

AIR POLLUTION CONTROL DISTRICT
REGULATORY COMPLIANCE DIVISION

POLICIES AND PROCEDURES

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Topic: Findings and Increments of Progress For Variance

Distribution: All Policy Holders

FINDINGS

In order for the Hearing Board to grant a variance they must make certain findings. The Hearing Board must find that:

1. The source is or will be in violation of any Rule, Regulation or Order of the District;
2. Conditions causing the violation were beyond the reasonable control of the source;
3. Shutting down the affected equipment or source would not be reasonable under the circumstances;
4. The reduction in air pollution resulting from a shutdown would not justify closing the facility;
5. The applicant has given consideration to curtailing operations of the source in lieu of obtaining a variance;
6. During the period the variance is in effect, the applicant will reduce excess emissions to the maximum extent feasible; and
7. During the period the variance is in effect, the applicant will monitor or otherwise quantify emission levels from the source, if requested to so do by the District, and report these emission levels to the District pursuant to a schedule established by the District.

In addition, if an applicant is seeking approval of an Emergency Variance for a "breakdown condition" as defined in Rule 505.A, the Hearing Board must find that:

1. The occurrence constitutes a breakdown condition;
2. Continued operation of the source is not likely to create an immediate threat or hazard to public health or safety, and
3. The continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national primary ambient air quality standard.

All sources making application for a variance will be informed by the inspector or project manager that it is their responsibility to demonstrate to the satisfaction of the Hearing Board that all the findings required for the granting of a variance can be made. Applicants should be encouraged to include complete information in their variance application which specifically addresses each of the required findings. Furthermore, applicants should be informed that they and/or their legal representative should be present at the variance hearing to provide testimony related to the facts and findings of the variance application.

INCREMENTS OF PROGRESS

In the granting of any variance, the Hearing Board may require as a condition of approval that the source comply with specified increments of progress in achieving final compliance with the District Rule, regulation or order in violation. Typically, such increments of progress are required by the Hearing Board in the granting of any Regular Variance. Sources making application for a Regular Variance should be encouraged to include as part of their application a detailed schedule of increments of progress which ensures expeditious compliance of the source with the Rule, Regulation or Order in question.