

Regulation IV

Rule 404 – Hearing Board Fees

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The current version was adopted by the Governing Board via Resolution 2018-4 on May 10, 2018.*

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RULE 404

HEARING BOARD FEES

- A. PURPOSE:** This rule establishes the fees which may be assessed by the District to offset costs incurred by the Hearing Board in the performance of its duties pursuant to District Regulation IV and H&SC §40800 *et seq.* The authority to establish this rule is provided for in H&SC §42364.
- B. HEARING BOARD FEE SCHEDULE:** Every applicant or petitioner for variance, or for the extension, revocation or modification of a variance; or for an appeal from a denial or conditional approval of an ATC or PTO; or for an appeal of Hearing Board decision; or for a request for rehearing including any federal, state or local governmental agency or public district, except for the APCO filing on behalf of the District, shall pay to the District a fee based on *Table 1 – Hearing Board Fees*. The fees shall be calculated in accordance with Rule 400.
- 1. Additional Fees:** Additional Hearing Board fees and costs may be assessed by the Hearing Board as a direct result of the action which the applicant or petitioner has brought before the Hearing Board.
 - 2. Costs of Hearing Transcripts and Recordings:** Any person requesting a written transcript or recording of the hearing shall pay the cost of such transcript or recording. The parties to Hearing Board proceedings may be directed by the Hearing Board to pay the cost of transcripts necessary for the Hearing Board's determination of the matter, in such proportion as the Hearing Board may order.
 - 3. Fee Waivers and Refunds for Specified Appeals**
 - a. Third party appeals or re-hearings that lead to the overturning of a previous decision by the Hearing Board or by the APCO shall be refunded 75% of the filing fee.
 - b. When issuing a permit pursuant to H&SC §42311.2, the Hearing Board may waive all or part of these fees if it determines that circumstances warrant that waiver.
 - c. Any person may allege that payment of the excess emission fee will cause an unreasonable hardship and may be excused from payment of such fees or a portion of such fees by order of the Hearing Board if the Board in its discretion determines after hearing evidence thereon that payment of such fees would cause financial hardship to the petitioner with no corresponding benefit to the public.
 - 4. Fee Payment:** Full payment of the hearing fees shall be received by the District prior to the commencement of the hearing.

Table 1 – Hearing Board Fees

Filing Fees & Services	X-Factor Multiplier
Emergency Variance Petition, Initial Hearing	2
Variance Petition (Short or Long Term), Initial Hearing	5
Subsequent Hearing(s)- To modify increments of progress, extend, revoke, or to re-hear actions taken by a single member (emergency variance)	5
Regular Hearing - Petitions to reverse APCO decisions – permit approvals & denials, levying of administrative civil penalties	5
Records of Proceedings	Actual Costs

C. EXCESS EMISSION FEE SCHEDULE: As part of the variance petition, the petitioner shall prepare and submit a report of the emissions which are proposed to be discharged during the term of the variance in accordance with this section. In addition to the filing fees assessed under this Rule, each petitioner for a variance shall pay to the District, an emissions based fee for all emissions which are discharged during the term of the variance that are in excess of the quantity authorized pursuant to District permit, District Rule, or State law. The APCO shall retain at all times the sole authority to determine the quantity of emissions released and any associated fees.

- 1. Estimated Emissions:** The petitioner shall evaluate the effect of the proposed variance of the quantity of pollutants which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall report the effect of the variance on emissions of the pollutant types and categories listed in *Table 2- Excess Emissions*. The petitioner shall calculate emissions and shall report information pursuant to this Section.
 - a. Potential to Emit:** The report shall include an estimate of the potential to emit of the equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum quantity of emissions which are authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.
 - b. Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum quantity of emissions which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.
 - c. Excess Emissions:** The report shall include an estimate of the quantity of emissions which may be emitted in excess of regulatory limits. The excess emissions shall be equal to the quantity resulting from the subtraction of the estimated allowable emissions from the potential to emit.
 - d. Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for each pollutant listed in Table 2 – Excess Emissions shall be determined separately by multiplying the quantity of excess emissions proposed to be emitted during the term of the variance by the “X-Factor Multiplier” according to the equation below. Payment for the estimated excess emission fees shall accompany the variance hearing filing fees at the time the petition is filed.

$$Fee = (Quantity\ of\ Pollutant\ in\ tons) * ("X-Factor\ Multiplier") * ("X-Factor")$$

Where:

“X-Factor” is equal to the value established by the Board for the calendar year in which the variance was granted (order signed); and

“Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance.

- 2. Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term within 30 days of its termination. The fee for each pollutant shall again be calculated pursuant to subsection (1)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on actual emissions shall be determined by the petitioner. Within forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded by the District.

Table 2 – Excess Emissions

Air Contaminant		X-Factor Multiplier Per Ton of Contaminant
CO	Carbon Monoxide	none
NOx	Oxides of nitrogen (expressed as NO ₂)	1
PM	Particulate Matter	2
ROG	Reactive Organic Gases, except methane and those containing sulfur	1
SOx	Oxides of sulfur (expressed as SO ₂)	1
TRS	Total Reduced Sulfur compounds (expressed as hydrogen sulfide)	2

- 3. Opacity Emissions:** The petitioner shall evaluate the effect of the proposed variance on the opacity of exhaust gases which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall calculate emissions and shall report information pursuant to this Section.
- a. Potential to Emit:** The report shall include an estimate of the potential to emit of the equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum opacity of exhaust gases which would be authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.
 - b. Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum opacity of exhaust gases which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.
 - c. Excess Opacity (Emissions):** The report shall include an estimate of the intensity and of the number of opacity events in excess of regulatory limits which may occur.
 - d. Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for opacity shall be determined by multiplying the intensity of the opacity event by the number of days the event occurred. The resulting value shall be the “X-Factor Multiplier” which shall be applied to the value of “X” established for the fiscal year in which the variance was granted according to the equation below. Payment for the estimated excess emission fees shall accompany the variance hearing filing fees at the time the petition is filed.

$$\text{Estimated Fee} = (\text{PTE Opacity \%} - \text{Allowed Opacity \%}) * (\text{“X - Factor”}) * (\text{Days})$$

Where:

- “PTE Opacity” is the highest opacity anticipated to occur;
- “Allowed Opacity” is the lowest applicable regulatory limit for opacity;
- “X-Factors” is equal to the value established by the Board for the calendar year in which the variance was granted (order signed).; and
- “Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance.

- e. **Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term within 30 days of its termination. The fee for opacity shall again be calculated pursuant to subsection (3)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on actual emissions shall be determined by the petitioner. Within forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded by the District.

$$\text{Estimated Fee} = (\text{PTE Opacity \%} - \text{Allowed Opacity \%}) * (\text{"X - Factor"}) * (\text{Days})$$

Where:

“PTE Opacity” is the highest opacity anticipated to occur

“Allowed Opacity” is the lowest applicable regulatory limit for opacity

“X” is equal to the X-Factor in effect at the time of the emission; and

“Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance