

AIR POLLUTION CONTROL DISTRICT
REGULATORY COMPLIANCE DIVISION

POLICIES AND PROCEDURES

Policy No. VII.B.7
Supersedes Date _____
Date October 14, 1991

Draft _____
Final X
Pages 26

Topic: Variance Petition and Variance Order Forms

Distribution: All Policy Holders

In order to apply for a variance, the source must complete a Petition for Variance (see Attachment 1). This is a six page form with a three page instruction sheet. It incorporates the requirements of the 1991 Health and Safety Code and APCD rules 503 and 504. This form replaces all existing variance application forms.

When the Hearing Board grants a variance, APCD staff must prepare a variance order which details the findings made by the Hearing Board as well as any conditions imposed. Attachments 2, 3 and 4 are boilerplate variance order forms for the following purposes:

- Attachment 2. Variance order form for Interim, 90-Day and Regular Variances.
- Attachment 3. Variance order form for non-breakdown related Emergency Variances.
- Attachment 4. Variance order form for Emergency Variances filed pursuant to Rule 506 (Breakdowns).

The only difference in Attachments 3 and 4 is that Rule 506.B requires four additional findings in addition to those required by the Health and Safety Code.

ATTACHMENT 1

H.B. Case No. _____

Petitioner _____

Permit # _____

Date Rec'd _____

Time Rec'd _____

FOR APCD USE ONLY

PETITION FOR VARIANCE

Type of variance requested (check one only):

Emergency _____ Interim¹ _____ 90-day _____ Regular _____

Length of variance requested: Start Date _____

End Date _____

1. PETITIONER INFORMATION

A. Please provide the name, address and phone number of the petitioner.

Name _____

Address _____

Phone () _____

¹ A 90-day or regular variance petition must be filed concurrently with an interim variance.

B. Please provide the name, address and phone number of the person authorized to receive correspondence regarding this petition if different from the one shown in response to Question 1.A.

Name _____
Address _____
Phone (____) _____

C. The petitioner is (check one):

- i. an individual _____
- ii. co-partnership _____
- iii. corporation _____
- iv. other entity (please describe) _____.

If the petitioner is a co-partnership, please provide the names and addresses of the partners. If the petitioner is a corporation, please provide the names and addresses of the corporate officers. If the petitioner is an "other entity", please provide the names and addresses of the persons in control.

2. Location of equipment for which the variance is requested (if different from response to Question 1.A):

3. Briefly describe the equipment which is the subject of this petition (list all District permit numbers):

4. Complete this section ONLY if you are applying for an Emergency Variance pursuant to District Rule 506 (Emergency Variances for Breakdowns).

A. Date and time breakdown was reported to the District:

B. Breakdown number (as provided by the District): _____

C. Description of the breakdown condition, including equipment involved and the cause (to the extent known) of the breakdown:

D. Please describe why the continued operation of your facility in a breakdown condition is not likely to cause an immediate threat or hazard to public health or safety and will not interfere with the attainment or maintenance of any primary national ambient air quality standard:

5. A. List which District Rule and Regulation(s), ATC or PTO permit condition(s) or section(s) of the California Health and Safety Code you are or will be in violation of:

B. State the harm or damage which has or will result to you or your business if you are required to comply with the District Rule and Regulation(s), ATC or PTO permit condition(s) or section(s) of the California Health and Safety Code listed above in response to Question # 5A:

6. A. Describe the condition(s) which caused or will cause you to be in violation of the item(s) listed in Question #5 (above):

B. State why the condition(s) described in Question # 6A (above) are or will be beyond your reasonable control:

7. State the reason(s) why shutting down the affected equipment or business instead of obtaining a variance would be without a corresponding benefit in reducing air contaminants:

8. Describe what consideration you have given to curtailing operations at your business instead of obtaining a variance:

9. Describe what actions you will take to reduce excess emissions at your business to the maximum extent feasible if the variance is granted:

10. During the time period your variance is in effect, the District may require you to monitor or otherwise quantify emissions from your facility and to report these emission levels to the District. If requested to do so, describe how you would comply:

11. How do you intend to come into compliance with District Rules and Regulations? Provide a brief description of any equipment to be installed or modifications to be made and a schedule showing the date(s) by which compliance will be achieved.

12. Please state whether or not the operation of the affected equipment under a variance would constitute a nuisance:

13. Please state whether or not any case involving the same identical equipment or process is pending in any court, civil or criminal:

The undersigned is authorized to submit the above petition on behalf of the petitioner and further states that the above petition, including any attachments and the items therein set forth, are true and correct.

