

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

PROCEDURE BEFORE THE HEARING BOARD

(Adopted 02-05-2002; 06-19-2002 remove fees into Rule 309; 06-19-2024)

CONTENTS

PART 1 GENERAL	3
1.1 Purpose	3
1.2 Applicability	3
1.3 Effective Date	3
1.4 References.....	3
PART 2 DEFINITIONS	3
2.1 Abatement Order Petition	3
2.2 Air Pollution Control Officer (APCO)	3
2.3 Emergency Variance (less than 30 days).....	4
2.4 Essential Public Service.....	4
2.5 Interim Authorization to Modify a Variance with Increments of Progress	4
2.6 Interim Variance	4
2.7 Long-Term Variance (more than 90 days)	4
2.8 Monterey Bay Air Resources District.....	4
2.9 Modification of a Schedule of Increments of Progress or Final Compliance Date	4
2.10 Party	4
2.11 Permit Revocation	5
2.12 Petition by an Aggrieved Party.....	5
2.13 Petitioner.....	5
2.14 Product Variance	5
2.15 Public Agency.....	5
2.16 Rehearing of a Decision.....	5
2.17 Respondent	6
2.18 Review of Permit or Emission Reduction Credit Denial.....	6
2.19 Review of Permit Suspension.....	6
2.20 Schedule of Increments of Progress	6
2.21 Short-Term Variance (90 days or less).....	6
2.22 Variance	6
2.23 Variance Modification or Revocation	6
PART 3 ADMINISTRATIVE REQUIREMENTS	6
3.1 Filing Petitions.....	6
3.2 General Contents of Petitions	7
3.3 Specific Contents of Petitions.....	8
3.4 Filing an Accusation for Permit Revocation or Order of Abatement.....	10

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

3.5	Failure to Comply with Rules.....	11
3.6	Withdrawal of Petition.....	11
3.7	Hearings.....	11
3.8	Short-Term and Long-Term Variance Findings	14
3.9	Product Variance Findings	14
3.10	Abatement Order Findings	15
3.11	Permit Revocation Findings	15
3.12	Other Remedies For Permit Dispute Petitions.....	16
3.13	Permit or Emission Reduction Credit Denial Findings	16
3.14	Imposition of Additional Requirements and Discretion.....	16
3.15	Decision and Order	17
3.16	Effective Date of Decision.....	18
3.17	Excess Emissions Fee	18
3.18	Rehearing Decisions	18
PART 4	OFFICERS OF THE HEARING BOARD AND DUTIES.....	18
4.1	Election of Officers.....	18
4.2	Duties of Chair.....	18

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

PART 1 GENERAL

1.1 Purpose

The purpose of this regulation is to specify procedures that shall apply to all hearings before the Hearing Board of the Monterey Bay Air Resources District (MBARD).

1.2 Applicability

This regulation shall apply to all actions before the Hearing Board of MBARD. In case of a conflict, the applicable provisions of Division 26 of the California Health and Safety Code (H&S Code) shall control, including, but not limited, to Sections 40800-40865, 42302-42302.1, 42306-42309, 42350-42372, and 42450-42454.

1.3 Effective Date of Rule

This Regulation is effective June 19, 2024.

1.4 References

Other related or referenced MBARD rules or regulations include: Rule 101 (Definitions) and Rule 309 (Hearing Board Fees).

PART 2 DEFINITIONS

Except as defined below, the terms used in this Regulation are the same as defined in Rule 101 Definitions.

