Agenda Date: June 15, 2017
Agenda Placement: Admin.
Estimated Time: N/A
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer

CONTACT: Sara Hunt, Executive Assistant/Board Clerk (961-8853)

SUBJECT: APCD Hearing Board Appointments

RECOMMENDATION:

Consider recommendations of the APCD Hearing Board Nominating Committee as follows:

1) Appoint Mr. Terence Dressler as a public member on the APCD Hearing Board for a 3-year term; and

2) Appoint Mr. Francis Peters, Jr. as a public member on the APCD Hearing Board for a 3-year term.

DISCUSSION:

The APCD Hearing Board Nominating Committee (Committee) opened a recruitment to fill the soon to be vacant Public Representative and Engineer Representative positions on the APCD Hearing Board. The application period ran from March 27, 2017 through May 5, 2017. During this period, five applications were received for the Public Representative position, and zero for the Engineer Representative position.

Due to the size of our district, if a recruitment for one of the specified positions (in this case the Engineer) yields no qualified applicants, Health and Safety Code 40802 allows for the appointment of a Public Representative in its place. With this in mind, the Committee met on May 18, 2017 to interview the five applicants. Present were Board members Das Williams, Michael T. Bennett, Jim Richardson and Peter Adam. Mr. Adam was unable to stay for the duration of the meeting and therefore not included in the vote. Following interviews, the committee discussed candidate qualifications and nominations were made.

The Committee was very impressed with all the candidates. After consideration, a motion was carried in a 3:0 vote to recommend that the APCD Board of Directors appoint Terence Dressler and Francis Peters, Jr. as Public Representatives on the Santa Barbara County APCD Hearing Board, each for a 3-year term.

ATTACHMENTS:

A) Mr. Terence Dressler APCD Hearing Board Application
B) Mr. Francis Peters, Jr. APCD Hearing Board Application

ATTACHMENT A

Hearing Board Member Application
Terrence Dressler

June 15, 2017

Santa Barbara County Air Pollution Control District
Board of Directors

260 San Antonio Road, Suite A
Santa Barbara, California 93110

APPLICATION FOR HEARING BOARD

Santa Barbara County
Air Pollution Control District

Clerk of the APCD Board
260 San Antonio Road, Suite A
Santa Barbara, CA 93110-1315

(805) 961-8800 www.ourair.org

Instructions:

1. Read the public notice to determine if you meet the qualifications for the position.
2. An original application must be timely filed for each position.
3. Please type or print in blue or black ink.
4. Answer all questions accurately and completely. Incomplete applications may be disqualified. If additional space is needed, attach a sheet of paper.
5. Resumes are viewed as additional information and not in lieu of a completed application.
6. This application shall be maintained for a period of one year only.

Date Received:

RECEIVED
APR 07 2017
SBCAPCD

Please indicate the Hearing Board category (or categories) for which you are applying:

☐ Attorney Member ☐ Medical Profession Member ☐ Engineer Member ☒ Public Member

NAME Dressler, Terence Edward
Last First Middle

ADDRESS [redacted]
Street City Zip Code

CELL PHONE [redacted] EMAIL [redacted]

BUS. PHONE None HOME PHONE None

Are you or have you been employed by the SBCAPCD? ☒ Yes ☐ No
Department: Various (see attached CV)
Title: Various Dates: 8/17/87-6/26/11

Are you related to any SBCAPCD employee? ☐ Yes ☒ No
Name of Relative:
Relationship: Department:

The APCD Hearing Board hears and renders decisions on matters of a technical nature involving air quality. Please describe any technical experience, training, or education you have that directly relates to air quality and how it has prepared you to be an effective Hearing Board member.

- 33 year career in air quality management, including positions of increasing responsibility in three separate air pollution control districts.
- Participation in many Hearing Board meetings in the role of staff.

Please explain why you are interested in serving on the APCD Hearing Board.

Having spent my entire professional career in public service, in my retirement, I have sought out opportunities to serve that would benefit from my particular set of experiences, skills, and abilities. I am particularly suited to serve as a hearing board member. Also, I fundamentally believe that the hearing board process provides an important aspect of the air quality mission.

Please describe any experience(s) you have as a member of a Board.

- City of Goleta Planning Commission - 2013 - 2014
- Goleta Cemetery District Board of Trustees - 2006 - present
- California Air Pollution Control Officers Association Board of Directors 2005 - 2010
- El Rancho School Site Council - 1996-1998, 2000 - 2001

Do you have any commitments which would prevent you from meeting the attendance requirements of the Hearing Board? If yes, please explain.

