

California Environmental Protection Agency



AIR RESOURCES BOARD  
Compliance Division

## AMENDED ADVISORY

### *Amendment to Cancel Previous Advisory #117*

Number 117(A)

March 14, 1995

#### Variations from the Requirement to Install Air Pollution Control Equipment or Achieve Emission Standard/Limitation, #117(A)

It has been brought to our attention that an advisory distributed recently (#117) contained misleading information by defining Health and Safety Code (HSC) Section 42301.3(g) as a provision that allows variances to be granted from a permit to operate or authority to construct. This amended advisory is being sent to replace the original version and to communicate a more accurate definition of HSC 42301.3(g) and amendments made to it with the enactment of AB 2090 (Stats 1994, Chapter 720).

#### Previous Advisory #117 "Variations from Permits" is Hereby Void

This amendment renames and replaces an advisory distributed titled "Variations from Permits". Please discard the version sent to you previously and replace with this amended version.

Section 42301.3(g) does not allow a variance to be granted from the requirement to obtain a permit to construct or permit to operate as stated in our previous advisory. What HSC 42301.3(g) does allow is a variance to be granted from the underlying rule requirement to install air pollution control equipment or meet a more stringent emission standard or limitation. It is not a variance from a permit, but rather a variance issued to a source when there has been a delay in the permitting process, and this delay has resulted in the source's inability to comply.

#### AB 2090 - Amendments Regarding 42352 Six Findings

Assembly Bill 2090 amends 42301.3(g) in regard to the findings that have to be made under 42352 before the variance can be granted. We have enclosed a copy of the bill and have summarized the findings and amendments as follows. Please note that only the portions of the HSC and AB 2090 pertaining to a district variance program is addressed in this advisory.

Summary of Sections and Amendments to 42301.3(g)

Under Section 42301.3(g)(1), HSC 42352 (a)(2) is required to be met before a variance can be granted. However, Section 42301.3(g)(1) provides that the finding required by Section 42352(a)(2) shall be met if the hearing board finds that the applicant has met two criteria. These two criteria are; (1) that the delay is not due to the lack of due diligence on the part of the applicant and, (2) the delay results in the inability of the applicant to legally comply with the requirement or schedule that requires the installation and operation of air pollution control equipment, or achievement of a more stringent emission standard or limitation ("due diligence" is defined in 42301.3[g][2]).

The findings specified in Section 42352(a)(3) (4) and (5) do not need to be made for a variance granted under this statute.

HSC 42352(a) (6) shall apply. But, if monitoring or quantification is required, it shall be limited to any that is already being performed for the source.

The variance cannot be granted unless the above mentioned findings are made.

Section 42301.3(g)(1) further specifies that the hearing board may not impose any excess emissions fees in connection with the granting of the variance. In determining the term of the variance, the hearing board shall consider the period of time that the delay was not due to the lack of due diligence on the part of the applicant. Of course, 42352(a)(1) still applies.

Variances Cannot be Granted from Requirement to Obtain Permits

Section 42301.3(g)(4) as amended also states that nothing in this subdivision shall be interpreted as authorizing a hearing board to grant a variance from any requirement for a permit to build, alter, erect, or replace any air pollution control equipment included in a project subject to this section.

Please Note

The description provided above is only a summary of the impacts of this bill on the variance program. It is recommended that you read the bill in its entirety and inform your staff and hearing board members, as appropriate, about the changes.

If you have any questions please call Mary Boyer, Chief, Compliance Training and Data Management Branch at (916) 322-6037.

Enclosure

James J. Morgester, Chief  
Compliance Division

Assembly Bill No. 2090

CHAPTER 720

An act to amend Section 42301.3 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2090, Aguiar. Air pollution control projects.

(1) Existing law, the California Environmental Quality Act, provides for the environmental review of proposed projects, as specified, by lead agencies, as defined.

Existing law, the Air Pollution Permit Streamlining Act of 1992, requires every air pollution control district and air quality management district to provide procedures for expedited air pollution control project permit review. Existing law requires each district to prepare a list permitting criteria that identifies streamlined permit requirements for each type of project, requires an applicant to submit specified information, and requires the district to act upon the permit and upon any environmental impact report or environmental assessment required by the California Environmental Quality Act concurrently.

This bill would impose that requirement for concurrent action only if the applicant has submitted the required information, and would make a related clarifying change.

(2) Existing law also permits an applicant to petition a district hearing board for a variance from the underlying air pollution project permit requirement if there is a delay in the approval of the permit to construct or permit to operate for projects subject to expedited air pollution project permit review. Existing law requires the hearing board to find that specified findings are met and grant the variance if it finds that the delay is not due to the lack of due diligence on the part of the applicant in the permitting process, and the delay results in the inability of the applicant to legally comply with the rule or compliance schedule that requires the installation and operation of the pollution control equipment.

This bill would, instead, require the hearing board to grant the variance from certain equipment or emission standard or emission limit requirements if the specified findings are made, as prescribed in the bill, and would prohibit the hearing board from imposing any excess emission fees in connection with the grant of the variance.

(3) Under existing law, certain requirements relating to streamlined permit application procedures apply only to air pollution projects required by law.

This bill would limit the application of those provisions to those

comply with the requirement or schedule that requires the installation and operation of air pollution control equipment or achievement of a more stringent emission standard or limitation. The findings required by paragraphs (3), (4), and (5) of subdivision (a) of Section 42352 shall not apply to a variance granted pursuant to this paragraph. Paragraph (6) of subdivision (a) of Section 42352 shall apply to a variance granted pursuant to this paragraph. However, if the district requests that the applicant monitor or otherwise quantify emission levels from the source during the term of the variance pursuant to paragraph (6) of subdivision (a) of Section 42352, that monitoring or quantification required in connection with the variance shall be limited to any monitoring or quantification already being performed for the source for which the pollution control project is required. No variance shall be granted unless the hearing board makes the findings as specified in this subdivision. The hearing board shall not impose any excess emission fees in connection with the grant of the variance. In determining the term of the variance, the hearing board shall consider the period of time that the delay was not due to the lack of due diligence on the part of the applicant.

(2) For purposes of this subdivision, "due diligence" means that all of the following conditions exist:

(A) The air pollution control project proposed by the applicant was reasonably expected to achieve compliance with the pertinent emission standard or limitation.

(B) The applicant submitted the permit application in sufficient time for the district to act on the application and for the applicant to complete the project in accordance with the deadline.

(C) The applicant responded in a reasonable time to requests for additional information needed by the district to process the application or prepare any necessary environmental analyses.

(D) The district has not denied or proposed to deny the application on the basis of the project's inability to meet district permit requirements consistent with this section.

(E) During the term of the variance, the applicant will take practicable steps to ensure completion of the project as expeditiously as possible after issuance of the permit.

(3) Paragraph (1) shall not limit the authority of a district to require emissions monitoring or quantification under any other applicable provision of law.

(4) Nothing in this subdivision shall be interpreted as authorizing a hearing board to grant a variance from any requirement for a permit to build, alter, erect, or replace any air pollution control equipment included in a project subject to this section.

(h) If a supplemental or other environmental impact report or other environmental assessment is required for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the district is the lead agency, the district shall prepare and act

upon the report or assessment and the permit to construct concurrently in order to streamline the approval process. However, the district shall be required to take that concurrent action only if the applicant has submitted the information required by this section to allow the district to streamline the approval process.

(i) For purposes of this section, "material change" means a change that would result in a material impact on the level of emission calculated.

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