2.1 Abatement Order Petition

An order to any person found to be constructing or operating any article, machine, equipment, or other contrivance without a required or valid permit or in violation of Section 41700 or 41701 of the Health & Safety Code, or of any rule, regulation or permit adopted or administered by the Monterey Bay Air Resources District prohibiting or limiting the discharge of air contaminants into the air. [H&S Code Section 42450]

2.2 Air Pollution Control Officer (APCO)

The Air Pollution Control Officer of the Monterey Bay Air Resources District.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

2.3 Emergency Variance (less than 30 days)

Variance granted for good cause for a time period of less than 30 days. Can be granted without notice and hearing by the chair of the Hearing Board or any member of the Hearing Board. [H&S Code Section 42359.5]

2.4 Essential Public Service

Means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency. [H&S Code Section 42352(a)(2)]

2.5 Interim Authorization to Modify a Variance with Increments of Progress

An authorization granted to a person previously granted a variance which includes a schedule of increments of progress to continue operating when that schedule cannot be met and prior to a duly noticed public hearing to modify the schedule of increments. [H&S Code Section 42351.5]

2.6 Interim Variance

Variance granted for good cause for a time period of no more than 90 days for a source that has also submitted a petition for a short or long-term variance and wishes to continue operating pending the decision of the Hearing Board at a duly noticed public hearing. [H&S Code Section 42351]

2.7 Long-Term Variance (more than 90 days)

Variance granted for a period of more than 90 days. Also called a Regular variance. [H&S Code Section 40825]

2.8 Monterey Bay Air Resources District

MBARD or District or Air District.

2.9 Modification of a Schedule of Increments of Progress or Final Compliance Date

Petition before the Board to modify a schedule of increments of progress or a final compliance date in such a schedule. [H&S Code Section 42357]

2.10 Party

Party means the APCO, MBARD, the petitioner, the respondent, the complainant,

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

appellant, intervener, and any person, other than an officer or an employee of MBARD in his or her official capacity, who has been allowed to appear in the proceeding, except that a member of the public providing public comment shall not be deemed a “party”.

2.11 Permit Revocation

Petition from the Air Pollution Control Officer to the Hearing Board to decide whether a permit should be revoked when the Air Pollution Control Officer finds that the permit holder is violating an applicable order, rule or regulation of the air district, or an applicable provision of the California Health & Safety Code. [H&S Code Section 42307]

2.12 Petition by an Aggrieved Party

Petition from a party who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in a permitting or Emission Reduction Credit action with the air district, requesting that the Hearing Board hold a hearing to determine whether that permit or Emission Reduction Credit was properly issued. [H&S Code Section 42302.1]

2.13 Petitioner

The party, such as, a person, company, APCO, or MBARD, who files an application/petition for a hearing with the Hearing Board.

2.14 Product Variance

Variance granted and attached to a particular product which does not comply with air district rules or regulations and the variance is necessary for the sale, supply, distribution or use of the product. [H&S Code Section 42365 and 42366]

2.15 Public Agency

Any state agency, board, or commission of any county, city and county, city, regional agency, public district, or other political subdivision. [H&S Code Section 42352(b)]

2.16 Rehearing of a Decision

A hearing before the Board at its discretion that occurs within 30 days of the effective date of a previous decision. [H&S Code Section 40821]

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

2.17 Respondent

The party, such as, a person, company, APCO, or MBARD, against whom a petition is filed with the Hearing Board.

2.18 Review of Permit or Emission Reduction Credit Denial

A hearing before the Board requested by a source within ten (10) days of receiving the notice of permit or Emission Reduction Credit denial and requesting the Board to decide whether the permit was properly denied. [H&S Code Section 42302]

2.19 Review of Permit Suspension

A hearing before the Board requested by a permittee within ten (10) days of receipt of notice of suspension of a permit requesting the Board decide whether the permit was properly suspended. [H&S Code Section 42306]

2.20 Schedule of Increments of Progress

A statement of dates when various steps are to be taken to bring a source of air contaminants into compliance with emission standards. [H&S Code Section 39051]

2.21 Short-Term Variance (90 days or less)

Variance granted for a period of 90 days or less. [H&S Code Section 40826]

2.22 Variance

Temporary dispensation granted to sources from air district rules and regulations.

