

# **CHAPTER 9. JUDICIAL PROCEDURES**

## **ARTICLE 1. HEARING BOARD PROCEDURES**

### **9-1-010. Purpose**

The purpose of this article is to specify procedures that shall apply to all hearings before the Hearing Board of the Air Quality Control District as appointed by the Board of Supervisors pursuant to A.R. S. § 49-478 (1992).

[Adopted effective June 29, 1993. ]

### **9-1-020. Hearings on orders of abatement**

- A. An order of abatement issued by the Control Officer shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to §8-1-030 unless the person or persons named in such order shall have made a timely request for a hearing before the Hearing Board. If a hearing is requested, the Hearing Board shall hold the hearing within 30 days from receipt of the request unless such time is extended by the Hearing Board. Written notice of the time and place of the hearing shall be sent by the Hearing Board to the person or persons requesting the hearing and to the Control Officer at least 15 days before the hearing.
- B. If the Board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this Code or any requirement of a permit or Conditional Order issued pursuant to this Code and that no Conditional Order is justified, the Board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met.

[Adopted June 29, 1993 and effective September 1, 1993. ]

### **9-1-030. Operative procedures of the Hearing Board**

- A. Subject to the approval of the Board of Supervisors, the Hearing Board may, by majority vote, adopt a manual of procedures governing its operation as it may deem appropriate.
- B. All testimony before the Hearing Board shall be upon oath or affirmation.
- C. The Hearing board shall designate a recording clerk, who may be an employee of the District, and all proceedings shall be recorded by the clerk on audiotape.

[Adopted effective June 29, 1993. ]

### **9-1-040. Decisions of the Hearing Board**

- A. As an essential element of any decision, the Hearing Board shall prepare written findings of fact and conclusions of law, and shall base such decision upon those findings and conclusions. All decisions of the Hearing Board, including the majority of opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

- B. A majority of the total membership of the Hearing Board shall concur in a decision for it to have effect.

[Adopted effective June 29, 1993. ]

### **9-1-050. Subpoenas**

The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to A.R. S. § 12-2212 (1992).

[Adopted effective June 29, 1993. ]

### **9-1-060. Effective date of decisions**

- A. Decisions of the Hearing Board shall become effective not less than 30 days after they are issued unless:
  - 1. A rehearing is granted which shall have the effect of staying the decision.
  - 2. It is determined that an emergency exists which justifies an earlier effective date.
- B. The Hearing Board may revoke or modify an order of abatement , a permit or a Conditional Permit only after first holding a hearing within 30 days from the giving of notice of such hearing as provided in § 9-1-080.

[Adopted effective June 29, 1993. ]

### **9-1-070. Judicial review**

- A. Within 30 days after service of notice of a final decision or order of the Board, or an order denying a rehearing timely applied for, any person who was a party of record in the proceedings before the Board, including the Control Officer or department authorized or designated to enforce air pollution regulations, may appeal there from to the superior court in the county.
- B. A notice of appeal, designating the grounds therefore, and a demand in writing for a certified transcript of the testimony and exhibits shall be filed with the court and served on the Board. After receipt of the demand, accompanied by payment of a fee of the current prevailing rate for transcript, and one dollar for certification thereof, the board shall make and certify the transcript and file it with the clerk of the court to which the appeal has been taken within 30 days, unless extended by agreement of the parties or order of the court.
- C. When an appeal is taken from an order or decision of the Board, such order or decision shall remain in effect pending final determination of the matter, unless stayed by the court, on a hearing after notice to the Board and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting such stay.
- D. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

[Adopted effective June 29, 1993. ]

### **9-1-080. Notice of hearing**

- A. Any notice of hearing required by this Code shall be given by publication of a notice of hearing for at least 2 times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county, and by posting copies of the petition and notice in at least 3 conspicuous places in the county.
- B. If the hearing involves any violation of this Code or a Conditional Order therefrom then, in addition to the requirements of Subsection A. of this section the person allegedly committing or having committed the violation or requesting the Conditional Order, shall be served personally or by registered or certified mail at least 15 days prior to the hearing with a written notice of hearing.

[Adopted June 29, 1993 and effective September 1, 1993. ]