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Pima County Air Hearing Board

Manual of Procedures

1978

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PIMA COUNTY AIR POLLUTION HEARING BOARD

MANUAL OF PROCEDURES

RULE 1. SCOPE OF RULES AND LEGAL AUTHORITY.

These rules and procedures are applicable to all hearings and meetings of the Pima County Air Pollution Control Hearing Board and are adopted pursuant to A.R.S. § 36-785(D).

RULE 2. DEFINITIONS.

As used herein:

- A. "Board" means Pima County Air Pollution Hearing Board.
- B. "Chairman" means the Chairman, or in his absence, the Vice-Chairman of the Pima County Air Pollution Control Hearing Board.
- C. "Control Officer" means the executive head of the Pima County Air Pollution Control District. (Air Quality Control District)
- D. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government or any of its agencies, departments or political subdivisions, as well as a natural person.
- E. "Party" means each person named or admitted as a party or admitted as an intervenor.
- F. "Hearing" means a gathering of the Board for the purpose of adjudicating issues of law and fact which may arise between parties and which may affect the rights of those parties.
- G. "Meeting" means a gathering of the Board for conducting official business, other than times during which a hearing is being conducted.

RULE 3. ORGANIZATION.

- A. Membership Appointment: The Board shall be composed of five (5) members who shall serve without pay. Members shall be appointed by the Board of Supervisors of Pima County.

The five members shall be knowledgeable in the field of air pollution. Each Board member shall serve for a term of three (3) years.

B. Officers: The Board shall select a chairman and vice-chairman at the first regular meeting each year, and such other officers as it deems necessary,

RULE 4. OFFICERS AND STAFF.

A. The Chairman: The Chairman shall preside at all meetings and hearings. In the event of absence or disability of the Chairman, the Vice-Chairman shall preside. In the absence of both, the members present shall appoint a chairman of the hearing.

The Chairman shall report on all official transactions that have not otherwise come to the attention of the Board.

The Chairman shall, subject to these rules and further instructions from the Board, direct the official business of the Board, supervise the work of the Secretary, and request necessary help.

B. Vice-Chairman: The Vice-Chairman shall perform the Chairman's duties whenever the Chairman is absent.

C. Presiding Officer's Duties: The presiding officer, subject to these rules, shall decide all points of procedure of order, unless otherwise directed by a majority of the members in attendance on motion duly made and approved. He may administer oaths and take evidence.

D. Secretary: The Board shall appoint its secretary, who shall not be a Board member, but shall be an employee of Pima County.

E. Secretary's Duties: The Secretary, subject to the provisions of these rules, and the direction of the Board and its Chairman, shall attend to all hearings; scrutinize all matters to see that there is compliance with these rules; keep the minutes of the Board's proceedings, showing the vote

of each member, the record of its examinations, and other official actions; compile and maintain all required records; maintain the necessary files and indexes and generally perform all secretarial and clerical work of the Board.

F. Docket Book: The Secretary shall maintain a docket and minute book which shall be kept posted to date. In the docket book the Secretary shall enter the number of the case, the name of the contestant, short description, by street number or otherwise of the premises, the nature of the case, and the final disposition. All continuances, postponements, dates of sending notices, pleadings filed, and other steps taken and acts done shall be noted on the docket.

G. Minute Book: In the minute book shall be recorded the decision relating to each case acted on, together with the vote of each member of the Board, those absent being so marked, together with all other official actions of the Board.

H. Minutes a Public Record: The minutes of its proceedings shall be a public record and shall be kept in the office of the Pima County Air Pollution Control District. (Air Quality Control District)

RULE 5. MEETINGS.

A. Meetings Open: Meetings of the Board shall be open to the public.

B. Meetings: Meetings of the Board shall be held at such time as there are matters for determination before the Board, or at any other time, on call of the Chairman.

C. Quorum: A quorum of the Board shall consist of three (3) members, however, no decision of the Board shall be effective unless a majority of the total membership have concurred in reaching such decision.

D. Agenda: The Secretary shall prepare an agenda for each Board meeting, listing the matters of business in the following order:

1. Call to Order - recording of members present and absent.
2. Continued hearings.
3. New hearings.
4. Old business - matters pending Board action or further report.
5. Other business - new business not part of a hearing.
6. Minutes - submitted for approval, subject to changes as directed,
7. Adjournment.

E. Robert's Rules of Order: Robert's Rules of Order shall govern actions at meetings of the Board, except during the conduct of hearings.

RULE 6. NOTICES OF APPEAL AND PETITIONS.