- Goleta Cemetery District Board of Trustees monthly meeting 2nd Tuesday of each month 4:00pm - 5:00pm

Do you work for or have a financial interest in any source regulated by the APCD? If yes, please discuss.

None

Please list professional, trade, or business associations held which relate to the Hearing Board category for which you are applying.

None

List any additional information explaining your qualifications, including relevant volunteer activities, community organization memberships, accomplishments, publications, or awards. Attach additional sheets if necessary.

I published an article that specifically deals with the hearing board process:
Bending Too Far - The Environmental Forum, Vol. 23, no.5 (2006)
(see attached)

EDUCATION

College, Business or Trade Schools Attended	Major	Degree(s) Received
University of California Santa Barbara	Political Science	BA

REFERENCES - Give names of three persons, not relatives, who have knowledge of your character, experience, community involvement, and abilities.

NAME	ADDRESS	PHONE NO.	OCCUPATION
Douglas Allard		[redacted]	
Peter Cantle		[redacted]	
Thomas Murphy		[redacted]	

I HEREBY CERTIFY THAT ALL STATEMENTS MADE IN THIS APPLICATION ARE TRUE AND COMPLETE.

APPLICANT'S SIGNATURE _____ DATE _____

Curriculum Vitae

Terence E. Dressler

Employment History:

AIR POLLUTION CONTROL OFFICER (DIRECTOR)
SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT
MARCH 29, 2004 – JUNE 26, 2011

Duties: Under the direction of the Board of Directors of the Santa Barbara County Air Pollution Control District (District), direct the operations of the District; coordinate with state, federal, and regional agencies to explore new legislative or interagency approaches to improving air quality; work with local stakeholders to solve air quality problems; oversee, through subordinate managers, the District administrative, fiscal, and technical activities; develop and administer the District's annual budget of approximately $9.5 million; develop, implement, and enforce regulations required to achieve air quality health standards and reduce public exposure to toxic air contaminants; represent the District before the Board of Directors, Hearing Board, Community Advisory Council, and in negotiations with other governmental agencies, industrial sources, and members of the public; oversee the securing and administration of federal, state, and other grant funding; act as the District hiring authority, reviewing and authorizing personnel actions. Retired on June 27, 2011 after a career of 32 years, 8 months, and 10 days.

AIR POLLUTION CONTROL DISTRICT DIVISION MANAGER
SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT
NOVEMBER 1989 – MARCH 2004

Duties: Direct a division of the Santa Barbara County APCD, develop and track the division budget, develop division goals and implement division workplan, hire and train staff, direct supervision of supervising engineers, manage supervisory, technical, and administrative staff, manage technical service contracts, participate in policy development and negotiations with industry and state and federal government agencies. I have managed three divisions during my tenure at Santa Barbara County APCD. Division manager assignments include:

Manager – Regulatory Compliance Division: November 1989 – June 1990
Manager – Technical Services Division: September 1990 – June 1993
Manager – Regulatory Compliance Division: July 1993 – June 1997
Manager – Major Source Division: July 1997 – March 2004

AIR POLLUTION CONTROL DISTRICT INSPECTOR SUPERVISOR
SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT
AUGUST 1988 - NOVEMBER 1989

Duties: Supervise APCD enforcement staff, develop computer database applications, provide engineering expertise to APCD Policy Resolution Team, train and direct APCD inspectors, develop division policies and procedures, supervise the penalty settlement program, review and comment on draft rules and permits, participate in negotiations with industry and government agencies. On special assignment by the Assistant Director served as liaison to the U.S. Environmental Protection Agency in the development of the OCS Air Regulation.

AIR POLLUTION CONTROL DISTRICT INSPECTOR
SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT
AUGUST 17, 1987 – AUGUST 1988

Duties: Inspect sources of air pollution for the purpose of verifying compliance with APCD rules and state and federal laws, develop inspection protocols, write reports, provide technical expertise to engineering staff, document violations and provide expert testimony at enforcement hearings, train pollution source operators in methods of maintaining compliant operations. By special assignment by the Assistant Director developed Fugitive Hydrocarbon Inspection & Maintenance Compliance Protocol.

AIR QUALITY SPECIALIST
SAN LUIS OBISPO COUNTY
AIR POLLUTION CONTROL DISTRICT
NOVEMBER 28, 1979 – AUGUST 7, 1987

Duties: Inspect sources of air pollution, observe source tests, collect data and samples, process permit applications and conduct engineering analysis, direct development of air quality maintenance plan, supervise one Air Quality Specialist I, produce quarterly APCD report, review and comment on Environmental Impact Reports, prepare emissions inventories, develop computer applications, train staff, interface with the agricultural community on open burning issues.

