



## DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

### LEGAL OFFICE

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## Representing Yourself in a CalRecycle Hearing

CalRecycle provides the following information to help you prepare for your administrative hearing. While this information is not a substitute for having an attorney, it explains the hearing process and may be useful for you as you prepare for the hearing. You may access this document, download documents mentioned below, and find other information regarding hearing procedures at our website:

<https://www.calrecycle.ca.gov/epr/enforcement/hearings>

### Do I Need to Request a Hearing?

You are receiving this because the Waste Permitting, Compliance, and Mitigation Division of the Department of Resources Recycling and Recovery (CalRecycle) served with an administrative complaint or other document (Accusation) to initiate proceedings against you pursuant to the California Administrative Procedure Act (Gov. Code section 11340 *et seq.*). You may request a hearing before a Hearing Officer. The Accusation sets forth the penalties and other disciplinary measures, such as monetary penalties or revocation, denial, or suspension of a permit or registration, that CalRecycle seeks to impose against you. At the hearing, you may present a defense to the imposition of such measures.

If you do not request a hearing, you will default, and CalRecycle will be entitled to impose the penalties and other measures sought in the Accusation.

### How Do I Request a Hearing?

If you wish to request a hearing, you must complete the Request for Hearing / Notice of Defense form, stating the reason you are requesting a hearing, and send it the address provided on that form. You must provide enough information for CalRecycle to understand the facts, defenses, and other issues you will raise at the hearing.

### What Will My Hearing Be Like?

Your hearing will be like a trial in court, with witnesses, exhibits, and rules of evidence. A "Hearing Officer" will preside over the hearing pursuant to CalRecycle's delegation of authority to the Hearing Officer. You may represent yourself at the hearing, but you have the right to hire an attorney, at your own expense, to represent you. An attorney may be better able to present your defense.

When the hearing begins, each side may present an opening statement. The statements provide the Hearing Officer an overview of what each side intends to prove. Each side can then offer relevant evidence to prove its case.

Evidence can take many forms. It can be testimony taken under oath at the hearing, or it can be certain types of documents, such as business records. Before the Hearing Officer can consider documents you present, you must prove that the documents are authentic. This means that you must show that a document is what you say it is. Usually, parties use witness testimony to authenticate documents.

CalRecycle usually presents its evidence first. CalRecycle's attorney will ask its witnesses questions; this is "direct examination." When the attorney is finished, it will be your turn to ask questions of that witness; this is "cross examination." CalRecycle's attorney will then have a chance to "redirect" the witness by asking further questions. If CalRecycle's attorney redirects the witness, you will also have the chance to "re-cross" the witness by asking additional questions.

After CalRecycle finishes presenting its evidence, it will be your turn. You must submit all the evidence you want the Hearing Officer to consider. You may make a statement yourself and call your witnesses. Your presentation of witnesses will follow the same process described above for CalRecycle's witnesses. Even if you choose not to testify, however, CalRecycle's attorney may cross examine you.

After you have presented your case, CalRecycle may call "rebuttal" witnesses. Rebuttal witnesses may only testify regarding issues you brought up in your defense. If CalRecycle calls rebuttal witnesses, you may call additional witnesses to address the issues presented in CalRecycle's rebuttal. Hearings do not generally involve rebuttal witnesses, however.

Although most hearings involve only CalRecycle and the accused parties, in some instances the Hearing Officer may allow other individuals or entities to appear at the hearing to present relevant evidence, including testimony and documents. This might happen, for example, where the outcome of the hearing may affect the rights or interests of such other individuals or entities.

After all parties have presented their evidence, each side can make a closing argument. Usually, CalRecycle goes first. The party that goes first has the opportunity to make final comments after the other party makes its closing argument.

Closing argument is the chance for the parties to sum up their evidence and show the Hearing Officer why it should prevail. The argument can address only those facts addressed in the evidence presented during the hearing. In some cases, the Hearing Officer may require the parties to submit written, instead of oral, arguments. If so, the Hearing Officer will establish a schedule for doing so.

### **What Do I Need to Prove?**

If CalRecycle has denied a license, permit, or registration for which you applied, you have the burden to prove why such denial was improper. You must prove that you meet the qualifications for the license, permit or registration. If you already have a license, permit, or registration against which CalRecycle is imposing discipline, or if CalRecycle otherwise seeks to impose disciplinary measures against you pursuant to a law or regulation, CalRecycle has the burden of proof. This means that CalRecycle must establish that you violated the laws or regulations charged in the Accusation.

Even when CalRecycle has the burden of proof, you should prepare to offer evidence refuting the charges. Such evidence may include, for example, evidence of your good character and your conduct. Your attempts to mitigate or remedy any violations of laws or regulations may be relevant to your defense.

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## May I See CalRecycle's Evidence Against Me?

Through a process called "discovery," you are entitled to obtain CalRecycle's evidence against you. You may request information and evidence reasonably related to the allegations against you. This includes the evidence that CalRecycle will use to prove its allegations and evidence that may be relevant to your defenses to those allegations. For example, you have the right to receive CalRecycle's witness list. You also may obtain a copy of the investigative files and any other documents or relevant information CalRecycle has regarding your case. CalRecycle may require you to pay for copies of documents, however.

To request discovery, you must use the Request for Discovery form that CalRecycle provided when it served the Accusation on you. You can also obtain that form via CalRecycle's website or by requesting it from CalRecycle's attorney or Hearing Clerk. You must send the completed Request for Discovery to CalRecycle's attorney.