2.23 Variance Modification or Revocation

Petition filed by the Air Pollution Control Officer to the Hearing Board to determine whether a permit should be modified or revoked when the Air Pollution Control Officer determines that the holder of the permit is violating an applicable order, rule or regulation of the air district, or an applicable provision of the California Health & Safety Code. [H&S Code Section 42357]

PART 3 ADMINISTRATIVE REQUIREMENTS

3.1 Filing Petitions

A request for a hearing shall be initiated by filing a petition with the Clerk of the Hearing Board and payment of the fees as specified in Rule 309 Hearing Board Fees. Petitions

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

filed with the Clerk of the Hearing Board may be transmitted electronically, and any such electronically transmitted petition shall have the same legal effect as an original paper form. MBARD or the Clerk of the Board shall serve a copy of any petitions received for permit action or abatement order on the permit holder or individual/business which is the real party in interest so they may have the opportunity to file a response.

3.2 General Contents of Petitions

Every petition shall include the following, in a format specified by MBARD and submitted to MBARD with the information required in this rule.

- 3.2.1 The name, mailing address, email address, and phone number of the petitioner, or other person authorized to receive service of the notices.
- 3.2.2 Whether the petitioner is an individual, partnership, corporation, or other entity, and names and addresses of partners, if a partnership, names and addresses of the officers, if a corporation, names and addresses of the persons in control, if other entity.
- 3.2.3 The type of business or activity involved in the application and the street address or location at which it is conducted.
- 3.2.4 A brief description of the article, machine, equipment, or other contrivance, if any, involved in the application, including the permit number if there is a permit to operate.
- 3.2.5 The type of petition being filed that is:

Variance Petitions

- 1. Short-term variance – less than 90 days [H&SC Section 40825]
- 2. Long-term (regular) variance – more than 90 days [H&SC Section 40826/42358]
- 3. Interim variance – [H&SC Section 40824 and 42351, in conjunction with a petition filed for a short-term/long-term variance]
- 4. Emergency variance [H&SC Section 42359.5]
- 5. Product variance [H&SC Section 42365 & 42366]
- 6. Variance revocation or modification [H&SC Section 42356]

MONTEREY BAY AIR RESOURCES DISTRICT REGULATION VI

Permit Dispute Petitions

7. Review of permit or emission reduction credit denial [H&SC Section 42302]
8. Review of emission reduction credit denial [H&SC Section 40713]
9. Petition by an aggrieved party [H&SC Section 42302.1]
10. Review of permit suspension for failure to provide requested information per H&SC Section 42304 [H&SC Section 42306]
11. Petition to revoke a permit [H&SC Section 42307]

Rehearing or Abatement Order Petitions

12. Rehearing of a decision [H&SC Section 40821]
13. Petition for an order of abatement [H&SC Section 42451]
14. Defense of an interim abatement order [H&SC Section 42451.5]

- 3.2.6 Each petition shall be signed by either the petitioner or a designated agent on petitioner's behalf with a statement of their authority to sign.

3.3 Specific Contents of Petitions

In addition to the general petition requirements outlined in Section 3.2, petitions shall include the information below as required by the petition type.

3.3.1 Variance Petitions

For an interim or emergency variance, facts which support a determination by the Hearing Board that 'good cause' exists to hear a variance without notifying the public about the variance and providing the public with an opportunity to present evidence concerning the variance. [H&SC Section 42351(c) or 42359.5(b)]

In addition to the items listed in 3.2, petitions for short-term or long-term variances shall include:

1. The time period requested for the variance.
2. The section, rule or order which will be violated if a variance is not granted.
3. The facts showing that compliance with the section, rule, or order will result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of lawful business.
4. The facts showing that the closing or taking will be without corresponding benefit in reducing air contaminants.
5. The consideration given to curtailing operations in lieu of obtaining a variance.
6. The final compliance date and increments of progress if the requested variance period exceeds one year, or if requested by the Air Pollution Control Officer.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

7. The conditions associated with the individual increments of progress; including, but not limited to, increments of progress schedules, operating parameters, and reporting requirements.
8. An estimation of excess emissions and proposed actions which will reduce excess emissions to the maximum extent feasible during the variance period.
9. Procedures, methods, and equipment used to quantify emission levels from the source during the variance period, subject to approval and reporting requirements of the Air Pollution Control Officer.
10. Whether or not operations under such variance, if granted, will constitute a nuisance as specified in H&SC Section 41700.

