

## Variance Application Form Instructions

Requests for variances from Bay Area Air Quality Management District (BAAQMD) air pollution regulations should be submitted to the Hearing Board of the BAAQMD using the attached form.

The Hearing Board is an independent quasi-judicial body created by California State law with the sole authority to grant variances from air quality regulations. After your application has been reviewed by the Hearing Board, you and the Bay Area Air Quality Management District staff will appear in a public hearing before the Hearing Board to present your respective positions.

Proper completion of the Application will help the Hearing Board fully consider your request and will help you prepare for the hearing. Any Application that is not substantially complete shall not be accepted by the Hearing Board Clerk.

### FILING STEPS:

1. Properly complete the Application form. The form is available on the website at [www.baaqmd.gov/publications/forms](http://www.baaqmd.gov/publications/forms). You may complete the form on your computer and submit the copy you print on your printer.
2. If you need more space and attach additional pages, properly identify the numbered section of the Application form that they support.
3. **SMALL BUSINESSES:** Review the Small Business Considerations section of the Application for Variance (Page 12, Nos. 21 and 22). If you meet the requirements, complete and sign the Small Business Declaration (Page 13).
4. Submit the filing fee with the Application (or contact the Clerk to confirm overnight payment) and make check payable to BAAQMD. **See District Regulation 3, Schedule A- Hearing Board Fees.**
5. Mail or otherwise deliver an original and nine copies of the Application and all other papers to:

Marcy Hiratzka  
Clerk of the Hearing Board  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

Clerk of the Hearing Board contact phone # for questions: (415) 749-5073.

BEFORE THE HEARING BOARD  
OF THE  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA

**APPLICATION FOR VARIANCE**

In the Matter of the Application of \_\_\_\_\_ )

(Applicant: Insert business or organization name above) )

DOCKET NO. \_\_\_\_\_  
(Assigned by Clerk)

For a Variance from Regulation(s): \_\_\_\_\_ )

(Applicant: Insert Regulations in form: Regulation \_\_\_\_\_, Rule \_\_\_\_\_, Section \_\_\_\_\_) )

TYPE OF VARIANCE REQUESTED (see Page 3 for further information)

SHORT     INTERIM     REGULAR     GROUP     PRODUCT

VARIANCE PERIOD REQUESTED (see Page 10, No. 20):

From: \_\_\_\_\_ To: \_\_\_\_\_

TOTAL NUMBER OF (CALENDAR) DAYS IN VARIANCE PERIOD: \_\_\_\_\_

*(Note: Variance relief will not be granted for any period preceding the date of filing of the Application for Variance.)*

**[ALL DOCUMENTS FILED WITH THE CLERK'S OFFICE BECOME PUBLIC RECORD]**



## **TYPE OF VARIANCE REQUESTED:**

**NOTE:** The date of filing of the Application for Variance is the earliest allowed starting date for a variance. State law [California Health and Safety Code (H&SC)] imposes requirements on the amount of time to be allowed for notification of the public and air quality regulatory agencies before a hearing on a variance request can be held by the Hearing Board. Review the following descriptions of the types of variances, and select that which is most appropriate for your situation:

**SHORT:** If compliance with the District Rule(s) can be achieved in **90 (calendar) days or less**, request a short-term variance. [*10-day notice required to Bay Area Air Quality Management District's Air Pollution Control Officer (APCO), Applicant, California State Air Resources Board (ARB), Federal Environmental Protection Agency (EPA).*]

**INTERIM:** If Applicant requires immediate relief for the period between the date of filing of variance application and the date of the decision on the matter by the Hearing Board, request an interim variance. An interim variance is recommended if significant excess emissions will occur between the date of filing and the date of the fully noticed hearing by the Hearing Board. If an interim variance is required, a hearing will be scheduled as soon as possible. The period of an interim variance shall not exceed 90 days. If an interim variance is requested, Applicant must also request a short or a regular variance on the same application.

**REGULAR (OR LONG-TERM):** If compliance with District Rule(s) will take **more than 90 (calendar) days**, request a regular variance. (*30-day published notice required. 30 days notice to APCO, Applicant, ARB.*)

**GROUP:** If non-compliance with District Rule(s) by each individual Applicant comprising a group is based on issues of law and fact common to each Applicant, request a group variance. (*Noticing requirements as for Short or Regular variances depending on period of the Group variance.*)

**PRODUCT:** Any person who manufactures a product may petition the Hearing Board for a product variance from a District Rule or Regulation. A product variance shall be granted only when a variance is necessary for the sale, supply, distribution, or use of the product. (*Noticing requirements as for Short or Regular variances depending on period of the product variance.*)

BAAQMD Regulation 1-402: **“Status of Violation Notices During Variance Proceedings:** Where a person has applied for a variance, no notices shall be issued during the period between the date of filing for the variance application and the date of decision by the Hearing Board for violations covered by the variance application. However, during the period between the date of the filing for a variance and the date of decision by the Hearing Board, evidence of additional violations shall be collected and duly recorded. Where the variance is denied, evidence of violations collected between the filing date and decision date shall be reviewed and a notice of violation issued for violations occurring during that period shall be served upon said person. Where the variance is granted, no notice of violation shall be issued for violations occurring during that period except in extraordinary circumstances as determined by the APCO.”

