

**SAN JOAQUIN VALLEY UNIFIED
AIR POLLUTION CONTROL DISTRICT
COMPLIANCE DEPARTMENT**

COM 2320

APPROVED: John Stagnaro Date: March 21, 2024

Director of Compliance

TITLE **VARIANCE PROGRAM GUIDELINES**

SUBJECT **POLICY AND PROCEDURAL GUIDELINES FOR REGIONAL HEARING BOARDS,
VARIANCES, AND REGIONAL HEARING BOARD MEETINGS**

OBJECTIVE

To establish the San Joaquin Valley Unified Air Pollution Control District (District) policy and procedural guidelines for variance petitions to be heard before the regional Hearing Boards of the District.

POLICY STATEMENT

Chapter 8 of Part 3 and Chapter 4 of Part 4 of Division 26 of the California Health and Safety Code (CH&SC) contain provisions that require the District to establish one or more hearing boards and additional provisions that deal with the specific functions of said hearing board(s). Furthermore, District Regulation V contains 20 rules, which implement, interpret, and make specific the aforementioned provisions of the CH&SC. The Compliance Department oversees the variance program to ensure that petitions to appear before the regional Hearing Boards adhere to the applicable provisions of the CH&SC and District Regulation V.

REGIONAL HEARING BOARDS

In accordance with the CH&SC Section 40600, the District is required to have three regional Hearing Boards:

- Northern Region: San Joaquin County, Stanislaus County, and Merced County
- Central Region: Madera County, Fresno County, and Kings County
- Southern Region: Tulare County, and Valley Portion of Kern County

Regional Hearing Board Membership

To be eligible to serve on one of the District’s regional Hearing Boards, members must primarily reside within the boundary of the regional Hearing Board they serve. Should an appointed Hearing Board

member no longer primarily reside within the boundaries of their regional Hearing Board, they are no longer eligible to serve on their Hearing Board and must notify the District immediately.

Regional Hearing Board Composition

In accordance with CH&SC Section 40801, regional Hearing Boards will be composed of five primary members:

- One member admitted to the practice of law in this state;
- One member who is a professional engineer registered as such pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code);
- One member from the medical profession whose specialized skills, training, or interests are in the fields of environmental medicine, community medicine, or occupational/toxicologic medicine; and
- Two public members

In addition to the primary member, the District strives to recruit and retain an alternate member for each of the listed positions.

Hearing Board Member Recruitment Process and Hearing Board Terms

The District facilitates an application and selection process to appoint regional Hearing Board members. This process includes making applications available for interested residents of the Valley to access, advertising vacancies to solicit qualified applicants, including informing both the District's Citizens Advisory Committee (CAC) and Environmental Justice Advisory Group, and when applicable, sending notifications to professional groups relevant to any openings on the Hearing Board. The District's CAC creates a subcommittee to evaluate applications received, interview qualified applicants, and make recommendations to the District's Governing Board for consideration, who ultimately make Regional Hearing Board Member appointments. Appointments are for three-year terms, and members who remain qualified are eligible to be reappointed.

VARIANCES

Filing of Variance Petitions

Per CH&SC 42350 –Any person may apply to the hearing board for a variance from Section 41701 or from the rules and regulations of the district. Requests for a hearing shall be initiated by the filing of an original petition with the Clerk of the Hearing Boards and the payment of the fee as provided for in District Rule 3030 – *Hearing Board Fees*. Service of the petition may be made in person or by mail and the petition shall be deemed filed on the day dated stamped by the District. In the case of emergency variances, the District will also accept service of the petition by email or facsimile and the petition shall be deemed filed on the day of receipt of the emailed or faxed petition. The District normally requires petitioners to submit the appropriate fee before the District begins processing the request, however, in the case of emergency variances, petitioners shall be allowed to submit the fee up to two weeks after filing the petition. A Compliance Department representative shall instruct the petitioner to note the variance docket number on the check.

A petition may be signed and/or filed by a third party provided that that the petition sets forth the signing party's authority to sign and/or the third party provides the District with proof of service on the real party in interest.

A petition filed by or on behalf of a petitioner that is subject to District Rule 2520 – *Federally Mandated Operating Permits*, shall submit along with said petition a certification of truth, accuracy, and completeness signed by a responsible official as defined within Rule 2520.

The Clerk of the Hearing Boards will not accept for filing any petition which does not comply with the rules contained within District Regulation V as they relate to the form, filing, and service of petitions, unless the Chairperson or any two members of the Hearing Board direct otherwise and confirm such direction in writing.