3.3.2 Product Variance Petition

In addition to the items listed in 3.2, petitions for product variances shall include:

1. The facts showing the petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with the air districts rules and regulations.
2. A proposed written notice that must be furnished to any retailer, distributor, or purchaser of the product for the duration of the variance. The notice shall contain the following information:
 - a. That the product is being sold pursuant to a product variance granted by the Hearing Board.
 - b. The beginning and ending dates of the product variance.
 - c. Any conditions to be set forth in the product variance which might reduce excess emissions.

3.3.3 Permit or Emission Reduction Credit Action Petitions

In addition to the items listed in 3.2, petitions for permit or emission reduction credit actions shall include:

1. The section, rule or order which is the basis for conditional approval, suspension, denial, or revocation; or which is alleged to have been violated or is the basis of the grievance.
2. Statement as to why the petition is being sought.
3. The facts illustrating the potential impact on the source, public, and aggrieved party if the action is sustained by the Hearing Board.
4. The Hearing Board action requested.

3.3.4 Rehearing Petition

In addition to the items listed in 3.2, petitions for rehearing shall include:

MONTEREY BAY AIR RESOURCES DISTRICT REGULATION VI

1. The original petition number and hearing date.
2. The reasons and additional facts which merit rehearing the petition.
3. The Hearing Board action requested.

3.3.5 Abatement Order Petition

In addition to the items listed in 3.2, petitions for abatement orders shall include:

1. The section, rule, or order which is alleged to have been violated.
2. A statement of the facts constituting the violation, or alleged violation, and a description of the potential impacts.
3. Permit status and history of the source sought to be abated.
4. The particular act or operation sought to be abated, together with petitions, if applicable.
5. Facts showing that abatement is necessary to prevent future violations.

3.4 Filing an Accusation for Permit Revocation or Order of Abatement

An accusation may be brought by the Air Pollution Control Officer, for permit revocation or order of abatement pursuant to H&SC Section 42307 or 42451; or on the motion of the MBARD Board of Directors or by the Hearing Board, on its own motion, pursuant to H&SC Section 42451; or on the motion of any person authorized by law.

3.4.1 Service of Accusation for Petition for Permit Revocation or Order of Abatement

Upon the filing of an accusation and petition for permit revocation or order of abatement, MBARD shall serve a copy on the respondent. MBARD may include with the accusation any information which it deems appropriate including a form entitled "Notice of Defense". The accusation and all accompanying information shall be served on respondent by certified mail with return receipt or by any other means allowed by civil actions in California. The service of accusation shall include language similar to the following:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the Hearing Board within 15 days after the accusation was personally served on you or mailed to you, the Hearing Board may proceed with a hearing upon the accusation without your presence, and may issue any order supported by substantial evidence. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to the Hearing Board to Monterey Bay Air Resources District, 24580 Silver Cloud Court, Monterey, California 93940. You may, but need not, be represented by counsel at any or all stages of these proceedings.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact MBARD at the above address.

3.4.2 Failure to File Notice of Defense

If the respondent to an accusation fails to file a notice of defense, affidavits and respondent's express admissions may be used as evidence without any notice thereof to respondent, and the Hearing Board may at a public hearing decide the matter or dismiss the action. Nothing herein shall be construed to deprive the party of the right to make a showing by way of mitigation.

3.4.3 Amendment of Accusation before Hearing

At any time before the matter is submitted for decision, the Hearing Board may file or permit the filing of an amended accusation. All parties shall be notified and if the amended accusation presents new evidence, the Hearing Board shall afford the respondent the reasonable opportunity to prepare its defense but it shall not be entitled to file further pleadings unless the Hearing Board so orders. Any such new charges shall be deemed controverted, and any objections to the amended accusation may be made orally and shall be noted in the record of the hearing.

