

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT
POLICIES AND PROCEDURES

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Topic:	<u>Preparation of Hearing Board Staff Report for Permit Appeals</u>		
Distribution:	<u>Engineering Division Staff</u>		

Purpose:

When permits are formally appealed to the APCD Hearing Board, the District must promptly prepare a staff report concerning the matter(s) in question. This document must inform the Hearing Board of the District's reasons and actions on the issues appealed. The report must be submitted at least 15 calendar days prior to the hearing date.

Staff reports must be comprehensive, coherent, focused, and properly prepared in order to assist Hearing Board members in resolving permit appeals. A number of District people must review and assist in these matters. This policy and procedure item will provide standard guidance for staff on preparation of acceptable reports.

Policies and Procedures Memoranda are intended to provide agency staff, applicants and the public guidance relative to standardized APCD procedures. These policies and procedures shall not be interpreted in conflict with APCD Rules and Regulations or administrative policies, and may be modified or updated periodically without advance notice.

Guidance:

HEARING BOARD STAFF REPORT PREPARATION FOR PERMIT APPEALS

I. Foreword

The Santa Barbara County Air Pollution Control District Hearing Board resolves permit appeals. It accomplishes this via the hearing process. The hearing provides the applicant due process and informs the board about the issues. Individual board members may then vote on the recommendations presented, continue the hearing to the next scheduled meeting, construct a compromise solution or dismiss the case.

The permittee (appellant) initiates the process by filing an appeal per District Rules 503 and 507 before the deadline (30 days after permit receipt) with the Clerk of the Board. Next, the District submits a staff report at least fifteen (15) *days prior to the hearing date* set by the Hearing Board. This report must accurately inform Hearing Board members of the District's position, discuss supporting principles, furnish background material (chronology), provide supporting evidence (photos, reports, correspondence, records) and recommend measures to resolve the issues. Although the appeal process may be adversarial, the District's presentation should be factual, truthful and non-argumentative. The objectives are to paint a clear, accurate and comprehensive picture of the District's position and demonstrate its validity and reasonableness. The appellant has already given reasons and evidence to support claims in the appeal petition. The District's staff report, therefore, should convincingly and concisely present its case. This guidance will assist District staff in preparing and editing such a report.

II. Staff Report

The author(s) of every staff report should keep the intended reader (i.e., Hearing Board member) in mind. While District staff are familiar with the circumstances, evidence, issues, technical details and problems, the Hearing Board is not. Board members rely on the written material submitted by both sides (appellant and District) to inform themselves about the case but they are not air quality engineers and are not necessarily familiar with our concepts and terminology. These reports are intended to instruct Hearing Board members so they can ask pertinent questions of District staff and the appellant at the hearing.

The staff report presents the District's position and assists in the process of obtaining information. Remember that you are condensing a good deal of material to properly educate the reader about the details in the matter. The written document should be accurate, concise, well organized, and cohesive.

1. **Introduction.** Before writing, study the appellant's petition and your files. Make sure both parties are talking about the same issue(s). Talk to your supervisor, County Counsel, Division Managers, appropriate District staff, and others involved in the case. Organize your presentation to give the most information in the shortest time. Your

introduction should concisely describe the issue(s) of the appeal. Remember the reader wants to know why the appeal is being made, what the chief issues of concern are, what equipment or circumstances are involved. Describe what air quality impacts are associated, as well. Briefly address these concerns here. This section serves as a road map for the remainder of the document.

Provide a brief synopsis of recent actions in chronological order concerning the issuance of the final permit. Make sure it is accurate.

2. **Main Issue(s).** (*Write this Staff Report section first. Initially presenting issues, facts, technical basis and evidence will help organize the report and the presentation. It aids in determining strong points requiring more evidence and justification, as well as those to be omitted (weak or irrelevant arguments).*)

Explain the District's case. These are the areas of disagreement (problems) which triggered the appeal and require Hearing Board action. The who, what, when, where, why and how must be answered. Review your notes, files, references, evidence, background material, legal review, the permit file, the appeal petition, and correspondence. Avoid an argumentative tone in drafting the report. This does not mean eliminating opposing evidence or ideas. The objective is to convincingly provide the District's position on each issue. Cite references, background data, rules, laws, correspondence and any other factual data that support the District's case. Remember that pictures speak thousands of words when educating the Hearing Board.





Expert testimony and references carry special importance. Guidance documents from EPA (AP-42), CARB, or any other pertinent authority, e.g., American Petroleum Institute, Chemical Engineers Handbook, Handbook of Chemistry and Physics, CAPCOA Air Toxics Manual are in this category. Include them if they offer additional support. Their proper use can be the deciding factor in these matters.

