

Program Criteria

1. The district shall ensure that the requirements of the California Health and Safety Code Sections 40800 – 40830, 40860 – 40865, 42301(g), 41702, 41703, and 42350 – 42372 are being met.

{Code 1 – as referenced above}

2. Variance hearing board shall ensure that open meeting requirements of the Ralph M. Brown Act are being met.

{Code 1 – Ralph M. Brown Act, GC sections 54950 et seq.}

3. Variance from the nuisance provisions of Health and Safety Code Section 41700 or from a district's nuisance regulation shall not be granted.

{Code 1 – H&SC 42353}

4. All hearing board decisions shall be in writing. The reasons which support the findings of Health and Safety Code Section 42352 shall be in the variance order. Variance orders shall contain all the facts the hearing board examined in making its decision to grant a variance.

{Code 1 – HSC 40860; Code 2 – HSC 40862; Code 3 – ARB Advisory #20 “Legal Requirements for Variance Orders-2/18/1988, HSC Section 42352;” Code 1 – H&SC 40862}

5. Variance conditions shall be specific and enforceable. Sources shall not be allowed to increase their production or alter their process in order to increase their production to obtain a competitive advantage over similar sources. Conditions shall always minimize excess emissions.

{Code 2 – HSC 42352; Code 5}

6. Application for variances shall conform with district rule requirements, be complete, and contain all information needed to process the variance. This information includes, but is not limited to:

a. Source name, location, contact and telephone,

- b. Ownership status,
- c. Description of business activity,
- d. Detailed description of affected process,
- e. Detailed reasons for seeking variance relief,
- f. Rules being violated,
- g. Demonstration that the problems are beyond the reasonable control of the source,
- h. Damage or harm resulting or which would result to petitioner from immediate compliance with the rule and if this would result in an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business,
- i. Why the closing or taking would be without a corresponding benefit in reducing air contaminants,
- j. Efforts to curtail operations in lieu of obtaining a variance,
- k. How petitioner will reduce excess emissions to the maximum extent feasible during the period the variance is in effect,
- l. How petitioner will monitor or otherwise quantify emission levels if requested to do so by the district,
- m. Why operations under variance are not likely to create a nuisance,
- n. Specific equipment affected by malfunction or process change, etc.,
- o. Length of variance desired and an estimate of final compliance date including increments of progress,
- p. Advantages and disadvantages to the public if the variance is granted,

- q. An estimate of excess emissions during the variance period,
- r. Negative impacts resulting from granting the variance, and
- s. Any form developed by a district for use in filing an application for variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

{Sections a through q are Code 2 – HSC 42352 and Code 5. Section s is Code 1 – HSC 42350.5}

7. District staff shall prepare staff reports for each variance that is to be in effect for 30 days or longer. Staff reports must contain substantial details so that the hearing board can make a reasonable decision. The staff report shall include:

- a. Source background,
- b. Process description,
- c. Ambient air quality near the source,
- d. Details of the problems causing the violation,
- e. Rule(s) being violated,
- f. Actual variance application (submitted by source),
- g. Excess emissions calculated by the District for the variance period,
- h. Effects on ambient air quality near the source,
- i. Demonstration that the granting of the variance will not affect the SIP nor the maintenance of ambient air quality standards,
- j. Possible adverse health effects,
- k. History of previous variances,

l. Cost benefit analysis (for cases involving a dispute on available control technology and the source maintains that BACT is cost prohibitive),

m. Staff recommended restrictions, requirements or conditions,

n. Increments of progress, and

o. Final compliance date.

{Code 2 0 HSC 42352; Code 5}

8. Inspections shall be performed by the district to ensure that the sources meet all specified increments of progress included in the variance. Also, the district shall perform a final compliance inspection upon variance expiration.

{Code 2 – HSC 42358; Code 5}

9. The district shall recommend to the Hearing Board that variances shall not be issued to sources when the conditions causing the source to seek a variance are due to source negligence. The district shall recommend to the hearing board that they not allow recurrent variances for the same types of problems for the same permitted unit.

{Code 2 – 42352(a)(2) & 42352.5(a)(1); Code 5}

10. Variances from the requirement to obtain a permit to build, alter, erect or replace a piece of equipment shall not be granted.

{Code 1 – 42350; Code 3 – ARB Guidance Document, Memorandum titled “Legal Opinion on Variances from Authority to Construct and Permit to Operate Rules; Orders of Abatement” issued April 8, 1986}

11. A set of written procedures and guidelines shall exist to ensure that variances are handled uniformly and in compliance with the Health and Safety Code.

{Code 2 – HSC 40807; Code 5}

12. The variance shall include an estimate of how much excess emissions of the regulated pollutant(s) involved may be released.

{ Code 2 – HSC 42352(5) and (6); Code 4 – EPA Grant Condition }

13. Retroactive variance orders shall not be granted. A retroactive variance is defined as an order granting enforcement relief dating back prior to the date the variance application was filed.

{ Code 2 – HSC 42352, 42353, 42400.2 and 42402.2(a); Code 3 – ARB Guidance Document titled “Variances”, issued August 31, 1993 }

ARB Variance Oversight Program web-site:

<http://www.arb.ca.gov/enf/variance/variance.htm>