



**CALIFORNIA  
AIR RESOURCES BOARD**  
*Compliance Division*

**ADVISORY**

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**(VARIANCES)**

**Number 63**

**March 8, 1991**

**ARB Variance Review Policy for Compliance with  
Health and Safety Code Section 42352**

As you are aware, the ARB reviews each variance order granted. It has been our policy to return variance orders that do not comply with the requirements of Health and Safety Code (HSC) Section 42352. Each variance order must contain the six findings of the HSC Section 42352. According to a legal opinion issued by ARB General Counsel, the order must also provide the reasons the findings were made. If the variance order does not provide both the findings and the reasons, we will return it to you with the recommendation that the order be reheard or that appropriate corrections to the order be made if there was an inadvertent deletion from the order.

To assist you in correctly preparing variance orders, we are enclosing an example for your review and possible use. We have also enclosed a sample variance summary form which can be attached to the Variance Order and sent to us. Submission of a variance summary together with the variance will expedite processing variances.

If you have any questions or need additional information, please contact Mary Boyer at (916) 322-6037.

**James J. Morgester, Chief  
Compliance Division  
Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812**

**Enclosures**

BEFORE THE HEARING BOARD  
[DISTRICT NAME] AIR POLLUTION CONTROL DISTRICT  
STATE OF CALIFORNIA  
VARIANCE SUMMARY

VARIANCE PETITION NUMBER: \_\_\_\_\_ PUBLIC NOTICE DATE: \_\_\_\_\_

PUBLICATION DATE: \_\_\_\_\_

VARIANCE TYPE: \_\_\_\_\_

(EM,INT,SH,REG,EXT,MOD)

PETITIONER: \_\_\_\_\_

(NAME)

(STREET)

(CITY)

(STATE)

(ZIP)

EQUIPMENT: \_\_\_\_\_

PERMIT TO OPERATE NUMBERS: \_\_\_\_\_

RULE(S) VIOLATED: \_\_\_\_\_

**EXCESS EMISSIONS**

POLLUTANT	ATTAINMENT STATUS (Y/N)	VARIANCE PERIOD (TOTAL DAYS)	RATE OF EMISSION (LBS/DAY)	TOTAL EMISSIONS DURING VARIANCE (TONS)
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DATE SIGNED: \_\_\_\_\_

HEARING DATE: \_\_\_\_\_

DATE EFFECTIVE: \_\_\_\_\_

FINAL COMPLIANCE DATE: \_\_\_\_\_

**FOR ARB USE ONLY**

DATE RECEIVED: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

DATE ENTERED: \_\_\_\_\_

OVER 90 DAYS  
CPCFA

YES  
YES

NO  
NO

**BEFORE THE HEARING BOARD  
OF THE  
[DISTRICT NAME] AIR POLLUTION CONTROL DISTRICT  
STATE OF CALIFORNIA**

In the matter of the application of )

[SOURCE NAME] )

DOCKET NO. 91-

For a variance from )

ORDER GRANTING  
VARIANCE

[RULE OR REGULATION] )

On [DATE FILED], Petitioner [SOURCE NAME] filed with this Hearing Board a petition for issuance of an [TYPE OF VARIANCE] pursuant to Health and Safety Code Section 42451 (Case No. 91-\_\_\_). (STATE WHETHER AN INTERIM VARIANCE HAS BEEN GRANTED INCLUDING HEARING DATE AND FINAL COMPLIANCE DATE). The petitioner requested that the Hearing Board grant a variance from [RULE(S) AND SECTION VIOLATED] of District rules and Regulations. [INCLUDE TITLE, NUMBER AND SECTION OF RULE BEING VIOLATED]. Notice of the application and the hearing has been given for at least [NUMBER OF DAYS] pursuant to noticing requirements in accordance with the provisions of the California Health and Safety Code.

