

LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT

**RULE 5:6 VARIANCES OTHER THAN EMERGENCY VARIANCES**

**Adopted 10/01/1971, Amended 03/13/2012**

**1. VARIANCES OTHER THAN EMERGENCY VARIANCES:**

**Notwithstanding the above, the following specific items apply to Variances other than Emergency Variances.**

**1.1 Specific Contents of Petition: In addition to the requirements set forth in Section 3.2 of this Rule, petitions for variances shall state briefly:**

- 1.1.1 The Section, Rule or Order that will be violated if a variance is not granted.
- 1.1.2 That due to conditions beyond the reasonable control of the petitioner, requiring compliance with the Sections, Rule, or Order will result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of lawful business.
- 1.1.3 The facts showing that the closing or taking will be without corresponding benefit in reducing air contaminants.
- 1.1.4 The consideration given to curtailing operations in lieu of obtaining a variance.
- 1.1.5 The final compliance date and increments of progress if the requested variance period exceeds one year, or if requested by the APCO.
- 1.1.6 The conditions associated with the individual increments of progress; including, but not limited to, increments of progress schedules, operating parameters, and reporting requirements.
- 1.1.7 Estimation of excess emissions and proposed actions which will reduce excess emissions to the maximum extent feasible during the variance period.
- 1.1.8 The advantages and disadvantages to the residents of the district resulting from requiring compliance or resulting from granting a variance.
- 1.1.9 Procedures, methods, and equipment used to quantify emission levels from the source during the variance period, subject to approval and reporting requirements of the APCO.
- 1.1.10 Whether or not operations under such variance, if granted, will constitute a nuisance.
- 1.1.11 Facts demonstrating past diligence in trying to comply with applicable standards.

**2. Notice of Hearing**

**2.1 Regular Variance Petitions Longer than 90 Days and Final Compliance Date Modifications**

- 2.1.1 Notice shall be given to all neighboring districts, CARB, the U.S. Environmental Protection Agency (EPA), and every other person requesting such notice, not less than 15 days prior to such hearing.

- 2.1.2 The notice shall also be published in at least one daily newspaper of general circulation not less than 15 days prior to such hearing.
  - 2.2 **90-Day Variance and Increments of Progress Modifications:** Notice shall be given to all neighboring districts, CARB, and EPA not less than 10 days prior to such hearing.
  - 2.3 **Interim Variance and Interim Authorization to Modify Increments of Progress:** Reasonable notice shall be given prior to such hearing. The DISTRICT defines reasonable notice as a written notice displayed in a place accessible to the public on DISTRICT premises at least three days (3) prior to the public hearing.
  - 2.4 **All Other Hearings:** Notice shall be published in at least one daily newspaper of general circulation not less than 10 days prior to such hearing.
3. **Determination of Variance Findings:** No variance shall be granted unless the Hearing Board makes all of the following findings:
  - 3.1 That the petitioner for a variance is, or will be, in violation of HSC Section 40701, or any Rule, Regulation or Order of the DISTRICT.
  - 3.2 That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either:
    - 3.2.1 An arbitrary or unreasonable taking of property, or
    - 3.2.2 The practical closing or elimination of a lawful business. In making those findings where the petitioner is a public agency, the Hearing Board shall consider whether or not requiring immediate compliance would impose unreasonable burden upon an essential public service. For purposes of this paragraph, an essential public service means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency (HSC Section 42352(a)(2)).
  - 3.3 That closing or taking required by Section 3.2 above would be without corresponding benefit to air quality.
  - 3.4 That the applicant has given consideration to curtailing operations in lieu of obtaining a variance.
  - 3.5 During the period that the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible during the variance period.
  - 3.6 The applicant will monitor or otherwise quantify the emission levels from the source during the variance period, and report these emission levels to the DISTRICT pursuant to a schedule established by the DISTRICT, if requested to do so by the DISTRICT.
  - 3.7 As used in this Section, a public agency means any State agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision (HSC Section 42352).
  - 3.8 That an effective variance period has been specified including:
    - 3.8.1 Initial effective date,
    - 3.8.2 final compliance date, and
    - 3.8.3 Schedule of increments of progress for variance periods exceeding one year, and, if requested by the APCO at the discretion of the

Hearing Board, variance periods less than one year. The Hearing Board may also impose reporting requirements showing compliance with a schedule of increments of progress, or compliance with an emissions curtailment or reporting plan.

- 3.9 That the Applicant agrees to post a bond, if required by the Hearing Board as a condition of the variance, to assure performance of any construction, alteration, repair, or other work required by the variance. The bond may provide that, if failure to perform the required work by the agreed date, the bond shall be forfeited as provided in HSC Section 42355.