



R. J. Sommerville
Air Pollution Control Officer

DATE: April 23, 1991
TO: Air Pollution Control Board
SUBJECT: Adoption of Amendments to Rules 97 (Emergency Variance) and 98 (Breakdown Conditions: Emergency Variance)

SUMMARY:

Rules 97 and 98 specify procedures and requirements applicable to requests by companies for emergency variances from the Air Pollution Control District Hearing Board. They do not reflect current practices in handling emergency variance requests and reference rules no longer in effect. This has caused confusion. The proposed changes correct this. They are administrative in nature and delete incorrect references to rules and revise procedures for handling emergency variance requests to reflect current practices.

Issue

Should the Board adopt amendments to Rules 97 (Emergency Variance) and 98 (Breakdown Conditions: Emergency Variance) to delete incorrect references to rules and revise procedures for handling emergency variance requests to reflect current practices?

Recommendation

AIR POLLUTION CONTROL OFFICER

1. Set May 28, 1991 at 2:00 p.m., as the date and time for public hearing to consider the resolution amending Rules 97 and 98 of the Rules and Regulations of the San Diego County Air Pollution Control District.
2. Direct the Clerk of the Board to notice the Hearing pursuant to Section 40725 of the State Health and Safety Code.
3. Following the hearing: (a) adopt the resolution amending Rules 97 and 98 and, (b) make appropriate findings of necessity, authority, clarity and consistency, as required by Section 40727 of the State Health and Safety Code.

SUBJECT: Adoption of Amendments to Rules 97 (Emergency Variance) and
98 (Breakdown Conditions: Emergency Variance)

SUMMARY: [CONTINUED]

Advisory Statement

The Air Pollution Control Advisory Committee recommended adopting the proposed changes at its February 13, 1991 meeting.

Fiscal Impact

Adopting the proposed changes will have no fiscal impact on the District.

Alternatives

Not adopt the proposed changes to Rules 97 and 98. The references to rules no longer in effect and emergency variance request procedures no longer current would remain. There would continue to be confusion.

BACKGROUND:

Rule 97 specifies how requests for emergency variances from the Air Pollution Control District Hearing Board are to be filed by local industry. It references rules no longer in effect and does not reflect current Hearing Board practices. Rule 98 specifies emergency variance procedures related to equipment breakdown. It does not reflect current Hearing Board practices. These inaccuracies cause confusion. The proposed changes to Rules 97 and 98 correct inaccuracies and reflect current Hearing Board procedures for handling emergency variances related to breakdown conditions.

A workshop to discuss the proposed changes was held on November 7, 1990. The workshop report is attached.

There is no additional cost associated with these changes.

Concurrence:

Respectfully submitted,

NORMAN W. HICKEY
Chief Administrative Officer


R. J. SOMMERVILLE
Air Pollution Control Officer

**AIR POLLUTION CONTROL BOARD
AGENDA ITEM
INFORMATION SHEET**

SUBJECT: Adoption of Amendments to Rules 97 (Emergency Variance) and 98 (Breakdown Conditions: Emergency Variance).

SUPV DIST.: All

COUNTY COUNSEL APPROVAL: Form and Legality ☒ Yes ☐ N/A
☐ Standard Form ☐ Ordinance ☒ Resolution

AUDITOR APPROVAL: ☒ N/A ☐ Yes **4 VOTES:** ☐ Yes ☒ No

FINANCIAL MANAGEMENT REVIEW: ☐ Yes ☒ No

CONTRACT REVIEW PANEL: ☐ Approved _____ ☒ N/A

CONTRACT NUMBER(S): N/A

PREVIOUS RELEVANT BOARD ACTION: 4/21/78 (#1)

BOARD POLICIES APPLICABLE: N/A

CITIZEN COMMITTEE STATEMENT: The Air Pollution Control District Advisory Committee recommended approval of the proposed changes at its February 13, 1991 meeting.

CONCURRENCES: N/A

ORIGINATING DEPARTMENT: Air Pollution Control District

CONTACT PERSON: Richard J. Smith 750/694-3303



R. J. SOMMERVILLE
DEPARTMENT AUTHORIZED REPRESENTATIVE

April 23, 1991
MEETING DATE

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County)

**RESOLUTION AMENDING RULES 97 & 98
OF REGULATION V
OF THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT**

On motion of Member Williams, seconded by Member Bailey
the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

1. Amendment to Rule 97, Section (a) is to read as follows:

RULE 97. EMERGENCY VARIANCE

(a) A request for an emergency variance shall be filed with the Clerk of the Hearing Board at the San Diego County Administration Center, Room 402, San Diego, California 92101.