**NOTE:** The Environmental Protection Agency (EPA), a federal agency, does not recognize California's variance process, which is established by state law. The EPA considers facilities operating under a variance to be operating in violation of District regulations. Facilities that are in violation and then obtain a variance are advised that the EPA can independently pursue legal action based on federal law against the facility for continuing to be in violation.

1. Briefly describe the type of business and processes at your facility (Attach a map showing location)

See Small Business Considerations on Page 12, No. 21 before answering the following question:

Is Applicant a "Small Business" as defined by Health & Safety Code Section 42352.5(b)(1)?

Yes  No

Is Applicant a "Major Source" as defined by the applicable provisions of the Federal Clean Air Act, 42 U.S.C. Sec. 7661(2)?

Yes  No

Is Applicant a "public agency" as defined in Health & Safety Code Section 42352(b)?

Yes  No

2. Describe the equipment/activity for which a Variance is being sought (type of equipment/activity, source numbers, purpose, why is it essential to your business). Attach a copy of the BAAQMD Permit to Operate or Authority to construct for the subject equipment and/or facility so long as such Permit is less than 50 pages. If the Permit is greater than 50 pages, all portions relevant to the Application shall be provided.

Is there a regular maintenance and/or inspection schedule for this equipment? Yes  No

If Yes, how often?

What was the date of the last maintenance and/or inspection? \_\_\_\_\_

Are maintenance records available? Yes  No

Was there any indication of problems? Yes  No

**APPLICANT’S PETITION FOR REQUIRED FINDINGS**

California Health and Safety Code (H&S Code) 42352 requires the Hearing Board to make six findings for a variance to be granted. In this Section, Applicant must provide sufficient information to enable the Hearing Board to make a decision on each of the six findings:

**Finding # 1: That the Applicant for a variance is, or will be, in violation of Health and Safety Code Section 41701 or of any rule, regulation or order of the District.**

3. List all District Regulations, Rules, and/or Permit Conditions from which Applicant is seeking variance relief. Briefly explain how Applicant is or will be in violation of each rule or condition. If Applicant is requesting relief from Regulation 6, and the excess opacity during the variance period will reach or exceed 40% (Ringelmann 2), Applicant should also request relief from California Health and Safety Code Section 41701.

Regulation, Rules, Permit Conditions	Explanation

4. Has the District issued any Notice(s) of Violation (NOVs) to the Applicant concerning the subject of this variance request? Yes  No  **If “Yes”, please attach copies of the NOVs.**
5. Has the equipment in question or any other equipment at this facility been under variance protection during the last year? Yes  No

Docket #	Variance Period	Nature of Emission	Regulation/Rule/Section

6. List all NOV(s) issued to equipment at the **entire** facility during the previous 12 months:

Date of Notice	NOV #	Nature of Emission	Regulation/Rule/Section

**Finding # 2: That, due to conditions beyond the reasonable control of the Applicant, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.**

7. Describe, in detail, the event leading to the need for a variance:

8. Has the Applicant received any complaints from the public regarding the operation of the subject equipment or activity within the last year? Yes  No

Date of Complaint	Number of Complaints	Nature of Complaint

9. Explain why it is beyond Applicant's reasonable control to comply with the Regulation(s) and/or Permit Condition(s):

10. When and how did Applicant first become aware that it was not in compliance with the Rule(s) and/or permit condition(s)?

11. What actions has Applicant taken since that time to achieve compliance with the Regulation(s) or permit condition(s)?

12. What would be the harm to Applicant's business if the variance were not granted?

Economic losses: \$ \_\_\_\_\_

Number of Employees laid off (if any): \_\_\_\_\_

Provide detailed information regarding economic losses, if any, (anticipated business closure, breach of contracts, hardship on customers, layoffs and/or similar impacts).

**Finding # 3: That the closing or taking would be without a corresponding benefit in reducing air contaminants.**

13. List the estimated or measured excess emissions or excess opacity, if any, on a daily basis, or over a more appropriate period of time (For example: duration of requested variance period, hourly basis). Also list emissions reductions proposed by Applicant as mitigation. If no excess emissions or opacity are expected during the variance period, go to No. 16.

Pollutant	(A)	(B)	(C)**
	Estimated Excess Emissions (lbs/day)	Reduction Due to Mitigation (lbs/day)	Net Emissions After Mitigation (lbs/day)

\*\*Column A minus Column B = Column C

14. Show the calculations used to determine the excess emissions listed in No. 13. Are the values in No. 13 based on measurements \_\_\_\_\_ or estimates \_\_\_\_\_?