After a petition is filed with the Clerk of the Hearing Boards, a Compliance Department representative will establish a docket number to identify said petition. The docket number contains a regional designator (C, N, or S), the year in which the petition was received, a consecutive positive integer beginning with 01 each year, and an alphanumeric character(s) indicating the type of request. When assigning a docket number the following convention must be utilized:

R-YR-##T	where R	=	regional designator
	YR	=	two digit year
	##	=	consecutive positive integer
	T	=	alphanumeric character(s)

T shall be assigned as follows:

- i = interim
- S = short
- R = regular
- E = emergency
- X = extension
- P = product
- A = appeal (note that A is replaced with a "Z" in the variance database)
- M = modification

Any subsequent petitions received which pertain to the original petition will be identified with an identical docket number, except in that the alphanumeric character(s) will correspond to the new type of request. After a docket number has been assigned to a petition, an entry for said petition must be established within the Variance Tracking Database.

Contents Of Petitions

A petitioner shall complete and file the most current petition forms available on the District website or from the Clerk to the Hearing Boards, or may file a petition in another form so long as said petition complies with all the applicable requirements of District Rules 5030 – *Contents of Petitions*, 5040 – *Petitions for Variances*, and 5050 – *Compliance Schedule*.

As noted above, the Clerk of the Hearing Boards will not accept for filing any petition which does not comply with the rules contained within District Regulation V as they relate to the form of petitions, unless the Chairperson or any two members of the Hearing Board direct otherwise and confirm such direction in writing.

Distribution of Variance Notice

On or before the noticing deadline, copies of the Variance Notice must be distributed to the following persons if the notice does not require publication in a regional newspaper(s):

- Regional Hearing Board members, including alternates (mailed)
- Clerk to the Board (emailed)
- Deputy Air Pollution Control Officer (emailed)
- Asst. District Counsel (emailed)
- Director of Compliance (emailed)
- Regional Compliance Manager (emailed)
- Regional Supervisor(s) (emailed)
- Variance Coordinator (emailed)
- Supervisor of Variance Coordinator (emailed)
- USEPA (emailed)
- CARB (emailed)
- Petitioner (emailed, faxed, or mailed)
- Designated Southern & Northern Region office assistants for posting (emailed)

If the notice requires publication in a regional newspaper(s), copies of the Notice must be distributed to the following persons at least 5 business days prior to the noticing deadline:

- The persons specified in “1” through “13” above.
- Regional newspaper contacts (emailed)

Note – except for the notice to Regional newspapers, all emailed notices should be sent in protected .pdf format. The emailed notice to the Regional newspapers should be sent in unprotected Microsoft Word format, and should not contain a header or footer.

Amendments To Petitions

At any time before a petition has been publicly noticed for hearing, a petitioner may amend their petition. Subsequent to the matter being publicly noticed for hearing and at any time before the matter is submitted for decision by the Hearing Board, a petitioner may amend their petition provided that such amendment does not require issuance of a new public notice. A request by the petitioner to postpone the hearing of a matter is considered by the District to be an amendment of the petition. As such an amendment would require the issuance of a new public notice, the District will not grant requests to postpone the hearing of a matter once the matter has been publicly noticed. After the matter has been publicly noticed, a petitioner may request that the Hearing Board grant a continuance or may withdraw its petition and re-file a new petition at a later date.

Dismissal Of Petitions

The petitioner may withdraw a petition at any time before the submission of the matter to the Hearing Board without a hearing or meeting of the Hearing Board. The request for the withdrawal of a petition may be filed by a telephone call, voice mailbox message, facsimile, or email provided that an official withdrawal letter follows in person or by mail.

Continuance of a Variance

The petitioner may request that the Hearing Board grant a continuance of a hearing on a matter for a reasonable length of time. The petitioner must demonstrate to the satisfaction of the Hearing Board that good cause exists to grant such a continuance, and a stipulation signed by all interested parties must be submitted to the Hearing Board to include in the order granting such a continuance. In accordance with District Rule 5150 – *Continuances*, such stipulations may be submitted ex parte (without all parties in attendance) before the scheduled hearing, without the meeting of the Hearing Board and without prior notice.