INSPECTOR
VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT
OCTOBER 17, 1978 – NOVEMBER 21, 1979

Duties: Inspect sources of air pollution to determine compliance with APCD rules and state and federal laws; develop oil field inspection program; conduct engineering calculations to determine air pollution emission rates; write reports; document violations; act as primary interface with agricultural community regarding open burning issues.

Education:
University of California Santa Barbara – B.A. Political Science 1977

Community Activities:
- Resident of Goleta, California: August 1987 – Present
- El Rancho School Site Council: 1996 – 1998, 2000 – 2002
- Goleta Valley Toastmasters: 2000 – 2004
- Leadership Santa Barbara County: Class of 2000/2001
- Fairview Garden Farms Community Supported Agriculture – Events Committee: 1998
- Instructor – University of California Extension, Dept. of Science, Engineering & Management, Air Pollution Laws and Regulations – Spring Quarter 1994
- California Air Pollution Control Officers Association (CAPCOA) – Board of Directors: October 2005 – 2010; Secretary/Treasurer 2006 – 2007, Vice-President 2007 – 2008, President 2008 – 2009, Past-President 2009 – 2010
- Goleta Cemetery District Board of Trustees – February 2006 – Present
- City of Goleta Planning Commission – July 16, 2013 – July 31, 2014

Publications:
The Product of Public Service – Philosophy & Public Policy Quarterly, vol. 25, no.4 (2005) http://www.puaf.umd.edu/IPPP/quarterly.html

Bending Too Far – The Environmental Forum, vol. 23, no. 5 (2006)

Next Challenge on the Horizon: Air Pollution Emissions from Ships – with Tom Murphy, and Anthony Fournier. Published on the Website of the Santa Barbara County Air Pollution Control District (August 2006) http://www.sbcapcd.org/itg/download/8-06-em-article.pdf

Running Loose Ships – Santa Barbara Independent, vol. 21, no. 070 (May 17-24, 2007)

Oil and Water: Stories from the Windward Shore – McKinleyville: Fithian Press (March 2013)

Personal Information:

Bending Too Far

Flexibility in applying regulations is essential to compliance and to environmental progress. But the movement for "regulatory reform" uses increased flexibility to hide a program of deregulation

TERRY DRESSLER

Over the last fifteen years, a new school of thought has come into prominence in the United States that calls for dramatic changes in the very basis of our environmental protection system. We need to move away from the regulatory model if we want to achieve our environmental and public health protection goals, the movement asserts, and replace it with something else. This loosely coordinated campaign has worn several guises, from embracing market-based strategies like pollution trading schemes to accepting voluntary measures in lieu of regulations to inserting flexibility in rules and standards through categorical exemptions and other extreme means.

Brandishing the success of the power plant acid rain program, the movement has grown rapidly in the last five years. It attained widespread exposure in 2004 through the publication of "The Death of Environmentalism," a pamphlet positioned as an admission from within the environmental movement itself that the current system is failing. Last year, in a speech to the Air and Waste Management Association, EPA Deputy Assistant Administrator Thomas Dunne captured the general sentiment in Washington: "Almost everyone is still trapped in a regulatory maze — Congress, EPA, industry, the environmental community. After 35 years of working to reduce environmental risk, we all have become habituated, like Pavlov's dogs, to a single, defined response. The bell of environmental concern rings, and we all look for a new feeding of regulations." He concluded: "Maybe our nation's traditional reliance on regulations as the primary tool for managing environmental risk should end."

Terry Dressler is the director and air pollution control officer of the Santa Barbara County Air Pollution Control District. The views expressed in this article are his and may not represent the views of the District.

Our country has spent the better part of the last 40 years establishing the policies and institutions necessary to regain and retain healthful air and water quality, including some successful examples of the above. The tools we have developed have been tested and are true, albeit always in need of refinement. But refinement is not this movement's goal; its promoters' constant refrain is "reform," by which they mean abandoning the methods that have served us well. A wholesale move into uncharted territory, all for the sake of being sensitive to market forces, seems to me a precipitous course. We need to question whether the often-proposed transformation will work before we throw out the environmental-protection-goals baby with the regulatory-burden bathwater.