3.5 Failure to Comply with Rules

No petition shall be accepted by the Hearing Board which does not comply with these rules relating to the filing, content, and service of petitions, unless the chairperson or any two members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The chairperson or any two members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

3.6 Withdrawal of Petition

The petitioner may, by giving notice to the Hearing Board, withdraw their petition at any time prior to the time set for a hearing thereof, without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such withdrawal.

3.7 Hearings

3.7.1 Place of Hearing

All hearings shall be held at a place designated by the Hearing Board and which is readily accessible to the public.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

3.7.2 Preliminary Matters

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, permitting amendments thereto and other preliminary matters not determinative of the merits of the case may be determined by the chairperson or any two members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

3.7.3 Notice of Hearing

The Clerk of the Hearing Board shall give notice of the time and place of the hearing by email, mail, or personal delivery service to the petitioner, Air Pollution Control Officer, holder of the permit, and to any person entitled to notice pursuant to the timelines in H&SC Sections 40823, 40824, 40825, 40826, or 40827.

For an interim variance, the ‘reasonable notice’ requirement means at least 72 hours before the hearing.

The exception to the notice requirement is for an emergency variance. The chair of the Hearing Board or any other member of the Hearing Board may grant, without notice and hearing, an emergency variance to an applicant. [H&SC Section 42359.5(a)]

3.7.4 Recording of Hearings

Each hearing shall be electronically recorded by the Clerk of the Hearing Board. Any party to the hearing may arrange for a court reporter at the party’s expense. The recording will be retained for one year in accordance with H&SC Section 40828(b).

3.7.5 Quorum

Three members of the Hearing Board shall constitute a quorum and no action shall be taken except in the presence of a quorum. [H&SC Section 40820]

The exception to quorum requirement is for an emergency variance. The chair of the Hearing Board or any other member of the Hearing Board may grant, without notice and hearing, an emergency variance to an applicant. [H&SC Section 42359.5(a)]

3.7.6 Failure to Appear

Where a party fails to appear for a hearing after notice of time and place has been given to all parties by the Hearing Board, the Hearing Board may upon its own motion decide the matter or dismiss the action.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

3.7.7 Administration of Oaths and Sworn Testimony

Any witness, including interested members of the public who want to testify, must be sworn in before testifying. Any member of the Hearing Board, participating in the hearing, may administer oaths to swear in witnesses or interested members of the public. [H&SC Section 40829 and 40830]

3.7.8 Evidence

Oral evidence shall be taken only after administration of oaths to those persons providing testimony. The hearing need not be conducted according to technical rules relating to evidence and witnesses.

Each party shall have these rights:

1. To call and examine witnesses.
2. To introduce witnesses.
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 them to testify.
5. To rebut the evidence against them.

If the respondent does not testify in their own behalf, they may be called and examined as if under cross examination.

The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements at the hearing. Written statements should be submitted to the Clerk of the Hearing Board five days before the hearing. Statements need not conform to formal rules of evidence. The chairperson may impose reasonable limits on the duration of oral presentations.

As deemed necessary by the Hearing Board, any person relevant to a particular hearing may be examined by the Hearing Board.

3.7.9 Subpoena

The chair of the Hearing Board may issue a subpoena in accordance with H&SC Sections 40840, 40841, and 40842.

3.7.10 Continuances

The Chair or any two members of the Hearing Board shall grant any continuance of 15 days or less, which is concurred by the petitioner, the Air Pollution Control Officer and by all other persons who are party to the action. This action may be taken without a meeting of the Hearing board and without prior notice. This does

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

not preclude the Hearing Board from continuing a petition for a period longer than 15 days during or after the duly noticed hearing.

3.8 Short-Term and Long-Term Variance Findings

No short-term or long-term variance shall be granted unless the Hearing Board makes the following findings.

