

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION III
FEES**

RULE 309. HEARING BOARD FEES

(Adopted June 19, 2002; June 18, 2003; June 16, 2004; June 15, 2005; June 21, 2006; June 20, 2007; June 18, 2008; June 30, 2010; June 15, 2011; June 18, 2014; June 17, 2015; and June 15, 2016.)

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PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to provide funding for Hearing Board Activities.

1.2 Applicability

The provisions of this Rule shall apply to any person or facility that applies for a variance, or appeals a permit decision.

1.3 Exemptions

Reserved.

1.4 Effective Dates

This Rule, as most recently revised, is effective on July 1, 2016.

1.5 References

The requirements of this Rule arise from California Health & Safety Code Sections 40701.5, and 40800 *et seq.* Referenced or related District Rules include: Regulation VI (Hearing Board Rules).

PART 2 DEFINITIONS

2.1 Emergency Variance

A variance issued pursuant to HSC Section 42359.5.

2.2 Health & Safety Code (HSC)

The California Health and Safety Code.

2.3 Increments of Progress

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Identified compliance milestones with identified due dates which are included as a condition for the issuance of a variance.

2.4 Intervention

To become involved as a third party to a pending variance application, for the protection of one's own interests.

2.5 Variance

Official approval to exceed existing permit or regulatory requirements.

PART 3 REQUIREMENTS

3.1 Application Fees

3.1.1 The fee for each application for variance exceeding 90 days is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42350, including applications on behalf of a class of applicants, which meet the requirements of the Hearing Board Rules for a valid and proper class action for variance, plus the fee set forth in Rule 301 Table 1 Hearing Board Fees for each hearing in addition to the first hearing necessary to dispose of said variance application.

3.1.2 The fee for each application for variance not exceeding 90 days is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42350, including applications on behalf of a class of applicants, which meet the requirements of the Hearing Board Rules for a valid and proper class action for variance, plus the fee set forth in Rule 301 Table 1 Hearing Board Fees for each hearing in addition to the first hearing necessary to dispose of said variance application.

3.1.3 The fee for each application to modify a variance is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42356, plus the fee set forth in Rule 301 Table 1 Hearing Board Fees for each hearing in addition to

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the first hearing on said application to modify a variance, necessary to dispose of the modification application.

- 3.1.4 The fee for each application to modify a variance's schedule of Increments of Progress or Final Compliance Date is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42357, plus the fee set forth in Rule 301 Table 1 Hearing Board Fees for each in addition to the first hearing on an application to modify the schedule of a variance, necessary to dispose of the modification application.
- 3.1.5 The fee for each application for approval of a Schedule of Increments of Progress is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 41703, plus the fee set forth in Rule 301 Table 1 Hearing Board Fees for each in addition to the first hearing on said application for approval of a schedule of Increments of Progress, pursuant to HSC Section 41703.
- 3.1.6 The fee for each application for an emergency variance is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42359.5.
- 3.1.7 The fee for each application for Hearing Board review of the District's denial of a permit is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42302, plus for each hearing (set forth in Rule 301 Table 1 Hearing Board Fees) in addition to the first hearing on said application for review.
- 3.1.8 The fee for each application for Hearing Board review of the District's issuance of a permit is set forth in Rule 301 Table 1 Hearing Board Fee, in accordance with HSC Section 42302.1, plus for each hearing (set forth in Rule 301 Table 1 Hearing Board Fees) in addition to the first hearing on said application for review.
- 3.1.9 The fee for each application for Hearing Board review of the District suspension of a permit is set forth in Rule 301 Table 1 Hearing Board Fees, in accordance with HSC Section 42306, plus for each hearing (set forth in Rule 301 Table 1 Hearing Board Fees) in addition to the first hearing on said application for review.

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3.1.10 The fee for each application for intervention in a pending variance action pursuant to Section 5.7 of Regulation VI, plus for each hearing (set forth in Rule 301 Table 1 Hearing Board Fees) in addition to the first hearing in which any intervener participates as a party.

3.2 Excess Emission Fee

Each applicant for a variance shall pay to the Clerk of the Hearing Board, in addition to the filing fee required, an excess emission fee based on the difference between the emissions allowed by the District rules and the maximum emissions, other than those described in Section 3.3 below, allowed by the variance. The fee shall be an amount per pound of excess emissions that is set forth in Rule 301 Table 1 Hearing Board Fees.

3.3 Excess Visible Emission Fee

Each applicant for a variance from a limitation upon the opacity of emissions shall pay to the Clerk of the Hearing Board, in addition to any filing fees required and any excess emission fee required by Section 3.2 above, an excess visible emission fee based on the difference between the percent opacity allowed by the limitation and the maximum percent opacity of the emissions allowed from the source or sources operating under the variance, in accordance with the fee set forth in Subsection 3.3.1 below.

In the event more than one rule limiting the discharge of the same contaminant is violated, the excess emission fee or excess visible emission fee shall consist of the sum of fees for all individual excesses. For the purpose of this Rule, opacity rules and particulate mass emission rules shall not be considered rules limiting the discharge of the same contaminant.

3.3.1 Excess Visible Emission Fee

For each source excessive opacity emissions the fee is calculated as follows:

Fee = (Opacity* allowed by variance
- opacity allowed by rules) X
number of days allowed in variance x the amount set forth in Rule 301 Table 1
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* Where the opacity equals the maximum opacity of emissions in percent (not decimal equivalent) allowed by the variance. Where the emissions are darker than the degree of darkness equivalent to the allowed Ringelmann number, the percentage equivalent of the excess degree of darkness shall be used as "Opacity".

3.4 Minimum Fees

When a variance is granted from a rule or rules which limit the discharge of air contaminants, such that an excess emission fee or excess visible emission fee is due, a minimum fee is due as set forth in Rule 301 Table 1 Hearing Board Fees.

PART 4 ADMINISTRATIVE REQUIREMENTS

4.1 Application Fees

All application fees shall be submitted with the application with the exception of application fees for emergency variances which must be submitted within four (4) days of receipt of the application.

4.2 Applicability of Excess Emission Fees

The provisions of Section 3.2 above shall apply only to those rules or statutes that specify quantitative emission limits.

4.3 Fee Determination

The excess emission fee shall be calculated based upon the requested number of days of operation under variance multiplied by the excess emissions per day allowed by the variance, as set forth in Sections 3.2 and 3.3 above.

4.4 Hearing Board Adjustment of Excess Emission Fees

The Hearing Board may adjust the excess emission fee required by Sections 3.2 and 3.3 based on evidence regarding emissions presented at the time of the hearing.

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4.5 Excess Emission Fee Payment

The excess emission fee required by Sections 3.2 and 3.3 shall be paid within ten (10) days of the effective date of the variance.

4.6 Discretionary Powers

When it is determined by the Hearing Board that payment of fees required by Sections 3.2 and 3.3 would present an economic hardship to the petitioner, the petitioner may be exempted from such fees, or a portion of them.

4.7 Public Agencies

Public agencies qualifying under Government Code Section 6103 shall be exempt from payment of excess emission fees.

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