To give an example of how this plays out at the micro level — in the "regulatory maze" — in January, EPA published a proposed rule that ostensibly would tighten the health standards for particulate air pollution. However, the proposal excludes particulates generated by agriculture and mining. Furthermore, the rule would revoke the current standard for communities with populations of less than 100,000. While this rule revision is all dressed up in the procedural raiment of a new and stricter health standard, it would disenfranchise over 100 million people from health protective regulations and exempt 98 percent of the aerial extent of the United States from the current standard, meanwhile making air quality goals much harder to achieve by leaving out two of our biggest and most-polluting industries. That is a lot of baby to be tossing out.

I began to hear command and control used as a pejorative term for our established system of environmental regulation not long after the passage of the Clean Air Act Amendments of 1990, which of course introduced the first large-scale pollution trading program in the United States. More recently, the term reform has been cunningly recast as a declaration that something

about the regulatory nature of our environmental protection policy is deeply flawed. We got an early glimpse of this when the savings and loan industry was "reformed" during the Reagan administration, leading to the collapse of more than 1,000 banks while many citizens lost their life savings. The present administration has resumed this use of the term, a code word for significantly relaxing regulations or even deregulation. In 2002, EPA promised "to finish the task of improving and reforming the NSR program," a program the Clinton administration had begun enforcing vigorously while adding some flexibility but retaining the core goals. New Source Review requires EPA to treat as new sources plants that increase emissions when they upgrade, leading to the installation of modern controls.

Some of the reforms adopted by the Bush EPA — including applicability thresholds based on the net emissions increases within a plant-wide bubble, the ability to pick the highest emission rate within the last 10 years as a baseline against which to measure increases, and broadening the exception for "routine maintenance, repair, and replacement" to permit replacing one-fifth of a facility — allow large, permanent emission increases to escape NSR. Perhaps more alarming, the adoption of its deregulatory elements is mandatory: states may not establish stricter programs to comply with federal requirements.

How to institutionalize flexibility? A system used in California reaps the benefits while avoiding the pitfalls

The White House-driven NSR reforms are just one case in point. Another is the agency's failure to regulate power plant mercury emissions as a hazardous air pollutant by instead devising a trading scheme out of thin air. (After the SO_2 program's success, pollution trading has been touted as the ultimate regulatory tool despite the rare circumstances in which it can be safely and effectively applied.) One of the latest forays into this uncharted territory is a proposal to allow states to use credits from unenforceable voluntary measures in drafting their air quality State Implementation Plans. These changes are marketed to the public and the policy community as fulfilling a legitimate need for business to have "flexibility." Such radical departures, however, bend too far. Flexibility has always been important, even essential, to the success of environmental regulations, but as with reform, under the current administration the term has taken on a more profound and disturbing meaning.

All of this clamor to abandon, or at least significantly alter, our current regulatory policy structure is a symptom of a real need to institutionalize flexibility within the regulatory process. Over the 28 years of my career in air quality regulatory agencies in California, I have worked on many occasions with EPA, the military, the oil and gas industry, and other stakeholders to design carefully crafted regulatory policies that both provide flexibility and ensure air quality protection. The new flexibility, however, includes entering into unenforceable memorandums of understanding in lieu of promulgating rules, relying on unenforceable voluntary measures to achieve needed pollution reductions, and designing loopholes into rules via numerous categorical exemptions. Even the old fashioned practice of officials "looking the other way" has become standard operating procedure under the label of enforcement discretion. Such methods will never produce the results that carefully crafted, clearly written, and rigorously enforced regulations have consistently produced.

The practical application of regulations has always required striking a careful balance between what we want and what we can reasonably achieve. When laws and regulations impose technological standards, as they do in the case of air quality protection rules that stipulate the operational parameters of industrial equipment or the chemical formulation of consumer products like paints and solvents, there is often a need for regulatory flexibility to allow the technology to catch up to the air quality management goals. Such flexibility has taken varied forms, from product averaging provisions in architectural coatings rules, to fleet average emission limits in various diesel engine control rules, to determining Best Available Control Technology for new sources on a case by case basis. Provisions such as these retain their enforceability and ensure the integrity of the air quality goals. When it takes the form of broad exemptions, like the exclusion of particulate emissions from farms and mines, flexibility harms people and natural resources. Most recently, EPA has issued "no action assurance" letters to states to grant enforcement flexibility in the demolition of asbestos containing buildings. Unfortunately this type of looking-the-other-way happens seemingly every day.

