

TO: Variance Petitioners  
FROM: Clerk of the SMAQMD Hearing Board  
SUBJECT: Variance Petitions

DATE: January 22, 2010

If your business is or will be in violation of one of the Sacramento Metropolitan Air Quality Management District's (SMAQMD) rules, you may petition the SMAQMD Hearing Board for a variance. If granted, a variance will give you temporary relief from the rule requirements that are being violated. A specified amount of time will be allowed during which you must bring your business into compliance.

A petition form is enclosed. SMAQMD staff will explain the form if requested. We will also assist you in estimating excess emissions. Copies of Rule 601—PROCEDURE BEFORE THE HEARING BOARD and Rule 302—HEARING BOARD FEES are available on the District web site. Please review these documents carefully to familiarize yourself with the hearing process.

You may also use the enclosed petition to appeal the Air Pollution Control Officer's permitting decisions. For instance, if you believe your permit was incorrectly denied, you may petition the Hearing Board to make that determination.

Please be sure to review the findings that the Hearing Board must adopt when making a decision. The findings are in the petition form. **IMPORTANT: You must supply the evidence in support of those findings.** If the Hearing Board cannot make one of the required findings, the Hearing Board must deny the petition.

Anything that you supply in support of your petition, as well as the petition itself, will become part of the public record. If any information included in such materials is confidential information, please contact the SMAQMD Office of District Counsel **before** disclosing the confidential information.

An incomplete or inadequately documented petition or presentation at the hearing may delay the proceedings. Depending upon the complexity and nature of the situation, some petitioners use legal counsel to prepare the petition and hearing presentation.

After you submit your petition, SMAQMD must provide a public notice for the hearing. The length of notice required will depend upon the type of Hearing Board action you request. The Hearing Board has established a regular hearing schedule that is available on the District web site. **Please submit your completed petition and initial filing fee no later than the deadline shown on the schedule.** All regularly scheduled Hearing Board meetings are held in the SMAQMD conference room at 4:00 P.M.

Emergency variances necessitated by the breakdown of emission control equipment are scheduled on an as needed basis. You must contact the SMAQMD office and fill out a separate form to initiate a breakdown procedure.

Information regarding the initial filing fees is on the following pages. You may be charged fees in addition to the initial fee—per Rule 302.

If you have any questions or need assistance, please call the Clerk of the Hearing Board at (916) 874-4809.



- F. Please use a check mark in the  to identify the type of petition being submitted and circle the appropriate fee. Fee amounts include the newspaper publishing fee (when required). Fees in parentheses are for small business as defined by Rule 302:

<b>Variance Petitions</b>	<b>Fee</b>
<input type="checkbox"/> Interim Variance .....	\$1,024 (\$765)
<input type="checkbox"/> Short-Term Variance .....	\$1,024 (\$765)
<input type="checkbox"/> Regular Variance.....	\$1,084 (\$825)
<input type="checkbox"/> Emergency Variance .....	\$495 (\$495)

<b>Product Variance Petitions</b>	
<input type="checkbox"/> Interim Product Variance .....	\$1,024 (\$765)
<input type="checkbox"/> Product Variance .....	\$1,084 (\$825)

<b>Petition to Modify an Order Permitting a Variance</b>	
<input type="checkbox"/> Interim Variance .....	\$1,084 (\$825)
<input type="checkbox"/> Short-term Variance .....	\$1,084 (\$825)
<input type="checkbox"/> Regular Variance.....	\$1,084 (\$825)
<input type="checkbox"/> Interim Product Variance .....	\$1,084 (\$825)
<input type="checkbox"/> Product Variance .....	\$1,084 (\$825)

<b>Petition to Modify Increments of Progress</b>	
<input type="checkbox"/> Interim Authorization—Variance .....	\$1,024 (\$765)
<input type="checkbox"/> Interim Authorization—Product Variance .....	\$1,024 (\$765)
<input type="checkbox"/> Variance .....	\$1,024 (\$765)
<input type="checkbox"/> Product Variance .....	\$1,024 (\$765)