Distribution of Hearing Board Agendas

During the week preceding the meeting of the Regional Hearing Board, copies of the agenda must be distributed, in protected PDF format to the following persons:

- Regional Hearing Board members, including alternates (Board Packet)
- Clerk to the Board (emailed & Board Packet)
- Asst. District Counsel (Board Packet)
- Director of Compliance (Board Packet)
- Regional Compliance Manager (Board Packet)
- Regional Supervisor(s) (Board Packet)
- Variance Coordinator (Board Packet)
- Supervisor of Variance Coordinator (Board Packet)
- Petitioner (emailed, faxed, or mailed with Staff Report)
- Designated Southern & Northern Region office assistants for posting (emailed)

Distribution Of Variance Staff Reports

During the week preceding the meeting of the Regional Hearing Board, copies of the staff report(s) must be distributed, in protected .pdf format to the following persons

- Regional Hearing Board members, including alternates (Board Packet)
- Clerk to the Board (Board Packet)
- Asst. District Counsel (Board Packet)
- Director of Compliance (Board Packet)
- Regional Compliance Manager (Board Packet)
- Regional Supervisor(s) (Board Packet)
- Variance Coordinator (Board Packet)
- Supervisor of Variance Coordinator (Board Packet)
- Petitioner (emailed, faxed, or mailed with Agenda)

Distribution Of Hearing Board Packets

During the week preceding the meeting of the Regional Hearing Board, copies of the Hearing Board Packet, which includes the agenda, the minutes of the previous meeting, and the staff reports and petitions for all items on docket, must be distributed to the following persons:

- Regional Hearing Board members, including alternates (mailed)
- Clerk to the Board (intra-office)
- Asst. District Counsel (intra-office)
- Director of Compliance (intra-office)
- Regional Compliance Manager (mailed)
- Regional Supervisor(s) (mailed)
- Variance Coordinator (intra-office)
- Supervisor of Variance Coordinator (intra-office)

REQUIREMENTS FOR VARIANCES AND PERMIT APPEALS

No variance shall be granted unless the Hearing Board establishes that certain criteria prescribed within CH&SC and District Regulation V is met at the time of the hearing. This criterion differs for different types of variances as described below.

The District will support variance requests that District management determines to meet all of the applicable requirements for the specific variance type as presented below. Conversely, if District management determines that one or more of the applicable requirements cannot be met, the District will oppose the variance request. It should be noted that the burden of proof in variance matters appearing before the Hearing Board is on the petitioner.

Ultimately, the Hearing Board makes the determination on whether the requirements necessary to grant a variance can be made, and may or may not choose to follow the recommendations of the District in such matters.

Should the Hearing Board grant a variance without meeting all of the applicable requirements for the specific variance type, the California Air Resources Board (CARB) may revoke or modify such a variance upon holding a hearing on the matter pursuant to Section 42363 of the CH&SC.

Moreover, should the Hearing Board grant a variance without meeting all of the applicable requirements for the specific variance type, the District may request judicial review of the decision granting such a variance by filing a petition for a writ of mandate in accordance with Section 40864 of the CH&SC.

Emergency Variances

In the case of an emergency variance, the chair of the Hearing Board, or any other primary member designated thereby, must determine that good cause is present to grant such a variance in accordance with Section 42359.5 of the CH&SC. Additionally, in accordance with District Rule 5200 – *Emergency Variance*, the Hearing Board must make the six prerequisite findings set forth in Section 42352 of the CH&SC. Considerations in determining whether the petitioner has presented sufficient evidence to allow the Hearing Board member to make the findings is presented in Section 42352.5 of the CH&SC as detailed below:

The chair of the Hearing Board, or any other primary member of the Hearing Board designated thereby, may issue, without notice of the hearing, an emergency variance to a petitioner.

An emergency variance is appropriate in circumstances where:

- Good cause exists to justify the holding of a hearing on an emergency variance petition in the absence of notice to the public; and
- As per District Rule 5200, the six prerequisite findings set forth in Section 42352 of the CH&SC can be made.

An emergency variance is not appropriate in circumstances where said variance is being sought to avoid the notice and hearing requirements of Section 40824 or 43251 of the CH&SC.

The “good cause” determination shall be based on evidence presented to demonstrate that:

- The petitioner is in violation in of Section 41701 of the CH&SC, or of any rule, regulation or order of the District, or that such violation is imminent;
- The circumstances leading to the violation could not reasonably have been avoided by the petitioner, or anticipated in sufficient time to provide for public notice of the variance hearing; and
- That the petitioner exercised diligence in petitioning for the emergency variance, which shall mean that the petitioner filed a variance petition as soon as feasible after the time that the petitioner knew, or should have known, that a variance would, more likely than not, be necessary.

