

**SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT HEARING BOARD  
EMERGENCY VARIANCE: FACTS TO SUPPORT FINDINGS**

PETITIONER:

*Listed below are the findings that the Hearing Officer must make to grant your petition for an emergency variance. You are not required to submit this form, but you should be prepared to answer the questions listed beneath each required finding below to help you provide the Hearing Officer with the information he or she needs to make a decision regarding your petition. You may attach additional pages if needed.*

*The emergency variance period may not exceed thirty (30) days.*

A. Good cause exists for granting the variance.

**(1) What triggered this emergency variance request? (2) Why should you be excused from complying with the District rule(s) or permit condition(s) at issue? (3) What is your plan and timeframe for returning to compliance?**

B. The situation as outlined in the request constitutes an emergency.

**(1) Why is this situation an emergency? (2) What consequences will likely follow if your petition is not granted? (3) When did you discover the situation? (4) How long has this been happening?**

C. The operation resulting from the variance shall not create a private or a public nuisance.

**(1) Have you received any complaints regarding operation of this equipment? If yes, please explain. (2) If you are granted a variance, what steps will you take to avoid a nuisance, as defined by District Rule 51 (see definition on the next page)?**

D. The purpose of the emergency variance request is not to avoid an application for an interim variance or notice requirements for a hearing on the request, and it is impractical to hear the request at the next scheduled meeting of the Hearing Board.

**(1) Please explain why you cannot apply for an interim variance. (2) What consequences are likely to follow if you are required to apply for an interim variance? (3) What consequences are likely to follow if you are required to wait until the next meeting date for the Hearing Board to consider your request?**

E. The Hearing Officer must make the following additional findings if the emergency is a result of a breakdown condition, as defined by District Rule 98(a) (see next page for definition):

- (1) The occurrence constitutes a breakdown condition under Rule 98.
- (2) Continued operation in a breakdown condition is not likely to create an immediate threat or hazard to public health or safety.
- (3) Continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national or California ambient air quality standard.

**If the emergency is a result of the failure or malfunction of air pollution control equipment, related operating equipment or any in-stack continuous monitoring equipment, it may be the result of a breakdown condition. If your emergency is the result of any of these circumstances, please be prepared to answer the following questions.**

- (1) How long have you known about the breakdown? When did you report the breakdown to the District?**
  
- (2) Explain how you have attempted to comply with the District rule(s) or permit condition(s).**
  
- (3) What is the regular maintenance schedule for this equipment, and when was the last maintenance or inspection of the equipment? Please also attach copies of relevant maintenance records.**
  
- (4) Has this equipment ever broken down before? If yes, when?**
  
- (5) Describe the type of emissions and provide an estimate of the total excess emissions that will likely occur during the proposed variance period. Please discuss whether the emissions include toxic air contaminants and the proximity of the emissions to neighboring residences and businesses. If you have calculated or modelled excess emissions, please attach the supporting documents. Otherwise, explain details such as how many hours over the permit limit the equipment would run or how current ppm readings compare to the permit limit.**
  
- (6) How is this breakdown condition not the result of intentional or negligent conduct or disregard of air pollution rules? (For example, what steps did you take to avoid a breakdown? What caused the equipment to fail?)**

I declare, under penalty of perjury under the laws of the State of California, that the information provided above is true and correct.

Date Signed:

Authorized Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

### **San Diego County Air Pollution Control District Rule 51—Nuisance:**

A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property. The provisions of this rule do not apply to odors emanating from agricultural operations in the growing of crops or raising of fowls or animals.

### **San Diego County Air Pollution Control District Rule 98(a)—Definition of a Breakdown:**

(1) For the purposes of this rule, a **breakdown condition** means an unforeseeable failure or malfunction of either 1) any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these Rules and Regulations, or by State Law, or 2) any in-stack continuous monitoring equipment; which

- (i) is not the result of neglect or disregard of any air pollution control law or rule or regulation;
- (ii) is not intentional or the result of negligence;
- (iii) is not the result of improper maintenance;
- (iv) does not constitute a nuisance; and
- (v) is not a recurrent breakdown of the same equipment.

(2) For the purposes of this rule, **negligence** means failure to use the care that a prudent person usually exercises.

(3) For the purposes of this rule, **improper maintenance** means not performing normal, regular maintenance.