There are good arguments for regulatory flex-

ibility and reform. In the 1996 federal register notice that first proposed changes to the NSR rules, EPA acknowledged "concerns expressed by regulated industries that the EPA's major NSR regulations were too complex and burdensome." It proposed changes "to eliminate as much of the program complexity, administrative burden and resultant project delays as possible." In a 2002 article on NSR, two commentators with White House experience under both Republicans and Democrats, Howard Gruenspecht and Robert Stavins, acknowledge that "experience over the past 25 years has shown this approach is both excessively costly and environmentally counter-productive.... As currently applied, NSR wastes resources and can retard environmental progress." While they call for eliminating NSR, they would replace it with "more efficient and effective policies" to assure "sustainable environmental progress." But EPA's Dunne has a different goal in mind for NSR reform: "The time is ripe for change, a change that goes to the heart of environmental policy in this country," he says. "I believe this better way is exemplified by actions taken outside the regulatory system."

A new school of thought has been challenging the very basis of our regulatory system

Such actions taken outside the regulatory system individually and collectively raise issues of equal protection, expose the public to the risks associated with illegal behavior, provide an unfair economic advantage to special interests or scofflaws, create ambiguous standards and unpredictable outcomes, and can ultimately lead to the failure to achieve programmatic goals. Today's flexibility allows excess pollution to be emitted into the air, water, or soil, increases health risks for the public — and violates the trust of the community.

Flexibility in the execution of the laws has long been a feature of our society. Community standards, rules, and even taboos are suspended under certain conditions. The crime of assault is forgiven if committed in the act of self-defense. Trespass is permitted to give aid. Good Samaritan laws protect people from tort should they decide to offer help to an injured stranger. When properly conceived and implemented, regulatory flexibility can enhance the effectiveness of laws by improving compliance rates. In his book *The Evolution of Cooperation*, political scientist Robert Alexrod notes, "If the agency enforces with flexibility and the firm complies with rules, then both the agency and the firm benefit from mutual cooperation." A company that knows that it can count on cooperation and flexibility from a regulatory agency is more likely to view the relationship as a partnership rather than a competition and be motivated to focus attention and resources on compliance rather than expend effort in circumvention and resistance.

When laws and regulations impose technological standards, such as engine performance specifications, the need for enforcement flexibility can be acute. Technological standards require a high level of cooperation and collaboration between the regulatory agencies and the regulated industries. The technologies imposed by regulation must be properly designed, installed, and tested before any benefit from the regulation is realized. The engineering of some technologies may be very complex, thereby forcing the implementation of regulations to be incremental and iterative as the engineering catches up to the objectives. Also, as in the case of air pollution control, sometimes the goal of the technology is to achieve a very high level of control effectiveness, which requires a corresponding fine precision in the standards. When a rule requires a 99 percent reduction in pollution concentrations in an effluent stream and sets measured standards in the parts per million ranges with near instantaneous pollutant measurement averaging times, there is little room for even the smallest of performance perturbations.

Similarly, the physical complexity of many industrial processes and the need to test new control technologies that are unique to a particular industrial application may require flexibility. The design of some industrial facilities, such as petroleum refineries, is so integrated that no single process can be isolated from the whole without affecting all other processes at the plant. In such facilities, a requirement to shut down a process that is violating some pollution standard may result in the shutdown of the entire place. Plant-wide shutdowns can produce more pollution than the original non-compliant process would have produced if it were allowed to continue. Also, many technological standards

made, the variance is subject to such findings and cannot be granted absent them. Therein lies the balance point.

A fundamental aspect of the rule of law, and the concept of justice as fairness, is that we all enjoy equal protection under the law. Cicero was emphatic that there should be no law of personal exception, *"Privilegia ne inroganto."* As a condition of citizens' accepting the limitations that laws put on their behaviors, everyone must be assured that the laws will be applied equitably across the population. Mere rumors of favoritism will significantly reduce compliance rates as people are able to justify violations on the grounds that others are receiving special consideration. One need only measure the average speed on a stretch of open freeway to come to the conclusion that unevenly enforced speed limits equate to no speed limits. The practice of equal protection is an essential element of the enforcement of standards, in order for laws to have legitimacy in the minds of the citizenry.

It seeks an end to command and control through "flexibility" in implementation and enforcement

In his exploration of the philosophy of law, *Between Facts and Norms,* Jurgen Habermas talks about the "two dimensions of legal validity. On the one hand, established law guarantees the enforcement of legally expected behavior and therewith the certainty of law. On the other hand, rational procedures for making and applying law promise to legitimate the expectations that stabilized in this way; the norms deserve legal obedience." The practice of regulatory flexibility as currently constructed threatens the very legitimacy of the law.