Interim Variances

In the case of an interim variance, the Hearing Board must determine that good cause is present to grant such a variance in accordance with Section 42351 of the CH&SC. A detailed explanation of the good cause determination as it pertains to interim variances is explained in further detail later in this policy.

The Hearing Board may issue, with reasonable notice of the hearing upon the District and the petitioner, an interim variance to any petitioner who has submitted a petition for a short or regular variance and who desires to commence or continue operation pending the decision of the Hearing Board on the petition for the short or regular variance.

An interim variance is appropriate in circumstances where:

- Good cause exists to justify the holding of a hearing on an interim variance petition in the absence of notice to the public; and
- The petitioner has also petitioned for a short or regular variance.

An interim variance is not appropriate in circumstances where:

- The Hearing Board has previously held a hearing in accordance with the requirements of Section 40826 of the CH&SC (i.e., the Hearing Board previously held a hearing for a regular variance); or
- The interim variance is being sought to avoid the notice and hearing requirements of Section 40826 of the CH&SC.

The “good cause” determination shall be based on evidence presented to demonstrate that:

- The petitioner is in violation of Section 41701 of the CH&SC, or of any rule, regulation or order of the District, or that such violation is imminent;
- There is some certainty that the six prerequisite findings set forth in Section 42352 of the CH&SC can be made during the subsequent hearing for a short or regular variance;
- The circumstances leading to the violation could not reasonably have been avoided by the petitioner, or anticipated in sufficient time to provide for public notice of the variance hearing; and
- That the petitioner exercised diligence in petitioning for the interim variance, which shall mean that the petitioner filed a variance petition as soon as feasible after the time that the petitioner knew, or should have known, that a variance would, more likely than not, be necessary.

Short and Regular Variances

In the case of a short or regular variance, the Hearing Board must make the six prerequisite findings set forth in Section 42352 of the CH&SC. Considerations in determining whether the petitioner has presented sufficient evidence to allow the Hearing Board to make the findings is presented in Section 42352.5 of the CH&SC.

In addition to the above specified requirements, the Hearing Board, or Hearing Board member as applicable, must also make the two implicit findings set forth in Sections 42353 and 42362 of the CH&SC, respectively, in order to grant any variance other than a product variance. Section 42353 requires the Hearing Board prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the District Board and that operation under the variance must not result in a nuisance, and Section 42362 requires that the variance require compliance with the emission standard(s) or schedule of increments of progress as expeditiously as practicable.

Product Variances

In the case of a product variance, the Hearing Board must make the five prerequisite findings set forth in Section 42368 of the CH&SC. Additionally, the Hearing Board must also make the two implicit finding set forth in Sections 42362 and 42369 of the CH&SC, respectively. Section 42362 requires that the product variance require compliance with the emission standard(s) or schedule of increments of progress as expeditiously as practicable, and Section 42369 requires that use of the product under the product variance must not result in a nuisance and prohibits an emergency product variance from being granted.

Permit Expediting

In the case of a variance requested pursuant to CH&SC Section 42301.3(g), the only requirement the Hearing Board must find is that the delay is not due to the lack of due diligence on the part of the applicant in the permit process, and that the delay will result in the inability of the applicant to legally comply with the requirement or schedule that requires the installation and operation of air pollution control equipment or achievement of a more stringent emission standard or limitation. The findings required by paragraphs (3), (4), and (5) of subdivision (a) of Section 42352 are not required to be made by the Hearing Board.

Permit Appeal

Petitions to appeal the issuance of a permit before the Hearing Board pursuant to CH&SC Sections 42302 or 42302.1 must be filed within 30 days of the action specified in the applicable Section. Additionally, petitions seeking to appeal the denial or granting of an Authority to Construct or Permit to Operate must comply with the requirements of District Rule 5060, and pay applicable fees in accordance with District Rule 3030. Based on the evidence provided, the Hearing Board shall hold a public hearing and render a decision on whether the permit was properly issued.

