

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

RULE 123 - FINDINGS, VARIANCE OR ABATEMENT ORDER

(Adopted 8/17/76, Revised 11/21/78, 6/27/89, 3/9/93, xx/xx/10)

- A. No variance shall be granted unless the Hearing Board makes all of the following findings:
1. That the petitioner for a variance is, or will be, in violation of Section 41701 of the Health and Safety Code or of any rule, regulation or order of the District. (Reference Health and Safety Code Section 42352 (a) (1)).
 2. That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. (Reference Health and Safety Code Section 42352 (a) (2)).
 - a. The Hearing Board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in Subsection A.2 of this rule, shall consider, in addition to any other relevant factors both of the following:
 - 1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the Hearing Board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the Hearing Board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.
 - 2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the Hearing Board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.
 - b. If the petitioner is a small business, as defined in Section C, and emits 10 tons or less per year of air contaminants, the Hearing Board shall consider the factors specified in Subsection A.2.a of this rule in the following manner:
 - 1) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for

any claimed ignorance of the requirement from which a variance is sought.

- 2) In determining the extent to which the petitioner took reasonable actions to comply, the Hearing Board shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.
- 3) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the Hearing Board shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

(Reference Health and Safety Code Section 42352.5).

- c. In making those findings where the petitioner is a public agency, the Hearing Board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. (Reference Health and Safety Code Section 42352 (a) (2)).
3. That the closing or taking would be without a corresponding benefit in reducing air contaminants. (Reference Health and Safety Code Section 42352 (a) (3)).
4. That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance. (Reference Health and Safety Code Section 42352 (a) (4)).
5. That during the period the variance is in effect, the applicant will reduce excess emissions to the maximum extent feasible. (Reference Health and Safety Code Section 42352 (a) (5)).
6. That during the period the variance is in effect, the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emission levels to the District pursuant to a schedule established by the District. (Reference Health and Safety Code Section 42352 (a) (6)).
7. That a nuisance as specified in Rule 51 will not occur. (Reference Health and Safety Code Section 42353).
8. ~~That continued operation is not likely to create an immediate threat or hazard to public health or safety.~~

98. If the petition is for an emergency variance, that the occurrence constitutes good cause, including, but not limited to, a breakdown condition as defined by Rule 32 of these Rules. (Reference Health and Safety Code section 42359.5 (b)).

B. No order for abatement shall be granted unless the Hearing Board ~~makes all of the following findings~~ finds:

1. ~~T~~ that the respondent is in violation of Section 41700 or 41701 of the Health and Safety Code or of any rule, regulation or order of the District. (Reference Health and Safety Code Section 42451).

2. ~~That the order of abatement will not constitute a taking of property without due process of law.~~

3. ~~That if the order for abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.~~

C. Definitions

For the purpose of this rule, the following definitions apply:

1. "Essential public service": 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. (Reference Health and Safety Code Section 42352 (a) (2)).

2. "Public agency": Any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision. (Reference Health and Safety Code Section 42352 (b)).

3. "Small business": As defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business. (Reference Health and Safety Code Section 42352.5 (b) (1)).