EPA's proposal to exempt rural areas and the mining industry from the particulate matter health standards certainly violates both the prohibition against laws of personal exception and the concept of equal protection. Not only is public health threatened, but to meet the new health standards, states will have to force other industries to reduce their emissions more sharply. Here is a perfect example of where the establishment of special exemptions and failure to provide equal protection threatens the law's legitimacy.

An alternative approach to flexibility would be to apply the rules evenly across all areas and industrial sectors and then use a public process, like that of the California hearing boards, to address individual needs for flexibility and provide extra time to comply. The process offers flexibility while retaining the legitimacy produced by equal protection.

A further political issue related to equal protection concerns the potential violation of separation of powers should the executive branch unilaterally assume powers reserved to the judicial or legislative branches. Most often, when enforcement flexibility is employed, it is practiced by the executive branch of government (e.g., police, regulatory authority, attorney general), as was the case when the executive officer of the California Air Resources Board entered into a memorandum of understanding with the railroad companies. Habermas notes the requirement for "statutory authorization *(Gesetzesvorbehalt)* . . . that administrative power may not be used to intervene in, or substitute for, processes of legislation and adjudication." It could be argued that regulatory flexibility practiced by the executive branch is assuming authority that it has not been given by statute and puts the executive in the position of being judge and legislator as well as administrator of the law.

While on the surface the Railroad MOU appeared to be a fresh, collaborative, nonregulatory approach to achieving air quality goals, to many it was a privately negotiated deal that shielded the railroad companies from responsibility for their toxic pollution. The political battle that ensued illustrates how usurping legislative authority undermines the legitimacy of the action. In the long run, it would have been preferable to adopt regulations and handle any needed flexibility on a case by case basis in a public process, like the variance process.

Another problem with flexible enforcement of rules has to do with how governmental regulation affects the market. Consistent and uniform application of standards provides equity in the marketplace. In fact, some laws such as weights and measures standards and food quality standards are not only intended to protect the consumer but are also designed to prevent unfair competition. The practice of enforcement flexibility, then, can provide an unfair economic advantage to parties who evade the standards and thereby create an economic incentive to ignore the regulations. If an agency forbids the use of

are specifically designed for unique applications and have not been previously tested. Once the technology has been fabricated and installed, testing is necessary to ensure that it will work as designed. Often during such verification testing, enforcement flexibility is necessary while variations in operating parameters are tested in order to optimize the equipment's performance. Finally, sometimes there is a need to allow for temporary non-compliant operations while necessary repairs or modifications are implemented. In some cases, requiring a business to cease operations to make repairs would result in a permanent closure or "taking" of the business. In these cases, it may be desirable to allow the business to remain in operation during the repair and modification process.

There is a working model that demonstrates how flexibility can be institutionalized in a manner that allows firms to meet their environmental obligations while mitigating the inherent problems related to flexible implementation of standards. This delicate balance is achieved daily by the air pollution control agency hearing boards that are established by state air pollution control statutes in the California Health and Safety Code. Through the granting of variances from air quality regulations on a case by case basis after a public hearing during which several findings are established, the hearing boards provide an avenue for relief from enforcement during the time necessary to reach compliance. This institution demonstrates how we may derive the benefits of regulatory flexibility while avoiding the potentially serious harm to public health.

In California, air pollution from industrial facilities is regulated by 35 county or regional air pollution control agencies. These special districts have governing boards that consist variously of local elected officials and, in some areas, appointed members. Each district board appoints a director, called an air pollution control officer, who serves as the agency's executive. For example, I am the director of the Santa Barbara County Air Pollution Control District, which is governed by a 13-member board of directors consisting of the five county supervisors and a representative from each city council in the county. The air pollution control officer enforces designated provisions of the Health & Safety Code, rules and regulations adopted by the district board, orders issued by the district hearing board, and permit conditions imposed by the control officer pursuant to the district's permitting authority. The district hearing board is an adjudicatory body appointed by the board of directors. The hearing board hears appeals of the control officer's permit decisions, considers requests for variance from rules and permit conditions, and considers petitions from the control officer for orders of abatement, which are analogous to cease-and-desist orders. Hearing board procedures include noticed public hearings, consideration of sworn testimony, and the authority to issue and serve subpoenas.

"Any person may apply to the hearing board for a variance . . . from the rules and regulations of the district," the state code says. In granting a variance the hearing board is required to make certain findings. As noted by Kenneth Manaster in his authoritative article in the *University of California Davis Law Review*, typically the petitioner for a variance is trying to "buy time for the source to be able to continue operating . . . normally despite being in violation of a district regulation . . . to complete corrective action to solve the problem. . . . The legislature designed this procedure for the benefit of air pollution sources that have good reasons for needing time to continue operating without being subject to enforcement penalties."