PROHIBITED VARIANCES

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any equipment until a Permit to Operate for such equipment has been granted or denied by the District – i.e., a petitioner cannot be granted a variance from the requirement to obtain a permit to allow for the operation or use of any piece or pieces of equipment. Moreover, no variance shall be granted from the requirement for an Authority to Construct (ATC) to build, erect, alter, or replace any piece or pieces of equipment. However, these provisions do not preclude the Hearing Board from granting a variance from the requirements prescribed within an ATC, only from requirement to obtain a permit prior to operating or an ATC prior to building, erecting, altering, or replacing a piece of equipment requiring such a permit or ATC (except for variances requested pursuant to CH&SC Section 42301.3(g) described above). An example of a prohibited variance would be a request to operate permitted stationary emergency generators during a non-emergency or non-maintenance event for more hours than their permit allows. Lastly, no variance shall be granted if the operation, under the variance, will result in a nuisance.

In the case of a product variance, no product variance shall be granted if the use of the product under the variance will result in a nuisance. Additionally, no emergency product variance shall be granted.

EFFECTIVE DATE OF VARIANCE

The Hearing Board shall announce its decision in writing, and copies of the decision shall be immediately filed with the Clerk of the Hearing Boards and mailed to all of the interested parties, including, but not limited to, the petitioner, the CARB, and the US Environmental Protection Agency (USEPA). The decision shall become effective upon filing, unless the Hearing Board orders otherwise. It should be noted that although the Hearing Board is given latitude in establishing the effective date of the decision, said date cannot legally be backdated to before the date that a petition to appear before the Hearing Board is filed.

Except in the case of an emergency variance, the District will support the effective date of a variance being backdated to the date that a petition to appear before the Hearing Board was filed so long as the following conditions are met:

- No excess emissions are expected to occur as a result of the variance,
- The monitoring and/or record keeping requirements established within the applicable District rule(s) or permit conditions(s) are adequate to meet the requirements prescribed within the prerequisite findings,
- The violation of District rules and/or permit conditions is imminent and unavoidable (i.e., the petitioner is not willfully and intentionally placing themselves in violation while awaiting the scheduled meeting of the Hearing Board), and
- The petitioner for variance took timely actions to comply or seek a variance. Additionally, the District may support such requests that do not meet the above conditions on a case-by-case basis as determined by District management.

In the case of an emergency variance, the District will support the effective date of a variance being backdated to the date that a petition to appear before the Hearing Board was filed so long as the petitioner makes itself available for the earliest possible hearing on the petition for emergency variance.

Although the District will support the effective date of a variance being backdated to the date that a petition to appear before the Hearing Board was filed if the above provisions are met, the District will not support variance relief that is entirely retroactive to the date of hearing. That is, the petitioner for variance must still be in violation at the time of hearing in order for the prerequisite findings to be made by the Hearing Board and for a variance to be granted.

PERIOD OF VARIANCE

Any order granting a variance shall specify the time during which such order shall be effective and shall set a final compliance date. The order may establish a specific time period within a larger window of time during which the variance will begin and end; however, said window must not exceed the effective time period allowed by CH&SC for the specific type of variance.

In the case of an order granting an emergency variance, the final compliance date shall be no later than 30 calendar days from the effective date of the variance.

In the case of an order granting an interim variance, the variance shall not be valid beyond the date of decision of the Hearing Board on the application of the short or regular variance or for more than 90 days from the date of issuance of the interim variance, whichever occurs first.

In the case of an order granting a short variance, the final compliance date shall be no later than 90 calendar days from the effective date of the variance or series of short variances of which said variance is a part.

In the case of an order granting a regular variance, the final compliance date shall be no later than one calendar year from the effective date of the variance, unless the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants for which the variance is granted will be brought into compliance with the applicable emission standards.

In the case of an order granting a product variance, the final compliance date shall be no later than one calendar year from the effective date of the variance, unless the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants from the product for which the product variance is granted will be brought into compliance with the applicable emission standards and all District rules, regulations, and orders, in which case, the final compliance date shall be no later than two calendar years from the date of the granting of the initial product variance.

In the case where a petitioner has been granted one type of variance, but needs additional time, the term of the next variance shall be for the full term of that specific type. *For example, if a petitioner is granted an emergency variance, but petitions for a short to continue, the short shall be for the full 90 days. The District would not subtract the 30 days and only allow an additional 60, unless extenuating circumstances existed.*

MITIGATION OF EXCESS EMISSIONS

In accordance with prerequisite findings set forth in Section 42352 of the CH&SC, the petitioner for variance must reduce excess emissions to the maximum extent feasible during the period the variance is in effect. Said emission reductions must be real and quantifiable as determined by the Hearing Board.

