permit to operate or modification of a permit, or to renew a permit to operate with new or modified conditions, may be appealed to the Hearing Board by persons other than the applicant under the following conditions. On matters where the Air Pollution Control Officer provided public notice and an opportunity for comment, only persons who appeared, submitted written testimony, or otherwise participated in the application or permit review process may appeal to the Hearing Board. If no such notice was provided, any aggrieved person may appeal. The appeal shall be in the form of a request to the Hearing Board to determine whether the decision or proposal to issue the permit, modification or renewal was proper. A 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 as provided in these Rules and Regulations. The request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. A copy of such request shall be served on the applicant for the permit to operate and the Air Pollution Control Officer no later than the day the request is filed with the Hearing Board. Within 30 days of the request, the Hearing Board shall hold a noticed public hearing and render a decision on whether the proposed decision to issue a permit to operate, modification or renewal was properly made in accordance with applicable District Rules and Regulations, and state and federal law.

(d) REQUEST FOR STAY

(1) An aggrieved person who has filed a petition pursuant to Section (c) of this rule may request the Hearing Board to stay the effect of any permit action that would otherwise be effective prior to the expiration of the time for the federal EPA review, pending a decision of the Hearing Board on the petition. Any such request shall be in writing, shall state with reasonable particularity the grounds in support of the request and shall be signed under penalty of perjury. A copy of the petition and request for stay shall be served personally on the applicant for the permit to operate and the Air Pollution Control Officer on or before the day the request for stay is filed with the Hearing Board. Service of the request on an applicant for a permit to operate, who does not maintain a fixed place of business within the County of San Diego, and upon the Administrator of the federal EPA may be accomplished by mail. Proof of service on the applicant for a permit to operate must accompany any request for a stay at the time such request is filed with the Hearing Board. The person requesting the stay shall include, with the notice of the request to the applicant, a notice of the time and place of the meeting of the Hearing Board at which the request for stay will be considered.

(2) A request for stay served and filed pursuant to Subsection (d)(1) above, shall be heard, notice requirements permitting, at the next meeting of the Hearing Board at which time the Hearing Board shall determine whether the permit to operate, modification or renewal should be stayed until the final decision of the Hearing Board on the propriety of the issuance of the permit, modification or renewal is rendered. If the notice requirements cannot be met for the next meeting of the Hearing Board, the stay request shall be heard at the following meeting of the Hearing Board. The person requesting the stay, the holder of the permit to operate and the Air Pollution Control Officer shall be given an opportunity to present evidence and arguments on the request for stay.

(3) Minor modifications that an applicant can implement prior to approval pursuant to this regulation may not be stayed by the Hearing Board. The Hearing Board shall stay the effect of other District determinations pending 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 applicant, 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 on all parties and the Air Pollution Control Officer.

(e) STAY AFFECTING MODIFICATION ONLY

With respect to a permit to operate 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) DISPUTE RESOLUTION

Not later than three business days after receipt by the Air Pollution Control Officer of an appeal pursuant to Section (b) or (c) of this rule or a request for stay pursuant to Section (d) of this rule, the Air Pollution Control Officer or a designee shall attempt to schedule a meeting

with the appellant and the applicant 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 Air Pollution Control Officer shall file a report with the Hearing Board detailing the resolved and unresolved issues and the Air Pollution Control Officer's position on the unresolved issues.

(g) LIMITATIONS ON APPEALS TO THE HEARING BOARD

No appeals may be taken to the Hearing Board, and the Hearing Board shall not have jurisdiction, in the following circumstances:

(1) Renewal of a permit to operate or transfer of ownership, provided permit conditions are not modified or revised, unless new requirements that became applicable to the source after the prior permit was issued have not been reflected in the proposed renewal permit. In the event new requirements are applicable or permit conditions are modified or revised at the time of renewal, the provisions of this rule shall apply only to the new requirements and to the modification or revision, and related conditions.

(2) Approval of a permit to operate modification required solely because of a change in permit exemptions stated in Rule 1411, provided the affected emission unit was installed at the time the applicable revisions to Rule 1411 became effective and provided no modifications to the equipment are necessary to comply with these Rules and Regulations or applicable state and federal law. In the event a modification is not exempt under this section, the provisions of this rule shall apply only to the modification, and related conditions.

(h) PETITIONS TO THE ADMINISTRATOR OF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY (EPA)

If the Administrator of the federal EPA does not object in writing to the issuance of a permit to operate as proposed by the Air Pollution Control Officer during the period provided in this regulation for federal EPA review, any person may petition the Administrator within 60 days after the expiration of that review period to make such objection.

Petitions pursuant to this section may be filed while an appeal to the Hearing Board is being made by the petitioner or by another person.

Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until the federal EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the federal EPA review period and prior to a federal EPA objection. If the Air Pollution Control Officer has issued a permit prior to receipt of a federal EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and the Air

Pollution Control Officer may thereafter issue only a revised permit that satisfies the federal EPA's objections.

Neither a petition under this section, nor a federal EPA decision to modify, terminate or revoke a permit pursuant to this section, shall render a source in violation of the requirement to have submitted a timely and complete application under this regulation.

(i) FINAL PERMIT ACTION

Notwithstanding the appeal and petition provisions of Sections (a) through (h) of this rule, the Air Pollution Control Officer shall take final permit action on an application to issue, amend, modify or renew a permit, or on a permit reopening, within the time limits specified in Rules 1410 and 1418.

(j) JUDICIAL REVIEW

Judicial review of a final permit action shall be available as provided by state and federal law.