A. Any person desiring to appeal from the denial of an installation or operating permit, or the imposition of conditions thereon by the Control Officer, shall file a written notice of appeal with the Board within ten (10) days after notice is received of such action. Any person desiring to appeal from the issuance of an order of abatement shall file a written notice of appeal with the Board within twenty (20) days after the date of issuance of the order. A notice of appeal filed under this rule shall contain a concise statement of the grounds for appeal and the specific relief requested.

B. A petition for a conditional permit shall be filed in writing with the Board, shall specify the rules and regulations from which a variance is requested and shall include:

1. A detailed description of the facility for which the conditional permit is requested including a description of all machines, devices or other articles associated with the facility which may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollutants.

2. Detailed reasons for the granting of additional time to bring petitioner's facility in compliance with the applicable rules and regulations of the Arizona State Department of Health.

3. A summary of the evidence to be presented at the hearing demonstrating that the granting of a conditional permit will not unduly endanger human health or safety, either directly or indirectly.

4. A detailed plan (compliance plan and schedule) of the corrective steps proposed to be taken in order to bring petitioner's facility in compliance with the applicable rules and regulations, including:

a. A detailed description of all emission control equipment and process modifications to be installed at the facility;

b. The date by which each contract for emission control systems or process modifications will be awarded; or the date by which each order will be issued for the purchase of component parts to accomplish emission control, or process modifications;

c. The date by which on-site construction or installation of each item of emission control equipment or each process modification is to be commenced;

d. The date by which on-site construction or installation of each item of emission control equipment or each process modification is to be completed; and

e. The date by which final compliance with all the rules and regulations of the Pima County Air Pollution Control District (Air Quality Control District) is to be achieved, and the dates mass emissions performance tests will be completed

if such tests are required.

5. Any other information the petitioner deems relevant to his petition for the conditional permit.

C. A petition for the renewal of a conditional permit shall be filed in writing with the Board not more than sixty (60) days nor less than thirty (30) days prior to the expiration of such permit, and shall demonstrate that the petitioner is in compliance with and conforming to the terms and conditions of the conditional permit sought to be renewed, except those conditions which necessitate the renewal.

D. A petition for the revocation or modification of a conditional permit, installation permit, operating permit or order of abatement shall be filed in writing with the Board and shall contain specific grounds for the revocation or modification requested.

E. At least ten (10) days prior to the date set for hearing on a notice of appeal or petition filed under this rule each non-petitioning party shall file a written response to the notice of appeal or petition.

F. The Board may dismiss any notice of appeal or petition or may strike any response which is not filed in accordance with these rules or may impose such other sanctions as it deems appropriate.

RULE 7. CONTEST CASES; NOTICE; HEARINGS; RECORDS.

A. In a contested case, all parties shall be afforded an opportunity for hearing after notice pursuant to Rule 8.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. The record in a contested case shall include:

1. All pleadings, motions, interlocutory rulings.

2. Evidence received or considered.

3. A statement of matters officially noticed.

4. Objections and offers of proof and rulings thereon.

5. Proposed finding and exceptions.

6. All memoranda, other than privileged communications submitted to the Board in connection with its consideration of the case.

E. Oral proceedings or any part thereof shall be stenographically recorded (or by other means if stipulated by the parties) and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcripts shall be assessed pursuant to A.R.S. § 36-785.01(C), whether it is made pursuant to a notice of appeal or not.

F. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

RULE 8. NOTICE AND TIME OF HEARING; APPEARANCE AND PRACTICE BEFORE THE BOARD.

A. Notice of Hearing: The Secretary shall send a notice of a hearing to the contestant, and such other persons required to be notified by ordinance. Except as provided in subsections (B) and (C) of this rule, said notice shall be mailed not less than five (5) days prior to the hearing date. Notice of the hearing shall also be advertised in a local newspaper of general circulation at least twice, not less than ten (10) days prior to the hearing date. Notice of the hearing shall also be

given by posting copies of the petition and notice in at least three (3) conspicuous places in the County.

B. If the hearing involves any violation of rules or regulations or a variance therefrom, or a hearing requested pursuant to A.R.S. § 36-782(A) on an order of abatement, in addition to the requirements of subsection (A) of this rule, the person allegedly committing or having committed the violation or requesting the variance or hearing, shall be served personally or by registered or certified mail at least fifteen (15) days prior to the hearing with a written notice of the hearing.

C. If the hearing is the result of a petition for conditional permit, the time set forth in (A) above shall be thirty (30) days notice posted and published prior to hearing, and compliance plans and schedules shall be available for public inspection upon the first posting or publication.