- 3.8.1 That the petitioner for a variance is, or will be, in violation of Section 40701 of the H&SC, or any rule regulation or order of MBARD.
- 3.8.2 That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either: an arbitrary or unreasonable taking of property; or the practical closing or elimination of a lawful business. In making those findings where the petitioner is a public agency, the Hearing Board shall consider whether or not requiring immediate compliance would impose unreasonable burden upon an essential public service.
- 3.8.3 That the taking of property or closing a business per Section 3.8.2 would be without a corresponding benefit to air quality.
- 3.8.4 That the applicant has given consideration to curtailing operations in lieu of obtaining the variance.
- 3.8.5 During the period the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible during the variance period.
- 3.8.6 The petitioner will monitor or otherwise quantify the emission levels from the source during the variance period and report these emission levels to MBARD pursuant to a schedule established by MBARD, if requested to do so by MBARD.
- 3.8.7 Operation under the variance will not result in a nuisance in accordance with H&SC Section 41700.
- 3.8.8 Operation under the variance must result in expeditious return to compliance.

3.9 Product Variance Findings

No product variance shall be granted unless the Hearing Board makes the following findings.

- 3.9.1 That the petitioner for a variance is, or will be, in violation of Section 40701 of the H&SC, or any rule regulation or order of MBARD.
- 3.9.2 Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either: an arbitrary or unreasonable taking of property, or the practical closing and elimination of a lawful business.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

- 3.9.3 The closing or taking would be without a corresponding benefit to air quality.
- 3.9.4 The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with MBARD rules and regulations.
- 3.9.5 During the period of the variance, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission level to MBARD, if requested.
- 3.9.6 Verification that during the duration of the variance, the appropriate and approved notice shall be provided to any retailer, distributor, or purchaser of the product when located within MBARD's jurisdiction.

3.10 Abatement Order Findings

The Hearing Board may do the following:

- 3.10.1 Issue a preliminary determination, final determination, or vacate an interim abatement order as specified in H&SC Section 42451.5.
- 3.10.2 Issue an abatement order if the Hearing Board finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a permit to operate required by MBARD Rule 200; is in violation of H&SC Section 41700 or 41701; or of any rule, regulation, or order prohibiting, or limiting the discharge of air contaminants into the atmosphere. [H&S Code Section 42451(a)]
- 3.10.3 Issue an abatement order in accordance with H&SC Section 42451(b) pursuant to the stipulation of the Air Pollution Control Officer and the person or persons accused of constructing or operating any article, machine, equipment, or other contrivance without a permit to operate required by MBARD Rule 200; is in violation of H&SC Section 41700 or 41701; or of any rule, regulation, or order prohibiting, or limiting the discharge of air contaminants into the atmosphere. The stipulation shall set forth terms and conditions and the Hearing Board shall include a written explanation of its action in the order for abatement.

3.11 Permit Revocation Findings

A permit may be revoked pursuant to H&SC Section 42309 if the Hearing Board makes the following findings.

- 3.11.1 The permittee has failed to correct any conditions required by the Air Pollution Control Officer.
- 3.11.2 A refusal of a permit would be justified.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

3.11.3 Fraud or deceit was employed in obtaining the permit.

3.11.4 Any violation of Part 4 of Division 26 of the Health and Safety Code or any rule, regulation, or order of MBARD.

3.12 Other Remedies for Permit Dispute Petitions

After a hearing, if the Hearing Board does not revoke a permit per Section 3.11, the Hearing Board may any do of the following pursuant to H&SC Section 42309:

3.12.1 Grant a permit denied by the APCO.

3.12.2 Continue the suspension of a permit suspended by the APCO.

3.12.3 Remove the suspension of an existing permit invoked by the APCO pending the furnishing by the permittee of the information, analyses, plans, and specifications required pursuant to H&SC Section 42304.

3.12.4 Find no violations exist and reinstate the permit.

3.13 Permit or Emission Reduction Credit Denial Findings

In order to deny a permit or Emission Reduction Credit, the Hearing Board must find whether the permit or Emission Reduction Credit was properly issued per H&SC Section 42302.1.