DATE: _____ SIGNATURE: _____

TITLE: _____

PRINT NAME: _____

INSTRUCTIONS FOR COMPLETING VARIANCE PETITIONS

A variance is an administrative order issued by the Air Pollution Control District Hearing Board granting temporary relief from the provisions of a District Rule and Regulation, ATC/PTO permit condition or section of the California Health and Safety Code. A variance will allow you to continue operating while taking steps to achieve compliance. However, the California Health and Safety Code prohibits the granting of a variance from the requirement to obtain an Authority to Construct permit (Rule 201.A) and for public nuisance (Rule 303).

There are four types of variances that you may apply for: Emergency, Interim, 90-Day and Regular. You should apply for an Emergency Variance if you find yourself out of compliance without any warning and the time to correct the problem will not exceed 15 days (in certain circumstances, this can be extended to 30 days). Otherwise, if you will be out of compliance for less than 90 days, then you should apply for a 90-Day Variance. If the time needed to achieve compliance is greater than 90 days, then you should apply for a Regular Variance. In certain instances, when you file for either a 90-Day or Regular Variance, you may also need an Interim Variance. A separate petition must be filed for each type of variance requested. Thus, if you need an Interim and a 90-Day Variance, two separate petitions must be submitted.

In order for the Hearing Board to grant any variance, Section 42352 of the 1991 California Health and Safety Code requires the Hearing Board to make six "findings" which are summarized as questions # 5 through 10 of the petition form. Please be aware that it is your responsibility, as the petitioner, to provide the Hearing Board with adequate information such that the Hearing Board can make these findings. Thus, the answers to questions # 5 through 10 must be as complete and thorough as possible.

There are fees associated with each type of variance petition. Please contact the District to determine the amount of the fee which must be submitted along with your petition.

Emergency Variance petitions are to be filed at the District's Buellton, Santa Maria or Goleta offices during normal business hours. Only the original copy of the petition is required, along with the filing fee.

For Interim, 90-Day and Regular Variances, the original petition and twelve copies and the filing fee are to be filed with the Clerk of the Hearing Board, 105 East Anapamu Street, Room 407, Santa Barbara during normal business hours. At the same time, a separate copy of the petition must be filed at the District's Goleta office.

Specific directions for completing each question in the variance petition form are provided below. If you need more space than is provided in the petition form to answer the questions, you may attach additional information on separate sheets of paper.

For further assistance, please contact the Regulatory Compliance Division at (805) 961-8800 (Goleta), 686-5012 (Buellton) or 346-7619 (Santa Maria).

PETITION QUESTION #

- 1.A Indicate your business name, phone number and address.
- 1.B This section should only be completed if the person who should receive correspondence regarding this variance petition is different from the petitioner. For example, the petitioner may be Acme Tire Company of San Francisco. However, Acme has a branch office in Santa Barbara and wants the manager of that office to work with the District to process the petition. In this situation, the name, address and phone number of the manager would be provided as a response to this question.
- 1.C District Rule 503.B requires this information to be provided. An example of "other entity" would be a governmental agency.
2. List the address of the equipment for which the variance is desired. If a street address is not readily available, please provide a brief description of the location - e.g., two miles east of the intersection of Main Street and Adams Avenue in Santa Royale.
3. List the equipment, equipment ID number (if any) and the District ATC or PTO permit number(s) for the equipment.
4. This section is only to be completed if you have reported a breakdown condition at your facility pursuant to District Rule 505 and you are applying for an Emergency Variance pursuant to District Rule 506.
- 5A. You may or will be in violation of more than one District Rule and Regulation, ATC/PTO permit condition or section of the Health and Safety Code. Please list all applicable ones.
- 5B. The harm or damage which would result may also be economic in nature.
- 6A. Provide a brief description of why the equipment is or will be in violation. For example, "the PTO requires my boiler to use utility grade natural gas. The gas company has curtailed delivery of natural gas because of shortages due

to the cold weather. Consequently I have to burn fuel oil".

- 6B. In order for the Hearing Board to grant a variance, one of the most important findings that it must make is that the conditions which have caused or will cause you to be in violation are beyond your reasonable control. For this item, you need to provide adequate evidence that the cause of the non-compliance is beyond your reasonable control. Thus, for the example provided in Question #6 (above), the curtailment of natural gas by the utility company is beyond the reasonable control of the petitioner. However, if the utility company has refused to deliver natural gas because you forgot to pay your gas bill, this situation may not have been beyond your reasonable control.
7. In granting a variance, the Hearing Board must also balance the public interest of not requiring you to comply with District Rules and Regulations against your staying in business. To answer this question, you should state the benefits associated with your continued operation. These benefits may be economic or social in nature.
8. You should state whether you have considered curtailing operations. If you have decided not to curtail operations, please state why you have decided against doing so.
9. If the variance will result in emissions greater than allowed by District Rules and Regulations or a permit condition, please describe how these excess emissions will be minimized.
10. If the granting of your variance will not result in air pollutant emissions over any limits specified by your permit or District Rules and Regulations, please state this fact.
11. As appropriate, include copies of purchase orders for equipment or services or other documentation.
12. Section 42353 of the California Health and Safety Code prohibits the Hearing Board from granting a variance if the operation of the equipment for which the variance is sought would constitute a nuisance.
13. District Rule 504.H requires this information to be provided.