D. Hearings shall be held within thirty (30) days of timely notice of appeal unless such time is extended by the hearing board. Hearings on petitions for conditional permits shall be set within thirty (30) days of filing and shall be heard within sixty (60) days of the filing of the petition.

E. Failure to Appear: If no appearance is made at the hearing by the contestant, the Board may continue the hearing or dispose of the matter on the record before it and hear those who have appeared in response to the notice of hearing.

F. A person may appear in his own behalf or by counsel, except that a corporation may appear only through legal counsel. The Pima County Attorney may appear as required or deemed necessary under any statute.

G. Notice of Appearance: When a person appears before the Board he shall advise the Board of his name and address. When an attorney other than the County Attorney appears before the Board he shall advise the Board of his name, address and

telephone number, and the name and address of the person in whose behalf he appears.

H. Contemptuous Conduct: Conduct at any hearing which, in the discretion of the Board, is deemed contemptuous shall be grounds for exclusion from the hearing.

I. At least ten (10) days prior to the date set for hearing each party shall file with the Board copies of all documentary evidence to be offered at the hearing and a written list of all witnesses to be called to testify on behalf of the party, together with a summary of the testimony to be given by each witness.

RULE 9. HEARINGS FOR THE PURPOSE OF TAKING EVIDENCE: PROCEDURE.

A. Functions of the Board: The Board shall regulate the course of the hearing in an impartial manner and shall rule upon the procedural matters incidental thereto. The Board as well as all parties may question witnesses.

B. Ruling by the Board: All motions and objections made during the course of the hearing shall be made to the Board which shall rule thereon or take them under advisement for later determination. Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds of objections relied upon.

C. Filing of Motions: Motions calling for determination of any matter of law shall be filed with the Chairman in writing, provided, however, that motions during a hearing may be oral. In the case of pre-hearing motions, any party may file an answering memorandum of authorities within five (5) days after service upon him of such motion or other application unless extended by the Chairman. Motions will be considered on the memoranda. No oral argument will be heard on such matters filed prior to the commencement of the hearing unless the Chairman so directs.

RULE 10. EVIDENCE.

A. Presentation and admission of evidence:

All witnesses at the hearing shall testify under oath or affirmation. Parties respondent and intervenors shall have the right to be represented by counsel and present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

B. Subpoena; motions to quash or modify:

1. The Chairman, in connection with any hearing,

a. Shall issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material, and

b. Shall issue subpoenas requiring the production of documentary or other tangible evidence at any designated place of hearing, upon written application by any party, which shall include a showing of the general relevance, materiality and reasonable particularity of the documentary or other tangible evidence desired and the facts to be proved by them. Copies of documentary evidence may be received in the discretion of the Chairman. Upon request, parties shall be given an opportunity to compare the copy with the original.

2. Process issued by the Chairman may be served by such persons and in such manner as authorized by the Arizona Revised Statutes.

3. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five (5) days after the date of service of such subpoena, move

the Chairman to quash or modify such subpoena, accompanying such motion with a brief statement of reasons therefor. The Chairman shall thereafter rule on such motion.

C. Official Notice: The Board may take official notice of any matter which might be judicially noticed by a Superior Court of the State of Arizona, any matter in the public official records of the Director or Division, or any matter which is peculiarly within the knowledge of the Division as an expert body.

D. On application of a party or the District and for use as evidence, the Chairman may permit a deposition to be taken in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing.

E. The evidential standard applied by the Board in its deliberations shall be "clear and convincing."

RULE 11. EXTENSION OF TIME.

Except as otherwise provided by law, the Chairman on application of a party or on his own motion and for good cause may extend any time limits prescribed by these rules or postpone the commencement of the hearing to a mutually satisfactory date and place or deny such requests.

RULE 12. INTERVENTION.

A. Upon timely application anyone may be permitted to intervene in a hearing;

1. When a statute or other law confers a right to intervene; or

2. When an applicant's claim or defense and the main proceedings have a question of law or fact in common.

B. A person desiring to intervene shall serve a motion

to intervene on the Chairman and upon all parties affected thereby.

C. In exercising his discretion, upon the filing of a motion to intervene, the Chairman shall consider whether such intervention is in the interests of justice and whether it will unduly delay or prejudice the adjudication of the proceeding and shall rule upon the application accordingly.

RULE 13. CONFERENCES.

Conferences on Procedure: The Chairman, on application of a party, or on his own motion, may call a conference of the parties at any time for the purpose of (1) clarifying the procedural steps to be followed in a proceeding, (2) clarifying or limiting the legal or factual issues involved in a proceeding, or (3) exchanging the information required to be filed under Rule 8H.

