

Variance Fact Sheet

What is a variance?

A variance is an administrative order granting temporary relief from the provisions of a District rule. If granted, a variance allows a facility to operate in violation of a District rule while it takes steps to come into compliance with the rule in question. Petitions for variances are heard by the Air Pollution Control District Hearing Board at the County Administration Center.

What is the Hearing Board?

The Hearing Board is an independent body consisting of five members appointed by the County Board of Supervisors: an attorney, a professional engineer, a medical professional, and two members of the public. While District rules apply to all persons in a given industry, a variance may be granted if the Hearing Board determines it is justified by particular circumstances affecting an individual business or manufacturer's product.

What are the grounds for granting a variance?

In making a decision, the Hearing Board considers the rule that has been or will be violated, the severity of the violation, technical problems in achieving compliance with emissions standards, and the advantages and disadvantages to the public and the facility involved. To grant most types of variances, the Hearing Board must decide that *all of the following* findings are true:

- **The facility is or will be in violation of District rules.**
- **The need for a variance is beyond the facility's reasonable control.**
- **Requiring compliance would cause an unreasonable taking of property (such as financial harm to a business), place a burden on an essential public service, or close a business.**
- **The reduction in air pollution resulting from a shutdown would not justify the harm to the business or public service.**
- **The facility considered curtailing operations.**
- **Emissions will be reduced to the maximum extent feasible.**
- **The facility will monitor and report emission levels.**

Variances *cannot be granted to allow*:

- relief from the consequences of a past violation;
- a public nuisance (such as nuisance odors, threats to public health, or damage to property);
- construction or operation of a process or equipment without a permit;
- violations of the California Health & Safety Code (except for section 41701—visible emissions); or
- violations of a statewide Air Toxics Control Measure (ATCM) or federal National Emission Standards for Hazardous Air Pollutants (NESHAP).

A facility subject to a federal operating permit (Title V permit) may be granted a variance, but the variance will not protect the facility from enforcement by the federal EPA or citizen suits under the federal Clean Air Act, as the EPA does not recognize variances granted under California law.

How can I apply for a variance?

The first step is to apply by submitting a petition (including the required filing fee) to the Clerk of the Hearing Board, located in Room 402 of the County Administration Center, 1600 Pacific Highway, San Diego. The Clerk's phone number is (619) 531-5434. Petition forms, a list of filing fees, and the Hearing Board Rules may be downloaded either from the Clerk's website at www.sdcountry.ca.gov/cob/apcdhb/index.html or the District's website at www.sdapcd.org (follow the menus to "I Want to..." → "Apply" → "Variance"). Filing fees depend on the type of variance sought. Information provided in the petition should be clear, comprehensive, and concise. Upon receipt of the variance petition, the Clerk will schedule the time and date of the hearing.

What types of variances are available?

There are five types of variances:

- 1) An *emergency variance* is for violations that occur without warning. Sudden equipment breakdown, a power failure, or accidental fire may be grounds for an emergency variance. This type of variance cannot be granted for more than 30 days.
- 2) A *90-day variance* is appropriate when a facility can come into compliance within 90 days.
- 3) An *interim variance* provides protection until a hearing can be held on a regular variance.
- 4) A *regular variance* is appropriate when a facility needs more than 90 days to comply with air quality rules. Though generally limited to a year, it may extend longer if justified by a detailed schedule showing how the facility will come into compliance.
- 5) A *product variance* is appropriate when a manufacturer of a product used in San Diego County needs additional time to comply with air quality rules. Though generally limited to a year, it may extend longer if justified by a detailed compliance schedule.

What happens at a hearing?

Variance hearings resemble informal courtroom proceedings. The Hearing Board listens to presentations by the District and by the applicant. District staff may argue for or against the granting of a variance or suggest certain conditions on a variance. Witnesses, who are placed under oath, may be questioned by the opposing side and by Hearing Board members. Members of the public may also present information.

The Hearing Board evaluates how the evidence applies to the required findings and makes a decision on the petition during the hearing. If a variance is granted, the facility is subject to the conditions of the variance during the entire term of the variance.

How can I prepare for a hearing?

Review the District's response to the petition, which is usually filed one week prior to the hearing and contains the District's recommendations to the Hearing Board.

An attorney or technical expert may represent a business at the hearing, although such representation is not required. However, it is important that whoever represents the business be prepared to discuss the rules that have been or will be violated, the circumstances causing the violation, the excess emissions that will result if the variance is granted, and the plan to come into compliance.

Who can I call for further help?

This fact sheet provides general information about variances. For more specific questions or for assistance in completing the petition forms, contact the District's Compliance Division at (858) 586-2650.