<b>Petition to Modify a Final Compliance Date</b>	
<input type="checkbox"/> Variance .....	\$1,084 (\$825)
<input type="checkbox"/> Product Variance .....	\$1,084 (\$825)

<b>Permit Action Petition</b>	
<input type="checkbox"/> Review of Permit Denial .....	\$1,084 (\$825)
<input type="checkbox"/> Review of Conditional Approval.....	\$1,084 (\$825)
<input type="checkbox"/> Review of Permit Suspension.....	\$1,084 (\$825)

<b>Other Petitions</b>	
<input type="checkbox"/> Rehearing of a Variance Decision .....	\$1,084 (\$825)
<input type="checkbox"/> Review of an Emission Reduction Credit Refusal .....	\$1,084 (\$825)
<input type="checkbox"/> Petition by an Aggrieved Party .....	\$1,084 (\$825)

- G. Please enclose filing fee with each petition. Make checks payable to the **SMAQMD**. No petition will be processed unless filing fee is submitted with petition.

**In addition to the filing fee, SMAQMD may subsequently charge a petitioner a fee for staff time exceeding 7.5 hours and/or an “excess duration fee.” See sections 301.2 and 301.4 of Rule 302—HEARING BOARD FEES.**

**CONTENTS OF PETITION FOR VARIANCE**  
(Please type or print clearly)

1. Name, title, address, and phone number of person authorized to receive notices regarding the petition:

<u>Name, Title, and Address</u>	<u>Telephone Number</u>
_____	(    ) _____
_____	
_____	
_____	
_____	

2. Names and addresses of partners or officers:

<u>Name(s)</u>	<u>Address(es)</u>
_____	_____
_____	_____
_____	_____

3. Name and location of business or activity if different from #1 above:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Briefly describe the nature of your business:

\_\_\_\_\_

\_\_\_\_\_

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5. Briefly describe the equipment which is the subject of this petition. List SMAQMD Permit Nos., indicate if equipment is exempt from Permit requirements, or answer No. 6 below:

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6. I have not received permit(s) yet. My application for a Permit To Operate was submitted on \_\_\_\_\_, \_\_\_\_\_.

7. Have you been issued a Notice of Violation concerning the operation of this equipment?

YES       NO

8. California Health and Safety Code section 41700 states:

“Except as otherwise provided in Section 41705<sup>2</sup> no person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.”

Is your company or agency (or will your company or agency be) in violation of California Health and Safety Code section 41700?

YES       NO

If yes, please explain:

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If yes, please also attach the name(s) and address(es) of any complainant(s).

<sup>2</sup> Among other things, section 41705 exempts (from section 41700) odors from agricultural operations. See section 41705 for details.

- 9. Is your company or agency (or will your company or agency be) in violation of:
  - a. California Health and Safety Code section 41701<sup>3</sup> or
  - b. Any Sacramento Metropolitan Air Quality Management District (SMAQMD) Rule, regulation, order, and/or Permit condition?

If so, please explain the violation and please cite the statute, Rule, regulation, order, and/or Permit condition that is being, or will be, violated.

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Please attach a copy of the pertinent Permit(s) to this petition. Remember, if any Permit or other information you supply as part of this variance petition process contains confidential information, please contact SMAQMD Office of District Counsel **before** disclosing such confidential material.

- 10. If you are required to comply immediately with the statute, Rule, regulation, order, or Permit condition (cited in your response to Question No. 9 above), are there conditions beyond your reasonable control that would result in any of the following situations:
  - a. An arbitrary or unreasonable taking of your property; or
  - b. The practical closing or elimination of a lawful business; or
  - c. An unreasonable burden on a publicly owned or operated "essential public service," *i.e.*, a prison, detention facility, police or fire fighting facility, school, health care facility, landfill, gas control or processing facility, sewage treatment works, or water delivery operation?

