

Air Pollution Control District Governing Board
San Diego County Air Pollution Control District
AGENDA ITEM # 05

DATE: April 2, 2021

TO: Air Pollution Control District Governing Board

SUBJECT:

ADOPTION OF PROCEDURES FOR THE APPOINTMENT OF MEMBERS TO THE AIR POLLUTION CONTROL DISTRICT HEARING BOARD

REQUESTED ACTION:

Adopt Attachment B to the Interim Bylaws, entitled: “Procedures for Appointment of Governing Board Public Members.”

OVERVIEW:

The California Health and Safety Code Section 40800 provides for the appointment of members to the Air Pollution Control District Hearing Board. The duties of the Hearing Board include consideration of variance requests from permitted entities, permit appeals from permittees or members of the public, and requests for abatement orders. The Hearing Board is made up of five members, which include one member admitted to practice law in California, one registered professional engineer, one member from the medical profession with specialized skills, training or interests in the fields of environmental medicine, community medicine, or occupational/toxicologic medicine, and two public members. Alternates may also be appointed for each member.

Hearing Board members were previously appointed by the County Board of Supervisors, sitting as the Air Pollution Control Board. The prior procedures for appointment of the Hearing Board members were specific to the Board of Supervisors, and do not carry over to the new APCD Governing Board structure.

Hearing Board members and their associated alternates are appointed to terms of office for three years. Currently, two of the five members of the hearing board are serving under expired terms, while two additional members’ terms will expire this calendar year. In consultation with outside counsel, District staff developed Attachment B of the Interim Bylaws, which contain proposed procedures for the Board’s appointment of the Hearing Board members, consistent with the requirements of the Health and Safety Code. District staff requests the Board’s adoption of these procedures, in anticipation of the appointment of two Hearing Board members and two alternates (one public member and one medical professional, and alternates) at the Governing Board meeting on May 7, 2021. The availability of the Hearing Board member application form (Attachment 2) will be publicly noticed by the District via its public website at www.sdapcd.org, email listserv with approximately 4,500 recipients, social media platforms, and other communications with a wide range of stakeholders by April 5, 2021. Applications will be due to the Clerk of the Board by April 30, 2021, in accordance with the proposed procedures, if approved.

FISCAL IMPACT:

N/A

ENVIRONMENTAL STATEMENT:

The requested action is not a project subject to the California Environmental Quality Act (“CEQA”). CEQA Guidelines Section 15378(b)(5) provides that the definition of project does not include, “Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.”

PREVIOUS RELEVANT BOARD ACTIONS:

March 19, 2021, Agenda Item 2, Adoption of Interim Bylaws for the APCD Governing Board.

ADVISORY GROUP ACTIONS:

N/A

ATTACHMENT(S):

1. Proposed Attachment B to the Interim Bylaws: San Diego County Air Pollution Control District Procedures for Appointment of Hearing Board Members

SUBMITTED BY:

Robert Reider, Interim Air Pollution Control Officer

CONTACT PERSON(S):

Name
Mahiany Luther
Phone
(858) 586-2725
Email
Mahiany.Luther@sdcounty.ca.gov

ATTACHMENT B

San Diego County Air Pollution Control District

Procedures for Appointment of Hearing Board Members

- A. Notices Inviting Applications. Notices inviting applications will be posted on the District's website and social media accounts at least 30 days prior to the meeting at which the members will be appointed. Other means of notification, including press releases and outreach to interested groups or organizations, may also be used.
- B. Applications. Persons seeking appointment to the San Diego County Air Pollution Control District Hearing Board must file an application, in the form and manner prescribed by the Clerk of the District's Governing Board (Clerk), or their designee. The application shall include information stating the applicant's qualifications for the Hearing Board position(s) being sought. Applications shall be due ten (10) days prior to the Governing Board meeting at which appointments will be considered. After the application deadline has passed, the Clerk will forward all timely received applications to the Governing Board and include copies of the applications in the Governing Board's agenda packet (with redactions as appropriate to protect the applicants' home address, phone number, personal e-mail address, or other exempt information under the Public Records Act).
- C. Qualifications. Specific qualifications for each of the five (5) Hearing Board members and their alternates, as established by Health & Safety Code section 40801, are as follows:
1. One member shall be **admitted to the practice of law** in California.
 2. One member shall be a **professional engineer** registered as such pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).
 3. One member shall be from the **medical profession**, whose specialized skills, training, or interests are in the fields of environmental medicine, community medicine, or occupational/toxicologic medicine.
 4. Two members shall be **public members**.
- D. Appointment.
1. Interviews of applicants will be held during a properly noticed and open meeting of the Governing Board. Such meeting may take place via videoconference held in compliance with applicable waivers to the Brown Act. The Clerk, or their designee, will ask each applicant to attend the Board meeting and be prepared to make an introductory statement and answer questions from the Board.

2. Applicants will be interviewed individually in the following order: (1) applicants for the attorney member; (2) applicants for the engineer member; (3) applicants for the medical professional member; (4) applicants for the public members. If feasible, the Chair will request the applicants' consent to be placed in a virtual "waiting room" while the Board is interviewing other applicants. (Any applicant may, however, decline this request and remain in the meeting during all interviews.)
3. Following applicant interviews, the Board will receive comments from the general public.
4. The Board will then consider the appointment of the Hearing Board members and their alternates in the order listed above. Each appointment shall be considered separately; the Board will not vote on a slate for multiple positions in the same motion.

The floor will be opened for discussion but, before any motion is made, each Governing Board Member will have an opportunity to state the names of up to three (3) preferred applicants whom they would like the Board to consider for appointment.

After each Board Member has had the opportunity to identify their preferred applicant(s), any Governing Board Member may make a motion to appoint an applicant as a Hearing Board member. The motion will require a second by another Governing Board Member. Following discussion, if any, the Governing Board will vote on the motion to appoint. The motion to appoint must be approved by a majority of the quorum.

Subsequently, any Governing Board Member may make a motion to appoint an applicant as an alternate Hearing Board member, following the process described above.

- E. Oath of Office. Prior to conducting any business at next meeting of the Hearing Board, each newly appointed Hearing Board member and alternate Hearing Board member shall take and subscribe the oath of office. A ceremonial oath of office may also occur.
- F. Vacancies. If a Hearing Board position remains vacant following consideration of appointments by the Governing Board, the application period to fill the position will be automatically extended by an additional thirty (30) days or for such other time period determined by a majority vote of the Governing Board, and the Governing Board may consider the appointment at an upcoming meeting. Upon the time period being extended, the Clerk's office will receive further applications for future consideration by the Governing Board.