Generally, you must your discovery requests within 30 days of receiving the Accusation, or within 15 days of receiving any supplemental Accusations. In some cases, these times may be shorter. Be sure to read the documents you receive to verify the applicable deadlines for requesting discovery.

CalRecycle has these same rights to obtain information. CalRecycle may serve you with a Request for Discovery. It may have done so already along with the Accusation. You must make copies of the requested information and provide them to CalRecycle by the date stated in the Request for Discovery.

## What Kind of Evidence Will I Need for the Hearing?

Depending on your case, you may choose to bring witnesses who have knowledge relevant to CalRecycle's allegations against you. Whenever possible, witness testimony should be based on firsthand knowledge, not statements made by other individuals.

If there are documents, such as contracts, business records, checks, or photographs that help prove your defenses, you can bring them to the hearing. You must leave with the Hearing Office all evidence that you present, so you may wish to bring copies, which are usually acceptable in place of originals. You should bring three copies of any documents you present.

You will be required to authenticate documents that you present. Parties typically do this through witness testimony. Such testimony must explain to the Hearing Officer what the document is, how the witness reliably knows what it is, and how it is relevant to your case.

## How Do I Get Records from a Business?

You have the right subpoena individuals, businesses, and government agencies to provide you relevant records and other tangible items relevant to your case. CalRecycle has made a subpoena form available for download on its website. You may also request that CalRecycle mail or email the form to you. You must pay any associated fees and have someone else serve the subpoenas; you may not do so yourself.

Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's

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Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See California Code of Civil Procedure, sections 1985 through 1985.4, for other important information.

### **How Do I Get Witnesses to Come to the Hearing?**

Witnesses who can provide testimony relevant to your case can voluntarily appear at the hearing. If a witness will not voluntarily appear on your behalf, the only way to protect your right to have that person present is through a subpoena. You can download the subpoena form from CalRecycle's website. You may also request that CalRecycle mail or email the form to you. You must pay any associated fees and have someone else serve the subpoenas; you may not do so yourself.

Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See California Code of Civil Procedure, sections 1985 through 1985.4, for other important information.

Witnesses are entitled to paid reimbursement of their time. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.

### **Is It Okay to Bring Letters or Declarations Instead of Witnesses?**

The Hearing Officer may permit you to submit certain letters, declarations, and other documents for limited purposes. Generally, however, it is best to bring witnesses who can answer questions relevant to your case, including those related to documents you wish to present.

The Hearing Officer will not speak with witnesses, except at the hearing itself. If you do choose to offer letters, declarations, or other documents, make sure you understand what you must do have them admitted into evidence. (For instance, see the above discussion regarding document authentication.)

Remember: This hearing is your chance to tell the Hearing Officer your side. It is important to have your witnesses present at the hearing to testify.

### **If I Forget Something, Can I Send It Later to the Hearing Officer?**

Your chance to present evidence is at the hearing. Only in rare cases will the Hearing Officer allow you to send evidence later.

### **Is There a Way to Settle This Without a Hearing?**

Cases often settle without going to hearing. Contact CalRecycle's attorney regarding potential settlement agreements.

### **What If I Am Unable to Attend the Hearing on the Scheduled Date?**

You must show good cause to change a hearing date. If you cannot attend on the date and at the time set by the Hearing Officer, you must contact CalRecycle immediately by filing a written request with the Hearing Clerk in CalRecycle's Legal Office. Your request must explain the reasons why you cannot attend the hearing as scheduled, and you must provide a copy of the request to CalRecycle's attorney. The sooner you make your request, the more likely the Hearing Officer will grant it.

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## Where Will the Hearing Take Place?

Hearings generally take place at CalRecycle's Sacramento office. If you believe that a different location would work better for you, you must contact CalRecycle's Hearing Clerk as early as possible to request a location change. CalRecycle reserves the right to deny such a request. CalRecycle may deny a request, for example, because its staff members or the Hearing Officer are unable to travel to the proposed location or because CalRecycle has already incurred costs for arranging for CalRecycle staff, the Hearing Officer, and witnesses to attend the hearing.

## What If I Do Not Attend?

If you request a hearing and do not attend the hearing, CalRecycle can still proceed with the case against you. (As explained above, if you do not request a hearing, you will default, and CalRecycle will be entitled to impose penalties and other disciplinary measures against you.)

## What If I Need an Interpreter?

If you or a witness need a sign language or other interpreter, immediately contact the CalRecycle attorney or Hearing Clerk so that CalRecycle can arrange for a certified interpreter to attend. Normally, you may not bring a friend or relative to interpret for you.

Ordinarily, the party requesting an interpreter must pay the cost for an interpreter. The Hearing Officer may require CalRecycle to pay such cost under certain circumstances, however.

## Will the Hearing Location Be Accessible to People with Disabilities?

Hearing locations are accessible to persons with disabilities. However, check in advance with CalRecycle's Hearing Clerk to ensure accessibility. In addition, if you know persons who plan to attend have special needs and require reasonable accommodation, please contact CalRecycle's Hearing Clerk as soon as possible so CalRecycle can make necessary arrangements.

## What Is the Contact Information for CalRecycle's Hearing Clerk?

All papers filed with the Hearing Clerk shall be sent via mail, fax, or email to:

CalRecycle Hearing Clerk  
CalRecycle Legal Office  
801 K Street, MS 19-03, 19th Floor  
Sacramento, CA 95814  
Fax: (916) 322-8768  
Email: [HearingClerk.MAT@CalRecycle.ca.gov](mailto:HearingClerk.MAT@CalRecycle.ca.gov)