15. Do the additional emissions during the variance period contain any Toxic Air Contaminants (TACs) [pursuant to Health and Safety Code Section 39655] or odorous substances? Yes  No

If Yes, list the TACs or odorous substances and approximate amounts:

16. List measured or estimated annual emissions from entire facility for each pollutant which is the subject of this variance application:

Pollutant	Total Emissions from Entire Facility (tons/year)

Briefly explain the basis for these facility emission values:

**Finding # 4: That the Applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.**

17. Explain why the Applicant cannot curtail or terminate operations in lieu of obtaining a variance:

**Finding # 5: During the period that the variance is in effect, the Applicant will reduce excess emissions to the maximum extent feasible.**

18. Explain how Applicant plans to reduce (mitigate) excess emissions during the variance period to the maximum extent feasible, or why reductions are not feasible (mitigation may include reductions at other sources):

**Finding # 6: During the period the variance is in effect, the Applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emissions levels to the District pursuant to a schedule established by the District.**

19. Has the District requested that the Applicant monitor or otherwise quantify emissions during the variance period? Yes  No

If Yes, please describe how Applicant will do so:

**APPLICANT’S PLAN FOR ACHIEVING COMPLIANCE:**

20. How does the Applicant intend to achieve compliance with the Rule(s) and/or permit condition(s)? Include a detailed description of any equipment to be installed and/or modifications or process changes to be made, a list of the dates by which the actions will be completed, and an estimate of total costs:

**Detailed Description:**

**Schedule Of Increments Of Progress:**

Increment Description	Completion Date

Applicant may propose operating conditions for the variance period which may be considered by the Hearing Board in its evaluation of the variance application.

**PROPOSED OPERATING CONDITIONS:**

Variance Period Requested: From: \_\_\_\_\_ To: \_\_\_\_\_

Total Number of (Calendar) Days in Variance Period: \_\_\_\_\_

*(Note: Variance relief will not be granted for any period preceding the date of filing of the Application for Variance.)*

Date of Application: \_\_\_\_\_

Completed By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Print Name)

**The following verification must be signed by the owner, manager, director or other responsible party of the plant, business, factory, or agency requesting the Variance.**

**VERIFICATION**

I, the undersigned, hereby declare under the penalty of perjury, under the laws of the State of California, that I have read the foregoing document, including attachments and the items therein set forth, and that I know its contents, are true.

Dated at \_\_\_\_\_, on \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

**SMALL BUSINESS MATTERS**

**Small Business Assistance:** Assistance in completing the Application for Variance and in developing a compliance schedule is available to small businesses. Contact the office of the Hearing Board Clerk at (415) 749-5073 for assistance.

**Small Business Considerations in the Granting of Variances by the Hearing Board:** California Health & Safety Code Section 42352.5 directs the Hearing Board to consider additional factors when making the required Findings for the granting of a variance to a small business.

**21. Definition of Small Business for purposes of special considerations:**

Is Applicant a manufacturing or wholesaling business with fewer than 100 employees?

Yes  No  Number of Employees: \_\_\_\_\_

**OR**

Is Applicant a retailing or service business with annual sales under \$5 million?

Yes  No  Annual Sales: \$\_\_\_\_\_

**AND**

Does Applicant emit 10 tons or less per year of air contaminants? Yes  No

If the Applicant satisfies the above conditions, the Hearing Board will consider the following special factors:

- (A) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the Hearing Board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.
- (B) In determining the extent to which the petitioner took reasonable actions to comply, the Hearing Board shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.
- (C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the Hearing Board shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

**Reduced Filing and Excess Emission Fees for Small Businesses:**

Bay Area Air Quality Management District Regulation 3 allows reduced filing fees and excess emission fees to be charged to small businesses. The definition of a small business for the purpose of these reduced fees is different than the definition used by the State of California for the special considerations listed above.

**22. Definition of Small Business for purposes of reduced filing and excess emission fees (District Regulation 3, Section 209; Both the number of employees AND gross annual income must apply);**

Does Applicant have no more than 10 employees?

Yes  No  Number of Employees: \_\_\_\_\_

Does Applicant have a gross annual income of no more than \$600,000?

Yes  No  Gross Annual Income: \$\_\_\_\_\_

Is Applicant not affiliated with a non-small business? Yes  No

**Declaration Regarding Small Business**

- 1. I am an officer, partner or owner of the Applicant herein, or a duly authorized agent of the Applicant authorized to make the representations set forth herein.
  
- 2. The Applicant is a business that meets the following definitions of Small Business (check those that are applicable):

Small Business for Purposes of Special Considerations (No. 21) \_\_\_\_\_

Small Business for Purposes of Filing and Excess Emission Fees (No. 22) \_\_\_\_\_

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

Executed on \_\_\_\_\_, at \_\_\_\_\_, California

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position with Company

*Revised 4/4/19*