Please discuss the evidence supporting your conclusion:

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Please be prepared to supply documentation or other proof of your evidence to the Hearing Board or the SMAQMD staff.

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<sup>3</sup> Among other things, section 41701 pertains to the opacity of visible air pollution such as smoke. The section specifies that emissions shall not be as dark as, or darker than, the No. 2 shade designation on a Ringelmann Chart.

11. Would the taking of property, closing or elimination of a lawful business, or unreasonable burden on an essential public service be without a corresponding benefit in reducing air contaminants?

Please discuss your evidence:

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Please be prepared to supply documentation or other proof of your evidence to the Hearing Board or the SMAQMD staff.

12. Please discuss the consideration your company or agency has given to:

- a. Curtailing the operation of the source in lieu of obtaining a variance, and
- b. Enacting other alternatives to the variance (besides curtailment), and
- c. Why operation curtailment or other alternatives are less desirable or feasible than seeking this variance.

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13. During the period the variance is in effect, do you agree to monitor or otherwise quantify emission levels from the source, if requested to do so, and report these emission levels to SMAQMD pursuant to a schedule established by the District?

YES       NO

Monitoring of emission levels is often necessary while a variance is in effect. Monitoring helps to guarantee minimal environmental consequences while a source is out of compliance with District regulations. In the absence of a monitoring program, the Hearing Board may be unable to find that a non-compliant activity will not be a public nuisance.



14. Estimate the *excess emissions* that may occur while your requested variance is in effect. *Excess emissions* are emissions of air pollutants beyond the emissions allowed by SMAQMD Rules, regulations, orders or Permit conditions. SMAQMD staff may be able to assist you with this estimate:

<b>POLLUTANT(S)</b> (e.g., VOC, NO <sub>x</sub> , PM10, PM2.5, Hexavalent Chromium)	<b>LBS. PER DAY OF EXCESS EMISSIONS</b>	<b>NO. OF DAYS EXCESS EMISSIONS PRODUCED</b>	<b>% OPACITY</b> (If Applicable)

Please Note: SMAQMD will charge a petitioner an “excess duration fee” for a variance that:

- Is in effect for more than 3 months, and
- Is issued for equipment identified by SMAQMD staff report as an excess emissions source.

The excess duration fee is:

- \$165 per month exceeding 3 months for small businesses, or
- \$275 per month exceeding 3 months for large businesses.

See section 301.4 in Rule 302—HEARING BOARD FEES. SMAQMD will charge the “excess duration fee” following completion of the staff report for the variance. The fee is in addition to the initial filing fees collected by SMAQMD.

15. Please describe the action you will take to reduce *excess emissions* to the maximum extent feasible. If you considered a specific course of action, but excluded it as infeasible, please list the action and explain why it is infeasible.

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16. What are the advantages and disadvantages to the residents of the District from requiring compliance or resulting from granting this petition request?

The Advantages:

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The Disadvantages:

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17. Please discuss your past diligence in complying with the applicable standards:

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18. Describe your method of achieving compliance, detailing any equipment to be installed or modifications to be made:

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19. Fill in the date on which you expect to be in compliance with the rules and/or regulations:

If more than one year, attach a schedule of increments of progress, identifying the dates of each milestone. The schedule shall include, but not be limited to, the date for (a) submitting plans, (b) awarding contracts, (c) commencing construction, (d) completing construction, and (e) achieving final compliance.

NOTE: Do not overly rely on a potential future change in the law, including SMAQMD Rules and regulations, as a means of coming into compliance. The Hearing Board may not and does not control the regulatory agenda of any law-making body such as the District's Board of Directors.

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Any Additional Information:

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Any person who knowingly provides false information in this petition or any supporting documentation may be subject to penalties up to \$35,000 under Health and Safety Code Section 42402.4.

**I declare under penalty of perjury that the foregoing is true and correct.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

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