The District was represented by [REPRESENTATIVE NAME, TITLE]

A hearing on the petition for variance was held in accordance with Health and Safety Code 40808 on [DATE HEARD]. The public was given the opportunity to give testimony. [LIST ANY WITNESSES SWORN IN FOR TESTIMONY.] The petitioner was represented by [REPRES-

**TATIVE NAME, AFFILIATION].**

### **FINDINGS OF FACT**

1. Petitioner is in the business of [**NATURE OF BUSINESS AND ADDRESS OF FACILITY**]

2. The subject equipment is [**LIST EQUIPMENT INCLUDING PERMIT TO OPERATE NUMBERS, PERMIT TO CONSTRUCT NUMBERS AND AUTHORITY TO CONSTRUCT NUMBERS**].

3. The equipment is used to [**DESCRIPTION OF EQUIPMENT AND ITS PROCESS. ALSO LIST ANY CIRCUMSTANCES/ REASONS WHY THE EQUIPMENT IS OPERATING IN VIOLATION**].

4. [**LIST POLLUTANT LEVELS AND ESTIMATED EXCESS EMISSIONS**].

5. Petitioner intends to come into compliance [**LIST STEPS TO BE MADE TO COME INTO COMPLIANCE.**]

6. [**SOURCE NAME**] operation of [**EQUIPMENT IN VIOLATION**] and corresponding control equipment (**IF APPLICABLE**) has resulted in and may continue to result in emissions to the atmosphere of [**POLLUTANT**] in violation of the above-specified District Rules and the California Health and Safety Code provisions.

7. [**SOURCE NAME**] operations at the facility are subject to the California statutes and District Rules.

**DETERMINATION OF ISSUES**

8. Pursuant to Health and Safety Code 42352 the following findings have been made:

***(NOTE: ALTHOUGH THE SIX FINDINGS ARE NOT REQUIRED ON INTERIM VARIANCES, CONSIDERATION SHOULD BE MADE AT AN INTERIM VARIANCE HEARING AS TO WHETHER OR NOT THE SIX FINDINGS CAN INDEED BE MADE AT THE NOTICED SHORT OR REGULAR HEARING.)***

(a) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

***[REASON(S) JUSTIFYING THE FINDING.]***

(b) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.

***[REASON(S) JUSTIFYING THE FINDING.]***

(c) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

***[REASON(S) JUSTIFYING THE FINDING.]***

(d) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

**[REASON(S) JUSTIFYING THE FINDING.]**

(e) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

**[REASON(S) JUSTIFYING THE FINDING.]**

(f) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emissions levels to the district pursuant to the schedule established by the district.

**[REASON(S) JUSTIFYING THE FINDING.]**

9. The increments of progress or emissions standards specified in this Order **[INCREMENTS OF PROGRESS ARE ONLY REQUIRED IF THE VARIANCE IS FOR A PERIOD OF MORE THAN ONE YEAR BUT WE RECOMMEND THAT THEY BE IN ALL ORDERS]** are reasonable to enable both continued **[SOURCE NAME]** production and the modification of equipment, as well as to permit continued observation of the results of such modifications and that the increments are expeditious as practicable.

10. A nuisance as defined in **[DISTRICT RULE]** of the District Rules and Regulations is not expected to occur as a result of this variance and continued operation is not likely to create an immediate threat or hazard to public health or safety.

## **INCREMENTS OF PROGRESS**

***[INCREMENTS OF PROGRESS MAY INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING.]***

**THE PETITIONER SHALL:**

- a. Issue contracts by ***[DATE.]***
- b. Take delivery of new equipment by ***[DATE.]***
- c. Start on-site construction by ***[DATE.]***
- d. Complete on-site construction by ***[DATE.]***
- e. Perform source test by ***[DATE.]***
- f. Receive and submit test results to District for analysis by ***[DATE.]***
- g. Achieve final compliance by ***[FINAL COMPLIANCE DATE OF VARIANCE.]***
- h. Notify the District in writing of final compliance with ***[RULE AND RULE SECTION VIOLATED.]***