2. Amendment to Rule 98, Section (d) is to read as follows:

RULE 98. BREAKDOWN CONDITIONS: EMERGENCY VARIANCE

**(d) EMERGENCY VARIANCE PROCEDURES FOR BREAKDOWN
CONDITIONS**

(1) If the breakdown condition will either require more than 24 hours to correct or persist longer than the end of the production run (except for continuous, monitoring equipment, for which the period shall be 96 hours) the owner or operator may, in lieu of shutdown, an emergency variance. A request for emergency variance for a breakdown condition shall be filed with the Clerk of the Hearing Board at the San Diego County Administration Center, Room 402, San Diego, California 92101.

(2) No emergency variance for a breakdown condition shall be granted unless the Chairperson or other designated member(s) determines that:

- (i) The occurrence constitutes a breakdown condition,
- (ii) continued operation is not likely to create an immediate threat or hazard to public health or safety, and
- (iii) the requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met, and
- (iv) the continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national or California Ambient Air Quality Standard.

(3) At any time after an emergency variance for a breakdown condition has been granted, the Air Pollution Control Officer may request that the Chairperson or designated member(s) reconsider and revoke, modify or further condition the variance if the Air Pollution Control Officer has good cause to believe that:

- (i) continued operation is likely to create an immediate threat or hazard to public health or safety;
- (ii) the owner or operator is not complying with all applicable conditions of the variance;
- (iii) a breakdown condition no longer exists; or
- (iv) final compliance is not being accomplished as expeditiously as practicable.

(4) An emergency variance for a breakdown condition shall remain in effect only for as long as necessary to repair or remedy the breakdown conditions, but in no event after a properly noticed hearing to consider an interim or 90-day variance has been held, or 30 days from the date of the subject occurrence, whichever is sooner.

IT IS FURTHER RESOLVED AND ORDERED that the subject amendments to Rules 97 & 98 of Regulation V, shall take effect upon adoption.

PASSED AND ADOPTED by the Air Pollution Control District of the County of San Diego, State of California, this 28th day of May, 1991 (2), by the following vote:

AYES: Members Bilbray, Bailey, Golding, Williams and MacDonald

NOES: Members None

ABSENT: Members None


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STATE OF CALIFORNIA)ss
County of San Diego)

I, THOMAS J. PASTUSZKA, Clerk of the Air Pollution Control District, County of San Diego, State of California, hereby certify that I have compared the foregoing copy with the original resolution passed and adopted by said Board at a regular meeting thereof, at the time and by the vote therein stated, which original resolution is now on file in my office; that the same contains a full, true and correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of the Air Pollution Control District, County of San Diego, State of California, this 17th day of June, 1991.

THOMAS J. PASTUSZKA
Clerk of the Air Pollution Control
District

By 
Patricia M. Fraser, Deputy



CHANGE COPY

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County)

RESOLUTION AMENDING RULES 97 & 98 OF REGULATION V OF THE RULES AND REGULATIONS OF THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

On motion of Member _____, seconded by Member _____
the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

1. Amendment to Rule 97, Section (a) is to read as follows:

RULE 97. EMERGENCY VARIANCE

(a) A request for an emergency variance ~~except for a request pursuant to Rule 98~~, shall be filed ~~pursuant to Subsection (a) of Rule 76 and Rules 77 and 78 of these Rules and Regulation~~ with the Clerk of the Hearing Board at the San Diego County Administration Center, Room 402, San Diego, California 92101.

2. Amendment to Rule 98, Section (d) is to read as follows:

RULE 98. BREAKDOWN CONDITIONS: EMERGENCY VARIANCE

(d) EMERGENCY VARIANCE PROCEDURES FOR BREAKDOWN CONDITIONS

(1) If the breakdown condition will either require more than 24 hours to correct or persist longer than the end of the production run (except for continuous, monitoring equipment, for which the period shall be 96 hours) the owner or operator may, in lieu of

shutdown, request the Air Pollution Control Officer to commence the an emergency variance, ~~procedure set forth in Subsection (d)(2) below.~~ A request for emergency variance for a breakdown condition shall be filed with the Clerk of the Hearing Board at the San Diego County Administration Center, Room 402, San Diego, California 92101.

(2) Upon receipt of a request for an emergency variance, the Air Pollution Control Officer shall contact the Chairperson of the Hearing Board, or other designated member(s) of the Hearing Board, to establish a time and place for consideration of the request. The Air Pollution Control Officer shall inform the owner or operator of the source of such time and place. During consideration of the emergency variance, the Air Pollution Control Officer shall recommend whether an emergency variance, should be granted, and the owner or operator of the source shall be entitled to present testimony and evidence. The burden shall be on the owner or operator to establish that a breakdown condition exists. Thereafter, the Chairperson or other designated member(s) may, without notice or public hearing, grant or deny an emergency variance. Reasonable conditions may be included in the variance. The Chairperson or other designated member(s) shall, within ten working days, issue a written order confirming the decision, with appropriate findings. The fee required by Rule 42 shall be paid within 5 days of granting or denying the variance.

