OFFICE OF THE FIRE MARSHAL
HAZARDOUS MATERIALS DIVISION
GUIDANCE DOCUMENT

☒ **New** ☐ **Revised** **By:** Holly Clark

Date: November 30, 2009 **Approved By**: B. Douglas Snyder

SUBJECT: Procedure to Schedule an Administrative Hearing with an Administrative Law Judge

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If a Notice of Defense (NOD) is submitted to the CUPA by a Respondent in response to an Administrative Enforcement Order (AEO), the CUPA must "immediately" submit a "Request to Set" form to the Office of Administrative Hearings (OAH) to request an Administrative Hearing by an Administrative Law Judge (ALJ). The following procedure outlines this process:

1. Obtain a Request to Set form at www.oah.dgs.ca.gov/RetainingOAH under Forms:General Jurisdiction Forms:State Agencies and Local Agencies.
2. Use the State Agencies Form OAH 21A if Cal/EPA is currently covering the expense through a contract between Cal/EPA and OAH to provide ALJ AEO hearings to CUPAs who receive NODs. Contact the OAH contract coordinator at (916) 263-0550 to determine if CalEPA has a current contract with OAH (e.g. contract 08-001 is valid for FY 08/09 and 09/10). If this contract has not been renewed, use the Local Agencies Form OAH 21B. (note: these forms cannot be saved, but can be printed and used as a worksheet, then typed online and printed when all required information is obtained)
3. The OAH Form must be completed as follows:
   a. The "CASE TITLE" is the Respondent's name and the dba listed on the AEO.
   b. The "OAH CASE NO." is left blank. It will be assigned after the OAH receives the Form.
   c. The "NAME OF AGENCY" is *San Bernardino County Fire Hazardous Materials Division – CUPA.*
   d. The "AGENCY CASE NO." is the AEO case number.
   e. The "AGENCY ATTORNEY/REPRESENTATIVE" section must contain the name of the Hazardous Materials Division Deputy Fire Marshal. (note: The D.A. and County Counsel are currently not available to represent the CUPA)
   f. The "RESPONDENT/APPELLANT/PETITIONER" is the AEO Respondent.
   g. The "RESPONDENT ATTORNEY/REPRESENTATIVE" if they have retained council.
   h. The "OTHER (LIST)" box must be checked.
   i. The "STATUTORY TIME LIMIT" "YES" box must be checked.
   j. The "LEGAL AUTHORITY" section is *CHSC 25404.1.1(e).*
   k. The "IF YES, DATE BY WHICH CASE MUST BE HEARD" is 90 days from the date the NOD is received by the CUPA.
   l. The "TIME ESTIMATE FOR HEARING". Enter the number of hours and/or days you expect the hearing to take in the boxes below. This section should be as realistic as possible.

It is helpful to interview the Defense Counsel to find out how many witnesses they plan to produce, and how many exhibits they plan to submit as evidence.

m. The "OAH TO REQUEST CSR" box must be checked in the next section. ("CSR" refers to a court reporter provided by the OAH)

n. The "PLACE OF HEARING" is any location that the CUPA chooses, at no extra charge. It does not have to be at the OAH or a court house, and can be at the *San Bernardino County Fire Dept. Office of the Fire Marshal – 620 So. "E" Street, San Bernardino, CA.* The room used for the Hearing must be large enough to accommodate the ALJ, a court reporter, and all parties involved in the hearing proceedings.

o. Every effort should be made to coordinate CUPA staff's available dates with the Respondent's and Defense Counsel's (if applicable) calendars before completing the "DATES PREFERRED" section of the Form OAH. Check the "YES" box in this section if you have coordinated the preferred dates listed in this section. (note: the San Diego OAH calendar clerk said that three (3) preferred dates should be listed in this section, and the "DATES AVAILABLE" and "DATES UNAVAILABLE FOR THE NEXT SIX MONTHS" sections should be left blank). The calendar clerk will schedule the Hearing on one of the 3 preferred dates.

p. The "ADDITIONAL COMMENTS AND/OR INSTRUCTIONS, REQUEST FOR ACCOMODATION" section must state *"Copies of Enforcement Order and signed Notice of Defense (NOD) are enclosed. Billing Address is California Environmental Protection Agency Unified Program Office, P.O. Box 2815, Sacramento, CA 92512; Contract 08-001"* (use the current contract number, or leave off if the CalEPA/OAH contract has not been renewed. If the contract has not been renewed, the current OAH Rates for an ALJ and other OAH services are on the OAH website at www.oah.dgs.ca.gov/RetainingOAH)

q. Do not check the "SECURITY REQUESTED" box.

4. Mail the completed "Request to Set" form **in triplicate** with a copy of the Enforcement Order and NOD to the *Office of Administrative Hearings, Attention: Calendar Clerk, 1350 Front Street, Suite 6022, San Diego, CA 92101* by certified mail. Do not include the Stipulation and Order. (note: The San Diego OAH has jurisdiction for San Bernardino County)

5. If any changes need to be made to the "Request to Set" form after it has been sent to the OAH, the change(s) must be submitted in a letter addressed to the *Office of Administrative Hearings, Attention: Calendar Clerk, 1350 Front Street, Suite 6022, San Diego, CA 92101* by certified mail. It is advisable to call the San Diego OAH Calendar clerk at (619) 525-4475 to notify her ASAP, especially if the change affects the Hearing date.

6. The OAH will mail a "NOTICE OF ASSIGNED HEARING DATES" to the CUPA with a date, time and location of the hearing, and the "OAH Case No." assigned. (note: all further communications and documents related to the case must reference the OAH Case No.)

7. A "NOTICE OF HEARING" form ("SBCFD AEO ALJ Notice of Hearing" located at z:Hazmat:Forms:AEO Forms) must be completed and mailed by the CUPA to:

   a. All involved parties. This can be done by personal service, certified mail, or by email if acceptable to the Respondent and/or Defense Counsel.

   b. Office of Administrative Hearings, Attention: Calendar Clerk, 1350 Front Street, Suite 6022, San Diego, CA 92101 by certified mail.

   c. California Environmental Protection Agency Unified Program Office, P.O. Box 2815, Sacramento, CA 95812 by regular mail.

8. Examples of a completed Form OAH 21A and a completed Notice of Hearing form can be found at z:Enforcement:Formal Enforcement Cases:Vinman