

**STATE REQUIREMENTS FOR
VARIANCES
AND
ABATEMENT ORDERS**

Air Resources Board

Nov-15

What is a Variance?

- An order, granted by the Air District Hearing Board, that grants temporary relief from certain District rules and/or state laws.
- Requirements for obtaining a variance are detailed in state law and local district rules.

Prohibited Variances - §42350

- requirement to obtain permit to build, erect, alter or replace regulated equipment
 - ✓ Authority to Construct
- requirement of Title V source to obtain permit to operate
- requirement of district emission capped trading program
- creates a nuisance - §42353

Nov-15

Criteria

- any person can apply
- is, or will be, in violation
- file a "petition"
- hearing is held
- petitioner prove findings to the HB
- petitioner present plan for regaining compliance

Nov-15

Types of Variance

LONG TERM > 90 days

- Regular
- 90 day (short)
- Interim
- Emergency
- Modifications
 - change of order requirements
 - extension of final compliance date
- Int. Authorization
- Product

Nov-15

Regular Variance - §40826 & 42352

- 15-day public noticing
 - ✓ APCO, applicant, ARB, EPA, all districts within air basin
 - ✓ public notice = must be published
- six findings
- full board (quorum of 3)
- up to 1 Year
 - ✓ increments of progress (IOPs) required if over one year

Nov-15

** SMALL DISTRICTS **

SUBJECT TO BROWN ACT

90-Day Variance - §40825 & 42352
(short variance)

- ☐ 10-day noticing
 - ✓ APCO, Applicant, ARB, EPA, all districts within air basin
- ☐ six findings
- ☐ single member hearing
- ☐ 90-day maximum

TOTAL UNTIL
H.B. DECISION

Nov-15

CANNOT BE ALTERNATE

Interim Variance - §40824 & 42351

- ☐ has petitioned for noticed hearing
 - ✓ (see 42351.a)
- ☐ reasonable notice - (40826)
- ☐ good cause finding **ONLY**
- ☐ single member hearing
- ☐ granted until noticed hearing decision
 - ✓ 90 days max - ends as of date of decision of noticed hearing
 - ✓ no Interims can be granted after regular/ext hearing or to avoid 40826 requirements

Nov-15

Emergency Variance - §42359.5

- ☐ no notice or hearing required
- ☐ 30 day max
- ☐ good cause finding **ONLY**
- ☐ single member hearing
 - ✓ Alternates cannot grant a decision for any single member hearings

Nov-15

HANDOUT

Modification of FCD - §40826 & 42357
(Extension)

- 90-Day - up to 90-days combined maximum
- regular - IOPs required if combined variance relief totals over 1 year
- 15-day public noticing
 - ✓ Must be published
- good cause justification
- full board (quorum of 3)

Nov-15

FINAL COMPLIANCE DATE

Modification of IOPs - §40825 & 42357
Increments of Progress

- 10-day noticing
- single member hearing
- good cause justification

Nov-15

INCREMENTS OF PROGRESS

Interim Authorization - §42351.5

- reasonable notice
- granted for 30 day max
 - ✓ pending noticed hearing on the Mod of IOPs
- one time only
 - ✓ no extensions
- single member hearing
 - ✓ rehearing by full board if any public objection
- good cause justification

Nov-15

VERY RARE

Product Variance - §42365 & 42368

- ☐ attached to product
- ☐ 5 required findings
 - ✓ due diligence
- ☐ 1-year - §42372
- ☐ extensions
 - ✓ up to 2 year max
 - ✓ must include IOPs
 - ✓ good cause and proof of compliance with required findings
- ☐ no emergencies
- ☐ interim and short variances ok

Nov-15

Abatement Orders

§40823 & 42450 et. seq

☐ Recurring Compliance Problems

- ✓ 10-day noticing
- ✓ form of injunction
- ✓ refrain from particular act
- ✓ conditional or strict cease and desist

Nov-15

NO ENFORCEMENT RELIEF

DISTRICT & HEARING BOARDS
CAN ISSUE

District Rules

- ☐ There may be additional requirements or prohibitions
- ☐ The variance becomes the temporary law for the facility
- ☐ Any violations of the variance are be subject to enforcement
- ☐ Variances do not protect from federal enforcement.

Nov-15

Order Must Contain Reasons

- ▣ Every decision of a hearing board must give reasons for the decision, including denials (40862)
 - Clarify the good cause justification

** MUST BE WRITTEN*

QUESTIONS

Vickie McGrath
vmcgrath@arb.ca.gov
(916) 324-7343

Nov-15