The movement proffers "voluntary measures" and "reform," codewords for deregulation

The provision in the statute for the opportunity to petition for a variance is a keenly balanced bit of regulatory policy, which not only affords flexibility in the implementation of the law but also addresses the potential pitfalls of such flexibility. As Manaster observes, making the option of a variance available as a matter of law establishes the variance "as a matter of right . . . [if] an applicant can demonstrate [good] reason." On the other hand, the hearing board has an affirmative responsibility to make findings "such as will enable the parties to determine whether and on what basis they should seek review and, in the event of review, apprise the court of the basis of the agency's action," in the words of a court. Hence, while the petitioner has the right to apply for a variance and deserves to be granted one if all the appropriate findings are

certain paints by the autobody repair industry, yet does not enforce the standard at a shop found in violation, then that shop gains an economic advantage over the other shops that are complying with the law. The market would then drive the other shops to use the illegal paint as well. If allowed, gaming the system will evolve quickly in the market place and render rules ineffective. As John Rawls observes in *A Theory of Justice*, "The firm . . . faces a temptation to evade if the agency is using a flexible enforcement policy which is unlikely to penalize evasion."

The issue of economic equity is addressed by the hearing board process. The California Health & Safety Code establishes the authority to collect fees from variance petitioners. Such fees in combination with specially "prescribe[d] requirements other than those imposed by statute or . . . rule, regulation, or order of the district" tend to remove any economic benefit of non-compliance, since operating under the variance can be temporarily more expensive than operating under normal compliant conditions. That violations of conditions of the variance are subject to significant penalties further removes any economic advantage of non-compliance.

In addition to requiring state-of-the-art technology when emissions increase, NSR requires offsetting emissions reductions. But EPA's new NSR regulations provide a level of flexibility that allows significant increases in air pollution emissions to escape regulation altogether. The relaxed applicability standards threaten to erode programmatic goals on which the rule was originally based (i.e., prevention of deterioration of air quality) by allowing hundreds of tons of unmitigated air pollution increases.

Here again, the hearing board model provides a way to balance our desire for regulatory reform with our health protection goals. On the flexibility side, operators of industrial facilities are much more willing to accept the stringent requirements that come out of the NSR process if there is a reliable and institutionalized relief valve to handle times when flexibility is needed. On the health protection side, the hearing board process obviates the potential that flexible enforcement will increase exposure to pollutants by the clear statutory prohibition against granting variances that would potentially "cause injury, detriment, nuisance, or annoyance." The hearing board is proscribed from granting variances in cases when the excess air pollution emissions might harm people. This is where the balance is drawn. The hearing board must make an affirmative finding of no harm done. The regulatory relief must not endanger the public.

Ultimately, it is essential that regulatory flexibility does not result in the erosion of environmental progress. While some flexibility is essential to the successful implementation of many environmental and public health laws, it is just as important to their success that we ensure that flexibility does not undermine the goals we are trying to achieve. We should develop mechanisms that provide the flexibility necessary to the evolution of a stable pattern of compliance, but not at the cost of environmental degradation, risk to public health, and the very legitimacy of the rules themselves. Establishing an institutionalized adjudicatory process like California's would provide the needed relief while at the same time avoiding the problems.

Through legislation and rulemaking, state and federal agencies could adopt technical adjudicatory panels, which would act much as air pollution control hearing boards do in California. In states the panels could be established at the state level or, for more accessibility, be designed to have jurisdiction over smaller areas. Likewise, EPA could establish such panels at the regional level and even create panels that would be medium specific — a hearing board for air, toxics, and perhaps radiation, and a different one for water.

Flexibility is essential on a day-to-day basis for a workable system, but these schemes bend our laws too far

Achieving the goals of environmental regulations is often a long-term project requiring vision, patience, and the ability to develop and apply new and innovative technologies. The complexity of both the problems and the solutions makes enforcement flexibility a necessary, if potentially problematic, option. We do not, however, have to sacrifice public health and environmental protection to reap the benefits of flexibility. In California's air pollution control programs, the hearing board has played an important role in balancing these needs. This well-tested institution could provide a model for that balancing act across a broad range of environment and public health protection regulations. •

ATTACHMENT B

Hearing Board Member Application
Francis Peters, Jr.