INTERIM OPERATING LIMITS DURING THE VARIANCE

**[OPERATING LIMITS MAY INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING.]**

- A. **[REDUCED OPERATING HOURS.]**
- B. **[HOURLY EMISSIONS RATES DURING THE PERIOD VARIANCE IS IN EFFECT.]**
- C. **[REPORT TO DISTRICT THE NUMBER OF HOURS OF OPERATION AND ESTIMATE OF EXCESS EMISSIONS ASSOCIATED WITH SUBJECT EQUIPMENT]**

REPORTING REQUIREMENTS

**[REPORTING REQUIREMENTS MAY INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING]**

A. No later than **[SPECIFY AMOUNT OF DAYS]** after **any** date for achievement of incremental step **or** final compliance date specified in this Variance Order, the Petitioner shall immediately notify the District of its compliance or non-compliance with the requirement and the date for compliance **or** non-compliance.

B. If delay is anticipated in meeting any requirement of this Variance Order, the Petitioner shall immediately notify the District in writing of the anticipated delay and the reasons for such delay. Notification to the District of anticipated delay does not excuse the delay. Notification is to be misconstrued as extension of the variance order.

C. **[SOURCE NAME]** shall report **[ ]** within **[ ]** working days from the date that final compliance with **RULE AND SECTION ( ) VIOLATED]** is achieved, but no later than **[ ]** working days from **[COMPLIANCE DATE]** whichever is sooner to the **[DISTRICT NAME]** Air Pollution Control District.



D. Excess emission fees/payments to be received by *[DISTRICT NAME]* no later than *[DATE]*.

E. Due date for filing petition(s) for extension or modification of this order must be received by *[DISTRICT NAME]* no later than *[DATE]*.

F. All submittals and notifications to the the District pursuant to this Variance Order shall be made to:

***[PROVIDE DISTRICT CONTACT NAME AND COMPLETE ADDRESS]***

### **CONCLUSIONS AND ORDER**

NOW, THEREFORE, the HEARING BOARD ORDERS that *[SOURCE NAME]* is granted a *[TYPE OF VARIANCE GRANTED]* from *[RULE AND SECTION(S) VIOLATED]* for its *[EQUIPMENT IN VIOLATION]* to be effective from *[EFFECTIVE DATE]* to *[FINAL COMPLIANCE DATE.]*

(a) *[SOURCE NAME]* will monitor excess emissions during the variance and report these emissions monthly to the District. Each report must be received by the District by the 10th working day of each month. Excess emission fees will be based on the emission submitted on the report.

(b) Compliance with this Order shall not relieve Petitioner from liability under the District's Rules for any violation thereof, and shall not preclude the District from pursuing remedies in accordance with the Health and Safety Code in the event of any violation.

(c) Any modification of Increments of Progress or Final Compliance Date of this Variance Order must be brought before the Hearing Board.

(d) Respondent shall report immediately to the District staff and the Hearing Board, in writing, its failure to meet any date or condition set forth in this Order or in any schedule established pursuant to this Order. Any such violation shall constitute a violation of this Order.

(e) This Order shall become effective immediately upon filing and shall remain in full

force and effect until **[FINAL COMPLIANCE DATE]** or until further order of this Board.

(f) The failure to abide by any condition of this Decision and Order shall subject the party receiving the variance to penalties set forth in Health and Safety Code Section 42402.

(g) Each day during any portion of which a violation occurs is a separate offense.

(h) Under Section 42362 of the California Health and Safety Code the State Board may revoke or modify any variance granted by any district if, in its judgement, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of Article 2, Chapter 4, Division 26, of the California Health and Safety Code.

(i) Petitioner shall retain the obligation to comply with all other local, state and federal regulations not specifically referenced in this Variance Order.

(j) Petitioner shall pay the District Fees specified in Rule(s) **[RULE NUMBERS]** of the District Rules and Regulations.

**AYES: [LIST BOARD MEMBER NAMES]**

**NOES: [LIST BOARD MEMBER NAMES]**

**ABSENT: [LIST BOARD MEMBER NAMES]**

**ABSTAIN: [LIST BOARD MEMBER NAMES]**

**[DISTRICT NAME] HEARING BOARD CHAIRMAN**

**DATE SIGNED**