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HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.)*

PART 4. NONVEHICULAR AIR POLLUTION CONTROL [41500 - 42710] (*Part 4 added by Stats. 1975, Ch. 957.)*

CHAPTER 4. Enforcement [42300 - 42454] (*Chapter 4 added by Stats. 1975, Ch. 957.)*

ARTICLE 2. Variances [42350 - 42364] (*Article 2 added by Stats. 1975, Ch. 957.)*

42350. (a) Any person may apply to the hearing board for a variance from Section 41701 or from the rules and regulations of the district.

(b) (1) If the district board has established a permit system by regulation pursuant to Section 42300, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

(2) Title V sources shall not be granted a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use.

(3) In districts with emission-capped trading programs, no variance shall be granted from the emission cap requirement.

(*Amended by Stats. 1996, Ch. 618, Sec. 5. Effective January 1, 1997.*)

42350.5. Any form developed by a district board for use in filing an application for a variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

(*Added by Stats. 1992, Ch. 1126, Sec. 4. Effective January 1, 1993.*)

42351. (a) Any person who has submitted an application for a variance and who desires to commence or continue operation pending the decision of the hearing board on the application, may submit an application for an interim variance.

(b) An interim variance may be granted for good causes stated in the order granting such a variance. The interim variance shall not be valid beyond the date of decision of the hearing board on the application of the variance or for more than 90 days from date of issuance of the interim variance, whichever occurs first.

(c) The hearing board shall not grant any interim variance (1) after it has held a hearing in compliance with the requirements of Section 40826, or (2) which is being sought to avoid the notice and hearing requirements of Section 40826.

(*Amended by Stats. 1976, Ch. 1063.*)

42351.5. 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 no more than one 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. In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests such a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision. The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

(*Amended by Stats. 1990, Ch. 150, Sec. 2.*)

42352. (a) No variance shall be granted unless the hearing board makes all of the following findings:

(1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

(2) That, due to conditions beyond the reasonable control of the petitioner, 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. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

(b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

(Amended by Stats. 1992, Ch. 1025, Sec. 1. Effective January 1, 1993.)

42352.5. (a) The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 42352 or paragraph (2) of subdivision (a) of Section 42368, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(2) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(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.

(Amended by Stats. 1994, Ch. 443, Sec. 1. Effective September 7, 1994.)

42353. Upon making the specific findings set forth in Section 42352, the hearing board shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the district board, not more onerous, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of individual persons. However, no variance shall be granted if the operation, under the variance, will result in a violation of Section 41700.

(Added by Stats. 1975, Ch. 957.)

42354. In prescribing other and different requirements, in accordance with Section 42353, the hearing board, insofar as is consonant with the Legislature's declarations in Sections 39000 and 39001, shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with such requirements.

(Added by Stats. 1975, Ch. 957.)

42355. (a) The hearing board may require, as a condition of granting a variance, that a bond 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. The bond may provide that, if the party granted the variance fails to perform the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or the 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.

(b) The provisions of this section do not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

(Amended by Stats. 1982, Ch. 517, Sec. 277.)

42356. The hearing board may modify or revoke, by written order, any order permitting a variance.

(Added by Stats. 1975, Ch. 957.)

42357. The hearing board may review and for good cause, such as a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in such a schedule.

(Added by Stats. 1975, Ch. 957.)

42358. (a) The hearing board, in making any order permitting a variance, shall specify the time during which such order shall be effective, in no event, except as otherwise provided in subdivision (b), to exceed one year, and shall set a final compliance date.

(b) A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.

(Added by Stats. 1975, Ch. 957.)

42359. Except in the case of an emergency, as determined by the hearing board, the hearing board shall hold a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 to determine under what conditions, and to what extent, a variance shall be granted.

(Added by Stats. 1975, Ch. 957.)

42359.5. (a) Notwithstanding any other provision of this article or of Article 2 (commencing with Section 40820) of Chapter 8 of Part 3, the chairman of a district hearing board, or any other member of the hearing board designated thereby, may issue, without notice and hearing, an emergency variance to an applicant.

(b) An emergency variance may be issued for good cause, including, but not limited to, a breakdown condition. The district board in consultation with its air pollution control officer and the hearing board may adopt rules and regulations, not inconsistent with this subdivision, to further specify the conditions, and to what extent, an emergency variance may be granted.

The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 40824 or 42351.

(Amended by Stats. 1979, Ch. 239.)

42360. Within 30 days of any order granting, modifying, or otherwise affecting a variance by the hearing board, or a member thereof pursuant to Section 42359. 5, either the air pollution control officer or the hearing board shall submit a copy of the order to the state board.

(Amended by Stats. 1976, Ch. 773.)

42361. Any variance granted by the hearing board of a county district or a unified district, or any member of such a hearing board pursuant to Section 42359.5, applicable in an area which subsequently becomes included within a regional district, including the bay district, shall remain valid for the time specified therein or for one year, whichever is shorter, or, unless prior to the expiration of such time, the hearing board of the regional district modifies or revokes the variance.

(Amended by Stats. 1976, Ch. 773.)

42362. The state board may revoke or modify any variance granted by any district if, in its judgment, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of this article.

(Added by Stats. 1975, Ch. 957.)

42363. Prior to revoking or modifying a variance pursuant to Section 42362, the state board shall conduct a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 on the matter. The person to whom the variance was granted shall be given immediate notice of any such hearing by the hearing board, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if he were a party to the hearing.

(Added by Stats. 1975, Ch. 957.)

42364. (a) The district board may adopt, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this article and for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by the schedule, including, notwithstanding the provisions of Section 6103 of the Government Code, an applicant that is a publicly owned public utility.

(b) All such fees shall be paid to the district treasurer to the credit of the district.

(Amended by Stats. 1977, Ch. 1195.)