



# Variations

## What is a variance?

A variance is an administrative order granting temporary relief from the provisions of an air quality regulation. A variance allows operation while steps are being taken to come into compliance with the regulation in question. Applications for variances from air quality regulations are heard by the Air Pollution Control District's Hearing Board.

## What is the Hearing Board?

The Hearing Board is established by State law and consists of five members: an attorney, a professional engineer, a medical professional, and two members of the public.

While the Air Pollution Control Board enacts regulations that apply to all persons in a given industry, the Hearing Board acts more like a court that rules on particular circumstances that only affect an individual business. State law also allows a manufacturer to obtain a variance for a particular product.

In a variance case, the Hearing Board will hear all relevant information concerning the subject of the variance application, will weigh the evidence, and will make a decision on whether a variance from the regulation in question should be granted under the circumstances of the case.

## How can I apply for a variance?

The first step is to submit a petition (application) 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) 531-5777 (option 0). Information packages are available at the Clerk's office that include variance application forms, a copy of the Hearing Board Policies and Procedures, the findings necessary under State law to grant a variance, and the filing fees. Current forms may also be downloaded from the District's website at [www.sdapcd.org](http://www.sdapcd.org) (follow the menus to Compliance/Variations & The Hearing Board/Petition Forms).

The required variance filing fee helps offset the costs of Hearing Board operations. The filing fee depends on the type of variance sought. Upon receipt of the variance application form, the Clerk's office will schedule the time and date of the hearing.

Prior to a hearing for a variance requesting relief for more than 90 days, the Hearing Board is required by law to give 30 days public notice of the hearing. In cases involving variance requests for less than 90 days, only 10 days public notice is required (except for emergency variations).

## What types of variations are available?

There are five types of variations:

- 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. An interim variance should be requested at the same time a regular variance is requested.
- 4) A *regular variance* is appropriate when a facility needs more than 90 days to comply with air quality regulations. Such a variance may extend beyond a year if it includes a specific detailed schedule that will eventually result in compliance.

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- 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 regulations. Such a variance may extend beyond a year if it includes a specific detailed schedule that will eventually result in compliance.

### **What are the grounds for granting a variance?**

In determining the outcome of a case, the Hearing Board considers the law, the rule or regulation that has been violated, the severity of the violations, technical problems, and the advantages and disadvantages to the public and the business involved should a variance be granted.

To grant a variance, the Hearing Board must decide that all of the following apply:

- The facility and/or equipment violates or will violate District air quality regulations, rules, or orders.
- Conditions causing the violation were beyond the facility's reasonable control.
- Shutting down the equipment or business would not be reasonable under the circumstances.
- The reduction in air pollution resulting from a shutdown would not justify closing the facility.
- Curtailing operations at the facility has been considered.
- Emissions will be reduced to the maximum extent feasible during the variance period.
- Emission levels will be monitored and reported during the variance period.

Variances cannot be granted for violations of the public nuisance law. This law prohibits emissions that would cause odor or other nuisances in the community, threats to public health, or damage to property.

Variances also cannot be granted from the requirement to obtain an authority to construct. Variances may be granted from the State's visible emissions law (section 41701) but not from other sections of the California Health & Safety Code.

### **What happens at a hearing?**

Variance hearings resemble courtroom proceedings. Both sides present evidence through witnesses who are placed under oath. Witnesses may be cross-examined by the opposing side and questioned by Hearing Board members. Persons requesting a variance are not usually represented by an attorney, although it is an option.

The Hearing Board attempts to determine why and how the rule is being violated, whether the violation could have been prevented, what is being done to correct the violation, when correction will be completed, what will happen to the business if it is forced to shut down, and how the violation affects the public.

District staff may argue for or against the granting of a variance or suggest certain limiting conditions. The public may present any information important to the case.

### **How can I prepare for a hearing?**

An attorney may represent a business at the hearing, although it is not common. However, it is important that whoever represents the business know the rules or regulations that have been violated, know what the excess emissions are, and have a plan to come into compliance.

If technical experts have been employed to help resolve the problem, they should attend the hearing.

### **Who can I call for further help?**

For help with the technical aspects of the rule or regulation, contact the District's Compliance Division at (858) 586-2650. To make an appointment with a District engineer to discuss specific equipment requirements, call (858) 586-2600.

This fact sheet provides general information about variances. For more specific questions, contact the District's Compliance Division at (858) 586-2650 or the Small Business Assistance program at (858) 586-2656.