

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

**RULE 124 – DECISION**

*(Adopted 8/12/69, Revised 2/20/73, 8/17/76, Revised and Renumbered 11/21/78, Revised 6/27/89, 12/14/10)*

- A. The concurrence of three or more Hearing Board members is necessary for a decision, except in the case of an emergency variance, the chairperson or other designated member(s) may, without notice of hearing, grant or deny an emergency variance. (Reference Health and Safety Code Section 40820)
- B. The Hearing Board, with not less than four members present, may in its discretion, within 30 days, rehear any matter which was decided by three members. (Reference Health and Safety Code Section 40821)
- C. The Hearing Board may rehear a decision if a party petitions for a rehearing within 10 days after a copy of the decision has been mailed to him. (Reference Health and Safety Code Section 40861)
- D. The Hearing Board may modify or revoke, by written order, any order permitting a variance. (Reference Health and Safety Code Section 42356)
- E. At any time after an emergency variance has been granted, the Air Pollution Control District may request that the chairperson or designated member(s) reconsider and revoke, modify or further condition the variance if the Air Pollution Control District has good cause to believe that:
  - 1. Continued operation is likely to create an immediate threat or hazard to public health or safety;
  - 2. The owner or operator is not complying with all applicable conditions of the variance;
  - 3. Good cause, including, but not limited to a breakdown condition, no longer exists;
  - 4. Final compliance is not being accomplished as expeditiously as practicable.
- F. The Hearing Board decision shall be in writing, served and filed within a reasonable time, five days in the case of an emergency variance. The decision shall include the reasons for the decision (Reference Health and Safety Code Section 40862). Within 30 days of any order granting, modifying or otherwise affecting a variance by the Hearing Board, either the Air Pollution Control Officer or the Hearing Board shall submit a copy of the order to the Air Pollution Control District, the California Air Resources Board, the petitioner, and every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing (Reference Health and Safety Code Sections 40860 and 42360).

- G. A decision granting a variance shall include a schedule of "increments of progress".
- H. As part of a decision granting a variance, the Hearing Board may require that a cash bond or a bond in an amount as determined by the Hearing Board executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the District having jurisdiction, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the District an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance. (Reference Health and Safety Code Section 42355)
- I. A decision granting a variance shall include, as interim requirements the utilization of the best practicable system of emission reduction throughout the duration of the variance.
- J. A decision granting a variance shall include monitoring and reporting requirements as the Hearing Board deems necessary to insure compliance with the variance.
- K. The hearing Board may review and for good cause, such as a change in the materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in such a schedule. (Reference Health and Safety Code Section 42357)
- L. An emergency variance shall not remain in effect longer than 30 days, and shall not be granted when sought to avoid the provisions of Rule 120.A, or subsections N or O of this rule. (Reference Health and Safety Code section 42359.5.b)
- M. The Hearing Board may grant an interim variance to a person when there is insufficient time to schedule a public hearing for a variance request. The interim variance shall not be valid beyond the date of decision of the Hearing Board for the requested variance or for more than 90 days from the date of issuance of the interim variance, whichever occurs first. (Reference Health and Safety Code Section 42351.b.)
- N. The Hearing Board shall not grant any interim variance which is being sought to avoid the public notice and hearing requirements for a variance request which extends beyond 90 days or after it has held a hearing in compliance of the notice and hearing requirements for a variance request which was for a period greater than 90 days. (Reference Health and Safety Code Section 42351.c.)
- O. If a person granted a variance with a schedule of increments of progress, files an application for modification of the schedule and is unable to notify the Hearing Board sufficiently in advance to allow the Hearing Board to schedule a public hearing on the application, the Hearing Board may grant an interim authorization, valid for not more

than 30 days, to that person to continue operation pending the decision of the Hearing Board on the application. The interim authorization shall not be granted for a requested extension of a final compliance date. (Reference Health and Safety Code Section 42351.5)