

Effective Use of Variances and Abatement Orders

Enforcement Division
California Air Resources Board
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Key Points

- What is a hearing board?
- What is a variance?
- Who can get a variance?
- Requirements for obtaining a variance
- Importance of district involvement
- Temporary operating parameters
- What is an abatement order?
- ARB review of orders

What is a hearing board...

A 5 member board appointed by the District Governing Board and authorized to grant temporary relief from district rules under certain circumstances

What is a variance...

A legal order granted by a hearing board providing temporary enforcement relief from specifically identified rules and/or operating conditions to specific equipment or processes, for a defined period of time, when immediate compliance is not possible

Who can get a variance...

“Any” person can apply for a variance

- Permitted sources
- Businesses subject to district rules

* Variances cannot be granted to ARB regulations

Requirements for approval

6 statutory findings proven by the petitioner to the hearing board

H&SC 42352

District involvement

From petition to final compliance...

- Help petitioner navigate process
- Recommend to the hearing board
- Enforce the order

Enforce the order

Verify compliance...

- Ensure conditions within order met
- Keep source on track toward compliance
- Verify final compliance
- Issue NOV if order is violated

What is an order for abatement...

Enforcement tool for chronic violators

- Most egregious violations
- Written in the form of an injunction
- Significant penalties

ARB Review

- All orders sent to ARB for review
 - Make recommendations for deficiencies
- ARB can modify or revoke if variance doesn't meet requirements of:
 - ✓ statutory findings
 - ✓ expeditiousness
 - ✓ if a nuisance

Conclusion

Variance orders should achieve compliance quickly and effectively while having a minimum amount of impact on air quality

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Strategies for Non-Compliance

Stationary Source Division-Field Operations

Sacramento AQMD

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Key Points Of Discussion

- Preventative Strategies
- Responsive Strategies



Before Non-Compliance Becomes An Issue...

- **Understand Your Community**
- **Provide Strong Public Outreach**
- **Interactive And Informative Web Presence**
- **Up-front Communication With The Right People**
- **Robust Notice Of Violation/Notice To Comply Policy**



Understanding Your Community

- Read Your Local Business Journal
- Communicate With Trade Associations
- Access To Chamber Of Commerce
- Attend Community Events

Public Outreach

- Compliance Assistance
- BERC
- Advisories
- Presentations
- Workshops
- Media

Useful Web Presence

- **Interactive**
- **Intuitive**
- **Informative**
- **Simple and Complete**

Up-Front Communication With The Right People

- Know What You Are Looking For
- Know What To Address
- Thoroughly Investigate
- Document, Document, Document
- Determine The Principals
- Set the Tone And Adapt
- Offer Worse Case Scenario

Robust Notice of Violation/Notice To Comply Policy

- Prepare Every Case For Court
- Follow District Policy
- Stay Within Statutory Timeframe

Mutual Settlement Program

- Board Approved Settlement Process
- Voluntary
- Avoids Litigation
- 95% Of Cases Resolved With MSP
- Keeps Process In-House



Have An Office Conference...



When Your Best Efforts Fail...



Employ Adaptive Measures...

- Referral To In-House Counsel
- Referral To DA/Task Force
- Referral To Circuit Prosecutor
- Small Claims Court
- Superior Court With Counsel
- Collection

Referral To In-House Counsel

- **Inform Your Violator Counsel Is Waiting**
- **The Weight of Counsel's Correspondence Is Significant**
- **MSP Calculated Penalties Gone**
- **No One Wants To Be Sued**

Referral To Outside Agency For Prosecution

- District Attorney
- Environmental Task Force
- EPA-CID
- Circuit Prosecutor

DA-Environmental Unit

- The Environmental Unit of the Division was created in 1990. The members of the Environmental Unit investigate and prosecute cases that involve violations of those code sections designed to protect the environmental quality of our community. A prosecution can be based upon the Health and Safety Code, the Penal Code, the Vehicle Code, the Water Code or the Fish & Game Code.
- And Air 😊



CA Environmental Task Forces

- Environmental Task Forces can be an effective enforcement tool for any environmental program. Many local and regional task forces exist, often run by local agencies or district attorneys' offices. Some task forces have been created around specific environmental issues or industries.
- For more information, please contact [Christie Vosburg](#), Assistant General Counsel of Enforcement.
- <http://www.calepa.ca.gov/enforcement/TaskForce/#sthash.0l6d51kC.dpuf>



EPA Criminal Investigation Division

- EPA's CID Special Agents are fully authorized law enforcement officers empowered to enforce our nation's environmental laws as well as any other federal law in accordance with the guidelines established by the Attorney General of the United States (18 U.S.C. 3063).

CA Circuit Prosecutor

- The Environmental Circuit Prosecutor Project (ECP) was established in 1988 to fill a gap in the enforcement of water, air, and other environmental laws in rural counties in California. The ECP provides environmental prosecutors to counties that lack the expertise and resources to prosecute environmental crimes.
- Penal Code 14300
- <http://www.calepa.ca.gov/enforcement/CircuitPros/#sthash.HCp8lHND.dpuf>



Referral To Outside Agency For Joint Inspection Or Request For Other Assistance

- Code Enforcement
- Sewer District
- EMD
- Sheriff/Police/Fire
- Fish And Wildlife
- Search/Inspection Warrant

File Your Case In Court



CA H&SC 40701 –General Powers

- A district shall have power to sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

Small Claims/Superior Court

Small Claims

- Administrative Judges
- Counsel May Not Represent
- Court Appointed Mediation Mandatory

Superior Court

- Cases >5k
- Counsel May Represent

Creditors' Rights/Collection Law Firm

- After court judgment, if the debtor refuses to pay a judgment, the prevailing party can request a Debtor's Examination via the courts. These exams are used to find out what the debtors assets are.

Creditors' Rights/Collection Law Firm

Methods of collection Include:

- Levy bank accounts, financial accounts (i.e., eTrade).



Creditors' Rights/Collection Law Firm

Additional Collection Method:

- Have the court appoint a receiver to collect rents and or sell property owned by debtor. One advantage of a receiver as opposed to a Sheriff's sale is that the receiver gets a far higher price than a Sheriff's sale. However, once a property is placed in receivership it can require quite a bit of work in order to prepare it for sale.



Conclusion

- **Establish And Understand Enforcement Objectives**
- **Utilize Transparent And Informative Methods**
- **Set The Tone With Great Communication**
- **Stay Engaged With The Case Until Closure**
- **Collaborate With Your Counterparts In Other Districts and Agencies**
- **Keep Innovating And Improving**

Questions?

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