3.14 Imposition of Additional Requirements and Discretion

3.14.1 Additional Requirements

In making the required findings to grant a variance, the Hearing Board may prescribe requirements, other than those imposed by statute or by any rule, regulation, or order of the MBARD Board of Directors, not more onerous, applicable to plants and equipment operated by specified industry or business or specified activity, of to the operations of individual persons. [H&SC Section 42353]

3.14.2 Discretion

In prescribing requirements to grant a variance, the Hearing Board shall exercise a wide discretion in weighing the equities involved and the advantages to residents of the air district from the reduction of air contaminants and disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with such requirements. [H&SC Section 42354]

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

3.15 Decision and Order

No decision shall be made except in the presence of a quorum and upon affirmative vote by at least three members of the Hearing Board.

An exception is for an emergency variance which may be granted without notice and for ‘good cause’ by one Hearing Board member in accordance with H&SC Section 42359.5 for a time period of less than 30 days.

In general, the Hearing Board decision and order shall comply the following.

- 3.15.1 Tailored to the petitioner and type of action heard.
- 3.15.2 An effective time period with an initial effective date and final compliance date. [H&SC Section 42358]
- 3.15.3 The Hearing Board may also impose reporting requirements showing compliance with a schedule of increments of progress, or compliance with an emissions curtailment or reporting plan.
- 3.15.4 The order expressly states the United States Environmental Protection Agency (EPA) or federal law has no provisions for and does not recognize variances.
- 3.15.5 If required by the Hearing Board as a condition to grant a variance, that a bond be posted by the petitioner to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. The bond may provide that, if failure to perform the required work by the agreed date, the bond shall be forfeited as provided by H&SC Section 42355.
- 3.15.6 The Hearing Board decision shall be in writing, served, and filed within 30 days after signature by the Hearing Board and shall contain the following:
 - 1. A brief statement of facts found by the Hearing Board to support the required findings.
 - 2. The determination of the issues presented related to required findings.
 - 3. The order of the Hearing Board pursuant to Section 3.14.
- 3.15.7 A copy shall be mailed, emailed, or delivered to the Air Pollution Control Officer, the petitioner, and to every person who has appeared as a party in person or by counsel at the hearing.
- 3.15.8 Decisions granting, modifying, or otherwise affecting a variance shall be submitted to the California Air Resources Board within 30 days after signature by the Hearing Board.

**MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION VI**

3.16 Effective Date of Decision

The decision shall become effective on the date of the affirmative vote of the Hearing Board unless otherwise specified.

3.17 Excess Emissions Fee

The party to whom a variance is granted shall pay an excess emissions fee as may be required by the Hearing Board based on the fee schedule in Rule 309 Hearing Board Fees.

3.18 Rehearing Decisions

3.18.1 The Hearing Board may rehear a decision if a party petitions for a rehearing within ten day after a copy of the decision has been mailed or emailed to said party pursuant to H&SC Section 40861.

3.18.2 The Hearing Board may, in its discretion, with not fewer than four members present, within 30 days of the effective date of the decision, rehear any matter pursuant to H&SC Section 40821.

3.18.3 If any member of the public contests a decision made by a single member of the Hearing Board, the application shall be reheard by the full Hearing Board within 10 days of the decision.

PART 4 OFFICERS OF THE HEARING BOARD AND DUTIES

4.1 Election of Officers

The Chair and Vice Chair shall be elected at the first Hearing Board meeting of each calendar year. Elections may be held more frequently for reasons such as, Chair or Vice Chair resigns from their position or three members of the Hearing Board request a new election.

4.2 Duties of the Chair

The Chair, and in the Chair's absence, the Vice Chair, shall have the following duties and authority:

1. Preside at each hearing.
2. Determine Preliminary Matters. (Section 3.7.2)
3. Grant Emergency Variances. (Section 3.7.3)
4. Grant requests for a continuance. (Section 3.7.10)
5. Sign written orders.
6. Any other duty or authority granted by the Hearing Board.