

## **Hearing Board**

### **Background**

The Hearing Board is a quasi-judicial panel authorized to provide relief from AQMD regulations under certain circumstances. As state law requires, Hearing Board members are appointed by, but act independently of, the AQMD Governing Board. The Hearing Board consists of a person from the medical profession, a professional engineer, an attorney, and two members of the public.

The Hearing Board is authorized to hear:

- petitions by companies for variances;
- petitions for abatement orders;

An abatement order requires a company operating out of compliance to take specific actions or to shut down its operation. This is a severe remedy normally reserved for serious violators.

- appeals by companies from the granting of permits, permit conditions, permit denials and suspensions, denials of emission reduction credits and denials of pollution control plans;
- appeals by third parties.

After hearing all sides of a case in which individuals or companies come into conflict with AQMD rules and regulations, the Hearing Board weighs the evidence and reaches a decision.

It is important to note that the Hearing Board is not authorized to:

- modify rules;
- exempt a business from complying with a rule;
- grant a variance from a violation of the public nuisance law, such as one that creates an odor problem or threatens public health or property; or
- review a violation notice in any way.

### **What is a variance?**

The Variance Information Packet contains background information on variances (PDF). A variance is an administrative exception to a law. A variance allows a company to continue operating in violation of AQMD rules without penalty while it takes appropriate steps to meet air pollution control requirements. Variances can be granted only by the AQMD Hearing Board, not by AQMD inspectors or engineers.

There may be good reasons why a company can't immediately comply with air pollution control laws. But operating outside the law can result in a fine, or even the shutdown of an operation. The only legal way to operate while working toward a solution without being subject to penalties is to get a variance. However, the U.S. EPA may take enforcement action, notwithstanding a variance.

There are four types of variances:

- Emergency

When a situation develops without warning (such as an equipment breakdown, power failure, or similar event that could cause a violation of AQMD rules) an emergency variance is an option. The Chairperson of the Hearing Board may grant an emergency variance, without public notice or hearing.

- Interim

For immediate coverage other than for emergencies, an interim variance, which only requires a "reasonable notice" period--can be obtained to cover the time until a hearing for a short or regular variance can be held. An interim variance must be requested at the same time either a short or regular variance is requested. The Hearing Board is required by law to find good cause to grant an interim variance. That means there has to be a good reason why the company could not have filed its petition in time for the hearing to be announced to the public.

- Short

Companies that can comply with AQMD rules within 90 days or less should request a short variance. A short variance requires a 10-day posted notice, plus five days processing time before the request can be heard.

- Regular

Companies that need more than 90 days to comply with AQMD rules should request a regular variance. The variance period is usually one year or less, but can be longer if a specific compliance schedule is set. An application for a regular variance must be filed at least 35 days before the request can be heard.

## **Variance Materials**

- AQMD Variance Information Packet (PDF)
- Petition form (PDF)
- Relevant Health and Safety Code sections
- Health and Safety Code sections 41700 and 41701 (PDF)
- AQMD Rule 601 - Hearing Board Procedure (PDF)
- AQMD Rule 302 - Hearing Board Fees (PDF)

- AQMD Rule from which relief is needed

- AQMD Rule 201 - General Permit Requirements (PDF)

(if seeking relief from a permit to operate/authority to construct/permit to construct condition)

- AQMD Rule 602 - Breakdown Conditions (PDF)

(for emergency variances only)

## **Variance Request Process**

To ask for a variance, appeal a permit, or appeal an emission reduction credit denial, call (916) 874-4800. The Clerk of the Board's Office will mail you the packet of information you need to file your petition. You may also download the petition form (PDF).

After you return the completed petition form and appropriate filing fee, you'll be contacted by a Clerk of the Board representative to arrange a date and time for your hearing. The Hearing Board meets at AQMD office. You cannot file for a hearing over the Internet or by facsimile.

The Hearing Board is required by law to give public notice of hearings. You will receive a copy of the notice.

AQMD Rule 302 provides a detailed description of all Hearing Board fees. At the time you apply, you will be charged a "filing fee." Small businesses are eligible for a discount on some fees.

If public notice must be printed in a newspaper (regular variance and appeals), you will also be charged a "publication fee." If your variance is granted, there will be an "excess emission fee" if the variance is in effect for more than 90 days. An AQMD staff person is available to help you determine the amount of excess emissions to be billed. For assistance, call Clerk of the Hearing Board at (916) 874-4809.

## **What happens at the Hearing?**

When you come to your hearing, be prepared. Bring all relevant information to form the basis of the six findings listed earlier. Also, bring:

- Names and telephone numbers of companies you've contacted to help you come into compliance;
- Dates by which your equipment can be installed; and
- Your plan for reducing emissions until then.

You may choose to seek the services of an attorney in presenting your case. If you plan to represent yourself, be sure to know what rules you are violating, your excess emissions, and how and when you plan to come into compliance. It is helpful to bring along any technical experts who are assisting you in resolving your problem.

Remember to bring copies of your current permits. The Hearing Board needs 10 copies of any and all documents presented.

Variance hearings are like courtroom proceedings. Both the variance petitioner and the AQMD, represented by the Office of District Counsel, present evidence through witnesses who are placed under oath, documents and/or exhibits. Witnesses may be cross-examined by the opposing side and questioned by Hearing Board members.

Among other issues, the Hearing Board attempts to discover why and how the rule is being violated, whether the violation could have been prevented, what is being done to correct the violation, when corrections will be completed, what will happen to the business if it is forced to shut down, how the violation affects the public, and what efforts can be made to reduce excess emissions to the maximum extent feasible.

The AQMD may argue against a variance or suggest certain limiting conditions. The public is invited to present any information important to the case. Board members then close the hearing and discuss the case among themselves before reaching a decision.

## **Getting Help**

For more information about how to request a variance, or assistance in filling out the application, call the AVAQMD office at (661) 723-8070.

If you have questions about the variance process, call the AVAQMD at (661) 723-8070.

You can pick up a variance packet at AQMD office or via the Internet. You may also call (661) 723-8070 or write to the AVAQMD, 43301 Division Street, Suite 206, Lancaster, CA 93535.