



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

Variance Process

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Bay Area Clean Water Agencies (BACWA) Meeting

Presentation Outline

- Definition of a Variance
- When to Consider a Variance
- Types of Variances
- Variance Criteria
- Process Steps
- Compliance Agreements
- Q&A

What is a Variance?

- An administrative order granting temporary relief from the provisions of a Air District regulation(s)
- Allows a facility to continue to operate while it takes steps to come into compliance with the regulation(s) in question
- Can only be granted by the Air District's Hearing Board, not by Air District staff
- Cannot be granted for violations of the State's public nuisance law.

When to Consider a Variance

- If a facility is out of compliance due to extenuating circumstances , or
- The facility knows it will be out of compliance in the future, and
- The facility has already fully explored and exhausted the possibility of a compliance or enforcement agreement

Most Common Types of Variances

- **Emergency Variance**: If a violation occurs without warning (such as a sudden equipment breakdown, a power failure or an accidental fire). May be granted for a period up to 30 days.
- **Short-term Variance**: May be granted if compliance can be achieved within 90 days.
- **Interim Variance**: May be sought in conjunction with a regular variance in order to commence or continue operation pending the hearing on the regular variance. It is valid up to 90 days or until the decision on the regular variance, whichever comes first.
- **Regular or (long-term) Variance**: exceeds 90 days and may not be issued for a period exceeding one year unless the variance includes a schedule of increments of progress with a final compliance date.

Variance Criteria

The Hearing Board must make the following six findings before a variance can be granted:

1. The applicant is or will be in violation.
2. That due to conditions beyond the reasonable control of applicant, requiring compliance, would result in either:
 - A) an arbitrary or unreasonable taking of property, or
 - B) the practical closing or elimination of a lawful business.
3. That the closing or taking would be without a corresponding benefit in reducing air contaminants.

Variance Criteria (cont'd)

4. That the applicant has given consideration to curtailing operations of the source in lieu of a variance.
5. That during the variance period the applicant will reduce excess emissions to the maximum extent feasible.
6. That during the variance period the applicant will monitor or quantify emissions if requested by the District.

Variance Process Steps

- Properly complete variance application
- Submit completed application and applicable Hearing Board Fees to Air District's Clerk of the Board
- Hearing date is set
- Notice of Hearing date, time and location mailed to applicant
- Hearing - applicant should come prepared
- Hearing Board decision – variance granted or denied
- If granted, applicant must comply with all conditions

Compliance (Enforcement) Agreements

- Remedy pursued when the Air District decides to exercise its enforcement discretion provided by State law
- May be suggested by Air District staff or initiated by a facility in response to enforcement action (NOV issuance)
- Can also be initiated anytime a facility anticipates a compliance problem
- Often used in a situation where variance findings can't be made even though there are good grounds otherwise for relief (i.e., a variance can't be granted)

Compliance Agreements (cont'd)

- May also be used when a variance is appropriate but you want to streamline the process
- Drafted by Air District Legal Division – input from Engineering and C&E staff
- Typically include monetary civil penalties, facility compliance obligations (such as operational limits) and a term of agreement – these are enforceable
- Agreements are a more expedient, efficient, resourceful and flexible tool compared to variances



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Questions?

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