In the absence of real and contemporaneous emissions reductions, the District may recommend that the Hearing Board require the surrender of Emission Reduction Credits (ERCs) to mitigate excess emissions generated during the period the variance is in effect, except as provided in the following paragraph. Typically, the District will recommend that the amount of surrendered ERCs be equal to 20% by weight of all excess emissions generated during the variance period, which may include a single variance or series of variances, once said excess emissions exceed one ton; however, the District may recommend other rates on a case-by-case basis as determined by District management. Excess emissions are defined as any emissions over a stated limit on the conditions of an ATC or PTO; or of any rule requirement. For example, if a source has an hourly emission limit and a daily emission limit, excess emissions begin once the hourly limit is exceeded. The District will not debate the merits of why such a limit was placed on the ATC or PTO during the variance process; that is a discussion to have during the permitting process. The recommendation for the surrender of ERCs shall be limited to Federal non-attainment pollutants and/or the precursors of said Federal non-attainment pollutants.

In the case of a request for variance to allow the operation of an organic liquid storage tank(s) without a vapor recovery system to capture and control emissions where said tank(s) was previously operated by a small producer as defined by Section 3.29 of District Rule 4623 – *Storage of Organic Liquids*, where said tank(s) was exempt from the requirements of District Rule 4623 (e.g., vapor recovery) in accordance with Section 4.3 and/or 4.4, and where said tank(s) becomes subject to the requirements of District Rule 4623 through a transfer of ownership to a company not considered a small producer, the District will not recommend that the Hearing Board require the surrender of ERCs to mitigate the excess emissions associated with the variance period so long as the new owner commits to a compliance timeline that the District believes is reasonable under the circumstances.

If the petitioner offers, in its petition, to surrender ERCs to mitigate excess emissions generated during the variance period, the District will recommend that the Hearing Board require surrender of ERCs in accordance with the petitioner's proposal so long as the expected amount of surrendered ERCs is equal to, or greater than, 100 pounds of any Federal non-attainment pollutant and/or any precursor of a Federal non-attainment pollutant.

In lieu of surrendering ERCs, the District will suggest that petitioners pay an excess emission fee. The excess emission fee will go to the District's Emission Reduction Program (ERIP) to provide funding to reduce pollution. Funding projects located near the source causing the excess emissions will be given priority. The fee will be \$3.75 per pound of each separate excess NO_x, SO_x, or VOC emissions, but will not be required until one ton of excess emissions are emitted. Upon emitting greater than one ton, the fee will be required retro-actively back to the first pound of excess emissions so that every pound will be accounted for.

The District will consider offsetting excess emissions by way of the petitioner shutting down equipment. When utilizing equipment shutdown(s) for offsetting excess emissions the following must be considered:

- Equipment shut down prior to the event resulting in the variance request will not be considered.
- Priority will be given to shutting down equipment in the vicinity of the equipment subject to the variance request.
- Emissions reductions from equipment that is voluntarily shut down, or shut down due to the unexpected event, or is shut down in order to conduct maintenance to the equipment receiving the variance shall be considered as offset emissions. *For example, if an incinerator is shut down due to a variance condition and the gas is sent to a flare, the emission reductions from the incinerator being shut down may be utilized to offset emissions from the use of the flare.*

RETURN TO COMPLIANCE VERIFICATION

Subsequent to the filing of the Hearing Board's written decision with the Clerk of the Hearing Boards, a Compliance Department representative shall generate a Compliance Verification Report (CVR) form and send said form along with a copy of the decision to the appropriate regional office for distribution to the Compliance Inspector responsible for determining compliance with the conditions presented within the variance decision.

During the period the variance is in effect, the petitioner must operate in accordance with the conditions presented within the variance decision – in effect, the variance acts as a temporary operating permit for those permit conditions and/or District rules granted relief under the applicable variance. Failure to comply with any condition of the variance decision results in a violation of said decision subject to the standard District enforcement action. Typically, the District will issue a Notice of Violation (NOV) for any and all violations of conditions presented within the variance decision; however, there may be situations where District management is of the opinion that a Notice to Comply (NTC), rather than a NOV, is warranted. When issuing an NOV or NTC for the violation of a variance decision, the Compliance Inspector shall reference the variance docket number and the conditions violated in the *Rule(s)* section of the NOV or NTC.

Any violation of a condition presented within a variance decision should be immediately reported to a regional Compliance Supervisor as the District may need to advise the petitioner that a modification of the variance is necessary or the District may, depending on the nature and severity of the violation, take the matter back to the Hearing Board and recommend that the variance be revoked.