RULE 14. CONSOLIDATION.

By order of the Chairman, separate proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters in issue in the separate proceedings where such consolidation may tend to avoid unnecessary costs of delay.

RULE 15. DECISIONS.

A. Except as otherwise provided by law, within thirty (30) days after the conclusion of a hearing, the Board shall render a decision in writing. Final decisions shall include findings of fact and conclusions of law separately stated. All decisions and orders of the Board shall be signed by the Chairman and shall be served upon the County Attorney and all parties to the action.

B. No decision of the Board shall be effective unless concurred upon by a majority of the total Board membership.

C. Disqualifications: A member shall disqualify himself from voting whenever he has a personal or monetary interest in the property concerned in the case, or will be directly affected by the decision of the Board, or believes any conflict of interest exists. A member may disqualify himself from voting whenever any contestant, or his agent, has sought to influence the vote of that member on his case, other than in a public hearing.

D. Advise: No informal requests for advice, or moot questions, will be considered by the Board. Any advice, opinion, or information given by any Board member or the Secretary, or any other official or employee of Pima County, shall not be binding on the Board.

E. No Precedents: No action of the Board shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

RULE 16. REHEARINGS.

A. Except as otherwise provided by law, any party desiring a rehearing may, within five (5) days after rendition of a final order, file a motion in writing for rehearing specifying the particular grounds therefor. A copy of such motion shall be served as provided in Rule 17. Any party may file objections to the motion for rehearing within five (5) days after receipt of such motion. The Chairman, by notice to all affected parties, may invite additional briefs or oral arguments upon the question of rehearing.

B. If a rehearing is granted, the Chairman shall so state in a written order, setting a time and place therefor.

C. If a rehearing is denied, the Chairman shall so state in a written order.

D. Notice of a grant or denial of rehearing shall be given no later than fifteen (15) days of the filing of the motion for rehearing.

RULE 17. FILING AND SERVICE OF PAPERS.

A. Filing with the Board: All papers required or permitted to be filed with the Board in any proceeding shall be filed with the Secretary. Filing may be accomplished by mail addressed to The Chairman of the Pima County Air Pollution Control Hearing Board, 151 W. Congress, Tucson, Arizona 85701, but filings shall not be timely unless the papers are received by the Secretary within the time fixed for filing, except that if filing is made by mailing, filing shall be deemed timely if said papers are postmarked prior to midnight of the day fixed for filing.

B. Number of copies: Unless otherwise specifically provided in these rules or by a particular rule or order of the Board, an original and five (5) copies of all papers shall be filed with the Secretary.

C. Service of all papers: Copies of all papers filed by any party shall, at or before the time of filing, be served on the County Attorney and all parties to the action. Service on a party represented by counsel shall be made on the counsel.

D. Manner of Service: Service of all papers under these rules shall be made by personal service or by mail, except that subpoenas must be served in the manner provided for by the Arizona Revised Statutes.

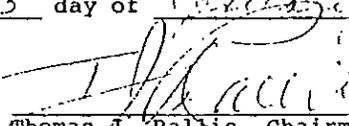
RULE 18. COMPUTATION OF TIME.

A. In computing any period of time prescribed or allowed by these rules, or by order of the Board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days,

intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

B. Time allowances for nonresidents of Arizona: Wherever these rules provide a specific limitation as to the time within which any papers are required to be filed with the Board in any proceeding, an additional period of seven (7) days shall be available for parties who are nonresidents of Arizona, unless any applicable statute provides to the contrary.

ADOPTED this 13th day of October, 1977,
to become effective on the 3 day of January, 1978.



Thomas J. Rallis, Chairman

Concurring:

LEONARD KARP

WILLIAM GENSLER, Ph.D.

JEROME ROTHBAUM, M.D.

RALPH WONG

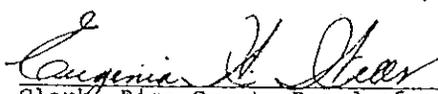
PIMA COUNTY AIR POLLUTION CONTROL
HEARING BOARD

APPROVED this 31 day of January, 1978.



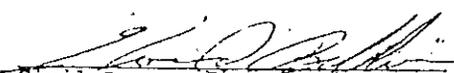
CHAIRMAN, PIMA COUNTY BOARD OF
SUPERVISORS

ATTEST:



Clerk, Pima County Board of
Supervisors

APPROVED AS TO FORM:



Civil Deputy County Attorney