ATTACHMENT 2

H.B. Case No.	_____
Petitioner	_____
Permit #	_____
Date Rec'd	_____
Time Rec'd	_____
FOR APCD USE ONLY	

**BEFORE THE HEARING BOARD
OF THE SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT**

In The Manner of the Application of _____)
 _____)
 [Petitioner])
 _____)
 for a _____ Variance)
 [Type])
 _____)
 from _____)
 [ATC or PTO condition(s)/Rule(s)/Health & Safety Code])
 _____)

H.B. Case No. _____

**VARIANCE FINDINGS
AND ORDER**

A Petition for a _____ Variance has been
 [Type]
 filed by _____
 [Name of Petitioner]
 on _____, 19____.
 [Date]

The above-entitled matter came on regularly for hearing on
 _____, 19____ with _____
 [Date] [Name(s)]

_____ appearing for the petitioner, and _____
 [Name(s)]

appearing for the Santa Barbara Air Pollution Control District (District).

This matter having been fully presented and duly considered, the Hearing Board makes the following findings and gives the following reasons for its decision.

1. Notice of the Hearing was duly given in the manner and for the time required by law.

2. All persons testifying were first duly sworn.

3. Testimony and argument on behalf of the petitioner and the Air Pollution control officer were made, received and considered.

4. The public was given the opportunity to participate in the Hearing and _____
[List Speakers/No One Spoke]

spoke.

5. Petitioner operates the equipment described in the petition at _____
[Location]

6. Petitioner is, or will be in violation of _____
[ATC or PTO condition(s)/Rule(s)/Health & Safety Code]

because _____
[Description of the Cause of the Violation]

7. Due to conditions beyond the reasonable control of the

Petitioner, requiring compliance would either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business in that _____

[State Facts]

8. The closing or taking would be without a corresponding benefit in reducing air contaminants in that _____

[State Facts]

9. The petitioner has given consideration to curtailing operations of the source in lieu of obtaining a variance in that _____

[State Facts]

10. During the period that the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible in that _____

[State Facts]

11. The District _____ request the petitioner to monitor or otherwise quantify emission levels from the source during the time period the variance is in effect. If so requested by the District, the petitioner will report these

[did/did not]

emission levels to the District pursuant to the schedule attached hereto and incorporated herein.

12. At the Hearing, a compliance schedule _____ [was/was not] submitted showing the dates of final compliance with the Rule and Regulations of the District, and the date(s) of increments of progress, when applicable. A true and correct copy of said compliance schedule _____ [is/is not] attached hereto and incorporated herein.

13. Petitioner testified as to the time required and steps necessary to meet the final compliance date.

14. The District staff _____ [Supported/Oposed] the application. _____

[State Reasons if Board's position differs from Staff]

THEREFORE, THE HEARING BOARD ORDERS, as follows:

1. That a _____ variance be granted for the
[Type of variance]

[List Equipment or Operation]

from _____
[ATC or PTO condition(s)/Rule(s)/Health and Safety Code Section(s)]

from _____, 19____ to _____, 19____,
[Date] [Date]

upon the condition(s) that _____

[List Conditions Imposed]

_____.

2. That the applicant shall report to the Hearing Board on _____, 19____, in writing, as to its progress towards
[Date]
compliance.

3. That failure of petitioner to meet all dates specified in the compliance schedule attached hereto, unless such dates have been modified by the Hearing Board after duly noticed public hearing thereon, shall constitute a violation of this Order, and petitioner shall be subject to all civil and criminal penalties, fines, sanctions and remedies provided by law.

DATED: _____, 19____.

CHAIR, Santa Barbara Air
Pollution Control District
Hearing Board

ATTACHMENT 3

H.B. Case No.	_____
Petitioner	_____
Permit #	_____
Date Rec'd	_____
Time Rec'd	_____
FOR APCD USE ONLY	

EMERGENCY VARIANCE ORDER
(H.B. CASE No. _____)

PETITIONER:

EQUIPMENT AND LOCATION:

Based on the petition made by the Petitioner and the report received from the Air Pollution Control District, I make the following findings:

1. That the Petitioner is, or will be in violation of

_____ [ATC or PTO condition(s)/Rule(s)/Health & Safety Code]

because _____

_____ [Description of the Cause of the Violation]

2. Due to conditions beyond the reasonable control of the Petitioner, requiring compliance would be either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business in that

_____ [State Facts]

3. The taking or closing taking would be without a corresponding benefit in reducing air contaminants in that _____
[State Facts]

4. The petitioner has given consideration to curtailing operations of the source in lieu of obtaining a variance in that _____
[State Facts]

5. During the period that the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible in that _____
[State Facts]

6. The District [did/did not] _____ request the petitioner to monitor or otherwise quantify emission levels from the source during the time period the variance is in effect. If so requested by the District, the petitioner will report these emission levels to the District pursuant to Emergency Variance Condition number(s) _____.