June 15, 2017

Santa Barbara County Air Pollution Control District
Board of Directors

260 San Antonio Road, Suite A
Santa Barbara, California 93110

APPLICATION FOR HEARING BOARD

Santa Barbara County
Air Pollution Control District

Clerk of the APCD Board
260 San Antonio Road, Suite A
Santa Barbara, CA 93110-1315

(805) 961-8800 www.ourair.org

Instructions:

1. Read the public notice to determine if you meet the qualifications for the position.
2. An original application must be timely filed for each position.
3. Please type or print in blue or black ink.
4. Answer all questions accurately and completely. Incomplete applications may be disqualified. If additional space is needed, attach a sheet of paper.
5. Resumes are viewed as additional information and not in lieu of a completed application.
6. This application shall be maintained for a period of one year only.

Date Received:

RECEIVED
MAR 29 2017
SBCAPCD

Please indicate the Hearing Board category (or categories) for which you are applying:

☐ Attorney Member ☐ Medical Profession Member ☐ Engineer Member ■ Public Member

NAME Peters, Jr. (Last) Francis (First) Xavier (Middle)

ADDRESS _____ (Street) _____ (City) _____ (Zip Code)

CELL PHONE _____ EMAIL _____

BUS. PHONE _____ HOME PHONE _____

Are you or have you been employed by the SBCAPCD? ☐ Yes ■ No
Department: _____
Title: _____ Dates: _____

Are you related to any SBCAPCD employee? ☐ Yes ■ No
Name of Relative: _____
Relationship: _____ Department: _____

The APCD Hearing Board hears and renders decisions on matters of a technical nature involving air quality. Please describe any technical experience, training, or education you have that directly relates to air quality and how it has prepared you to be an effective Hearing Board member.

I am self-trained as a clean-air advocate. I have worked personally with AQMD past-Executive Officer Barry Wallerstein and Philip Fine, Deputy Executive Officer on air quality issues in Orange County. Additionally, I would repeatedly travel to Sacramento to testify in support of AQMD regulations. In Oregon I was engaged in industrial pollution and woodsmoke advocacy efforts including testifying to the Chair of the Environmental Quality Commission and interfacing with DEQ Interim Director, Pete Shepherd. Several of my recommendations were included in DEQ's 2017 Woodsmoke Report to the legislature.

Please explain why you are interested in serving on the APCD Hearing Board.

Bicycling and clean air advocacy go hand-in-hand. I have blogged about both topics for years, attempting to educate the public on the adverse health effects of particulate matter and woodsmoke. airAdvocacy.org

Please describe any experience(s) you have as a member of a Board.

I have served on several non-profit boards, including my HOA board as Treasurer, Chairman of the Los Angeles-based Tech Coast Angels, Riverside-based SBDC, a SBA Small Business Development Center, the UCIrvine Claire Trevor School of the Arts, Deans Leadership Council and presently on the SBBIKE board. I was appointed by the Mayor to 3 one-year terms to the Newport Beach Bike Safety Committee, which eventually produced a Bicycle Master Plan for the City, unanimously adopted by the Council in 2014.

Do you have any commitments which would prevent you from meeting the attendance requirements of the Hearing Board? If yes, please explain.

No.

Do you work for or have a financial interest in any source regulated by the APCD? If yes, please discuss.

No.

Please list professional, trade, or business associations held which relate to the Hearing Board category for which you are applying.

None. I am a retired computer software entrepreneur.

List any additional information explaining your qualifications, including relevant volunteer activities, community organization memberships, accomplishments, publications, or awards. Attach additional sheets if necessary.

As a volunteer in 2016 I created websites for 2 neighborhood groups that organized in response to the Forest Service's Tree Moss study that showed long-term industrial toxic air pollution in residential Portland neighborhoods. One site, breatheOregon, became the basis of a Meyer Memorial Trust $250,000 grant. I served on the Media Committee for the Eastside Portland Air Coalition, designed and ran their website and particiapted in their non-traditional board structure. eastsideportlandair.org

EDUCATION

College, Business or Trade Schools Attended	Major	Degree(s) Received
UCLA	Computer Science	Masters
UMASS Amherst	Math	B.S.

REFERENCES - Give names of three persons, not relatives, who have knowledge of your character, experience, community involvement, and abilities.

NAME	ADDRESS	PHONE NO.	OCCUPATION
Ed France	[redacted]	[redacted]	Bike advocate
Spencer Ehrman	[redacted]	[redacted]	air advocate
Jessica Applegate	[redacted]	[redacted]	Air advocate

I HEREBY CERTIFY THAT ALL STATEMENTS MADE IN THIS APPLICATION ARE TRUE AND COMPLETE.

APPLICANT'S SIGNATURE _____ DATE 3-28-2017