(3)(2) No emergency variance for a breakdown condition shall be granted unless the Chairperson or other designated member(s) determines that:

- (i) The occurrence constitutes a breakdown condition,
- (ii) continued operation is not likely to create an immediate threat or hazard to public health or safety, and
- (iii) the requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met, and
- (iv) the continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national or California Ambient Air Quality Standard.

(4)(3) At any time after an emergency variance for a breakdown condition has been granted, the Air Pollution Control Officer may request that the Chairperson or designated member(s) reconsider and revoke, modify or further condition the variance if the Air Pollution Control Officer has good cause to believe that:

- (i) continued operation is likely to create an immediate threat or hazard to public health or safety;
- (ii) the owner or operator is not complying with all applicable conditions of the variance;
- (iii) a breakdown condition no longer exists; or
- (iv) final compliance is not being accomplished as expeditiously as practicable.

~~The procedures set forth in Subsection (d)(2) shall govern any further proceedings conducted under this subsection.~~

~~(5)~~(4) An emergency variance for a breakdown condition shall remain in effect only for as long as necessary to repair or remedy the breakdown conditions, but in no event after a properly noticed hearing to consider an interim or 90-day variance has been held, or 30 days from the date of the subject occurrence, whichever is sooner.

IT IS FURTHER RESOLVED AND ORDERED that the subject amendments to Rules 97 & 98 of Regulation V, shall take effect upon adoption.

PASSED AND ADOPTED by the Air Pollution Control Board of the San Diego County Air Pollution Control District, State of California, this _____ day of _____, 1991 by the following votes:

AYES:
NOES:
ABSENT:

**RULE 97 - EMERGENCY VARIANCE AND
RULE 98 - BREAKDOWN CONDITIONS: EMERGENCY VARIANCE**

WORKSHOP REPORT

A workshop notice was mailed to all District permit holders, all Economic Development Corporations, all Chambers of Commerce, the Environmental Protection Agency (EPA), the California Air Resources Board (ARB) and other interested parties.

The workshop held on November 7, 1990, was attended by 10 people. District responses to comments from the workshop are as follows:

WORKSHOP COMMENT

Why are these changes being proposed?

DISTRICT RESPONSE

The changes to Rule 97 will delete language referring to Rules 76, 77, and 78. These rules are no longer in effect. The changes to Rule 98(d)(2) reflect current procedures for handling Emergency Variances.

WORKSHOP COMMENT

What is being done now regarding Emergency Variance Hearings?

DISTRICT RESPONSE

Currently, the Clerk of the Hearing Board, not the District, handles the coordination and scheduling of Emergency Variance Hearings. Revisions to Rule 98 will require very minor revisions to the language in the Hearing Board Rules and Regulations. The District is working on that matter with the Clerk of the Board.

WORKSHOP COMMENT

What is happening with the revisions to the Hearing Board Procedures?

DISTRICT RESPONSE

These procedures are completely separate from the District Rules and Regulations and are under discussion and review by the Hearing Board members. Sources can submit their comments to the Clerk of the Hearing Board.

WORKSHOP COMMENTS

What happens to a source in a breakdown situation until the variance hearing can be scheduled?

DISTRICT RESPONSE

The District has the option of deferring enforcement action as determined on a case-by-case basis. If the variance is not granted, enforcement action may be taken.

WORKSHOP COMMENTS

What happens when the breakdown condition lasts less than 24 hours?

DISTRICT RESPONSE

The breakdown would be covered under the breakdown condition provisions in Rule 98(c).

WORKSHOP COMMENTS

The proposed revisions are not clear. It is suggested that the words "for a breakdown condition" be added to Rule 98(d), (d)(1), (d)(2), and (d)(3).

DISTRICT RESPONSE

Language will be added to clarify these subsections.

WORKSHOP COMMENTS

The last sentence in Subsection (d)(3) should be deleted as it refers to the original (d)(2) which has been deleted and replaced with a new subsection to which (d)(3) does not apply.

DISTRICT RESPONSE

The last sentence in Subsection (d)(2) has been deleted.

WORKSHOP COMMENTS

The reference to Hearing Board procedures should be added to District Rules and Regulations.

DISTRICT RESPONSE

The District does not believe it is necessary to include this reference.