One may also consult other California air pollution control agencies (e.g., Ventura County, South Coast, San Joaquin) for additional input. This could expose any differing responses on the issues which the District should be prepared to address. Make the effort. It's important for a comprehensive review. You might obtain new information to modify the positions of both parties. It may also show that we are treating the appellant the same way he/she would be treated elsewhere.

3. **Summary.** Main issues should be accurately and cogently summarized. Brevity is important here. Use this opportunity to remind the reader of the important points that comprise the District's position. These are your closing arguments. Focus on the critical points.
4. **Recommendations.** This important section provides the guidance on those actions the District suggests to take on the appeal. It should list the logical steps to be followed when accepting the District's analysis. Include the recommendation that the Hearing Board deny the petitioner's appeal and accept the District's position.

5. **Attachments.** All the reference materials to support the District's case (e.g., photos, correspondence, technical data, diagrams) should be included here. Each reference should be properly labeled and identified. Place a List of Attachments (not Table of Contents) at the beginning of this section. See below for a sample format and additional direction.

III. Additional Information

-  The Staff Report, including all documentary evidence and support materials, must be completed and sent to the Hearing Board (7 copies + 1 original) at least 15 days prior to the hearing date.
-  Send one copy to the appellant. Send an additional copy to the appellant's consultant *if requested*.
-  Advise the appellant to pay all permit fees prior to hearing date (Ref. Rule 210.IV.B).
-  Allow sufficient time for appropriate District personnel to review the report and make corrections. Remember:
 - 1) Supervisor must review and discuss all documents and final report.
 - 2) County Counsel must review the report.
 - 3) Manager, Engineering Division must approve final report.
 - 4) Any expert witnesses to support the District's position must be allowed sufficient time to prepare any testimony and make arrangements to appear at hearing. This also applies to written materials to be incorporated into staff report. Include an affidavit with the proper wording and format (see below). Furthermore, the appellant must be properly notified of the right to question the District's expert. There is a time limit to this right. Use the following notification wording:

“The accompanying affidavit of *[name of affiant]* will be introduced as evidence at the hearing in *[title of proceeding]*. *[Name of affiant]* will not be called to testify in person and you will not be entitled to question the affiant unless you notify *[name of proponent or attorney]* at *[address]* that you wish to cross-examine. To be effective, your request must be mailed or delivered to *[name of proponent or attorney]* on or before *[a date seven days after the date of mailing or delivering the affidavit to the opposing party]*.”

If written expert testimony is attached to the staff report, it must contain certain language to qualify it as a statement under oath. See below for guidance and sample format.

Format of List of Attachments

The attachments should be tabbed to make the staff report easy to use. The more hunting the reader has to do, the less enthusiastic they will be about your message. It also eliminates having to number the pages of the attachments, which is a tremendous benefit (1) if changes are made to the attachments after the pages have been numbered, or (2) if you do not have a Bate Stamp to do the overall page numbering and have lots of time and correction fluid. If you do not use tabs, add a page number column on the right.

The following shows the format for photographs, letters, technical documents, and rules. Other types of documents can be used as attachments. For these the first word of the description should be the type of document so the reader can easily scan the list for document type, dates, addresses, etc.

List of Attachments	
Attachment A:	Photograph of appellant's [short description] at [facility] taken on [date]
Attachment B:	Letter dated [date of letter] from [sender] to [addressee]
Attachment C:	Pages [x] - [y] of CARB document entitled [document title]
Attachment D:	Rule [rule number] of Santa Barbara Air Pollution Control District

Affidavit

An affidavit is a statement made by a person in writing under oath. It is testimony. As such, the Rules of Evidence apply: so if you want all the affidavit to be considered as evidence, restrict non-expert witnesses to matters within ordinary experience. (Experts can testify to those matters outside the realm of common experience.) Note that if something is not evidence, it is considered merely argument.

Facts are based on some kind of observation. "The plume was brown." is a statement of fact if the witness saw the plume and perceived it as brown. "Company X is appealing to avoid the impact of a rule in the development pipeline." is an opinion. The "witness" is the person who is testifying in the affidavit.

Affidavit of [Name of witness]

I, [Name of witness], state:

[set forth facts]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters stated upon my information and belief, and as to those matters, I believe them to be true. I further declare under penalty of perjury that, if sworn as a witness, I could competently testify to the foregoing.

_____ (Date and Place)

_____ (Signature and Title)

_____ (Name and Title of Witness)