7. The District staff [Supported/Opposed] _____
_____ the petition.

[State Reasons if Board's position differs from Staff]

The following conditions shall apply (List Conditions Imposed):

THEREFORE, an Emergency Variance for _____

[List Equipment or Operation]

from _____
[ATC or PTO condition(s)/Rule(s)/Health and Safety Code Section(s)]

from _____, 19____ to _____, 19____,
[Date] (Date)

is granted to the Petitioner.

DATED: _____, 19____.

[Name of Board Member]

Santa Barbara Air Pollution
Control District Hearing Board

ATTACHMENT 4

H.B. Case No.	_____
Petitioner	_____
Permit #	_____
Date Rec'd	_____
Time Rec'd	_____
FOR APCD USE ONLY	

**BREAKDOWN CONDITION
EMERGENCY VARIANCE ORDER**
(H.B. CASE No. _____)

PETITIONER:

EQUIPMENT AND LOCATION:

Based on the petition made by the Petitioner and the report received from the Air Pollution Control District, I make the following findings:

1. That a breakdown condition exists for _____

 [List equipment]
 at _____
 [Location]

2. That continued operation of this equipment in a breakdown condition (a) is not likely to create an immediate threat or hazard to public health or safety and (b) will not interfere with the attainment or maintenance of the national primary ambient air quality standard.

3. That the Petitioner is, or will be in violation of

[ATC or PTO condition(s)/Rule(s)/Health & Safety Code]

because _____

[Description of the Cause of the Violation]

2. Due to conditions beyond the reasonable control of the
Petitioner, requiring compliance would be either (1) an arbitrary
or unreasonable taking of property, or (2) the practical closing
and elimination of a lawful business in that _____

[State Facts]

3. The taking or closing would be without a corresponding
benefit in reducing air contaminants in that _____

[State Facts]

4. The petitioner has given consideration to curtailing
operations of the source in lieu of obtaining a variance in that _____

[State Facts]

5. During the period that the variance is in effect, the
petitioner will reduce excess emissions to the maximum extent
feasible in that _____

[State Facts]

6. The District _____ request the petitioner
[did/did not]
to monitor or otherwise quantify emission levels from the
source during the time period the variance is in effect. If so
requested by the District, the petitioner will report these
emission levels to the District pursuant to Emergency Variance
Condition number(s) _____.

7. The District staff _____ the
[Supported/Opposed]
application. _____

[State Reasons if Board's position differs from Staff]

The following conditions shall apply: _____
[List Conditions Imposed]

THEREFORE, an Emergency Variance for _____

[List Equipment or Operation]

from _____
[ATC or PTO condition(s)/Rule(s)/Health and Safety Code Section(s)]

is granted to the Petitioner. This Emergency Variance shall

continue for _____ days commencing _____, 19____.
[up to 15 days] [Date]

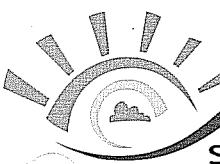
The filing of a request for an Interim, 90-Day or Regular Variance during the time this Emergency Variance is valid, however, shall automatically extend the term of the Emergency Variance until the date the Hearing Board determines whether or not to grant the Interim, 90-Day or Regular Variance. In no event, however, shall this Emergency Variance continue for more than thirty (30) days from _____, 19____.
[Date]

The Petitioner shall comply with the reporting requirements set forth in District Rule 506.E.

DATED: _____, 19____.

[Name of Board Member]

Santa Barbara Air Pollution
Control District Hearing Board



**Santa Barbara County
Air Pollution Control District**

Our Vision  Clean Air

SB County Air Pollution Control District
John Garnett
***** Interoffice *****

To: Subscribers and District Personnel

From: Lillian Coony, Santa Barbara County A.P.C.D.
Tel: (805) 961-8817, Fax: (805) 961-8801
Email: coonyL@sbcapcd.org

Date: December 19 , 2003

Regarding: Updates to Enforcement Policies & Procedures

Enclosed are the latest updates to your Enforcement Policies & Procedures Manual. Please make the following changes:

Remove Pages

Old Table of Contents
(9/16/02)

Replace/Add Pages

New Table of Contents
(12/19/03)

Policy No. 3100.VII.D
Mutual Settlement