VARIANCE SUMMARY REPORT

Upon achieving compliance, the petitioner must submit a summary report within 15 calendar days. If the 15th day should fall upon an office closure (i.e. a flex Friday, Saturday, Sunday, or holiday); the summary report shall not be considered late as long as it arrives on the next working day.

COMPLETED VARIANCE PACKET HANDLING

Once the facility has returned to compliance and all documents have been received, a completed variance packet will be compiled in the following order from top to bottom, the CVR, variance summary report, decision order, proof of service, and petition shall be submitted to Electronic Document Management System (EDMS) all at one time (as a Compliance Submittal), after the CVR is finalized. This is so the whole packet stays as one submittal and is easy to find within EDMS. The document date shall be the date the variance is granted by the Hearing Board.

REGIONAL HEARING BOARD MEETINGS

Notice Of Hearings

The Clerk of the Hearing Boards or Compliance Department representative shall serve a notice of the time and place of a hearing in accordance with the provisions of District Rule 5110 – *Notice of Hearing*, and Chapter 8, Article 2 of Part 3 and Chapter 4, Article 2 of Part 4 of Division 26 of the CH&SC. Furthermore, the notice shall contain such other information as may be necessary to reasonably apprise the people within the District of the nature and purpose of the hearing.

Except as provided below, all items coming before the Hearing Board require a notice be served no less than 10 days prior to the hearing, and be published in at least one daily newspaper of general circulation within the corresponding District region.

In the case of a hearing for an emergency variance, a notice is not required to be served.

In the case of a hearing for an interim variance or an interim authorization for a modification of a schedule of increments of progress, a reasonable notice of the hearing must be served. Publication of the notice in a daily newspaper of general circulation is not required for an interim variance or interim authorization for a modification of a schedule of increments of progress. For purposes of this requirement, the District considers reasonable notice to be no less than 72 hours prior to the hearing.

In the case of a hearing for a variance, or series of variances, not to exceed 90 days (short variance) or for a modification of a schedule of increments of progress, a notice of the hearing must be served no less than 10 days prior to the hearing. Publication of the notice in a daily newspaper of general circulation is not required for a short variance or a modification of a schedule of increments of progress.

In the case of a hearing for a variance (i.e., a regular variance) – other than an emergency, interim, or short variance – or for a modification of a final compliance date in a variance previously granted (i.e., a variance extension), a notice of the hearing must be served no less than 30 days prior to the hearing and published in at least one daily newspaper of general circulation within the corresponding District region.

In the case of a hearing for a product variance, a notice of the hearing must be served in accordance within the noticing requirements established for the type of variance (i.e., interim, short, regular, etc.)

If publication in a newspaper(s) is required, said notice must be submitted to the regional newspaper(s) no later than five (5) business days prior to the applicable noticing deadline.

To allow for the time necessary to properly generate and serve the required notice, a petition to appear before the Hearing Board at a scheduled meeting must be filed by no later than 1200 hours, PST, on the day of the applicable noticing deadline, except for petitions which require that notice of the hearing be published in a newspaper(s), in which case the petition must be filed by no later than 1200 hours, PST, on the day that the notice must be submitted to the regional newspaper.

Time And Place of Hearings

Except for emergency variances, all hearings will be held in an open public meeting at a place readily accessible to the public as designated by the Hearing Board and included in the public notice for said hearings. The Northern Region Hearing Board holds its regularly scheduled meetings on the first Wednesday of every calendar month in the video teleconference (VTC) room located in the District's Northern Region Office. The Southern Region Hearing Board holds its regularly scheduled meetings on the second Wednesday of every calendar month in the VTC room located in the District's Southern Region Office. The Central Region Hearing Board holds its regularly scheduled meetings on the third Wednesday of every calendar month in the Governing Board room located in the District's Central Region Office.

Emergency variance hearings will be conducted by telephone with a single member of the Hearing Board in the progression designated in the [Hearing Board Rules and Procedures](#) (beginning with the Chair), a representative(s) of the District, and the petitioner, legal counsel of the petitioner, and/or other authorized representative of the petitioner present in person or by telephone. This action will result in reduced driving emissions and will affirm our pledge to the "Healthy Air Living" (HAL) program. At no time will an alternate member hear a petition for an emergency variance as it is prohibited by the CA H&SC.