

RULE 5160 DECISION (Adopted May 21, 1992; Amended December 17, 1992; Amended December 16, 1993)

1.0 Requirements

No variance shall be granted unless the Hearing Board makes all of the following findings:

- 1.1 That the petitioner is or will be in violation of any rule, regulation or order of the San Joaquin Valley Unified Air Pollution Control District Government Board or applicable section of the California Health and Safety Code.
- 1.2 That due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either:
 - 1.2.1 An arbitrary or unreasonable taking of property, or
 - 1.2.2 The practical closing and elimination of a lawful business.
- 1.3 That such closing or taking would be without a corresponding benefit in reducing air contaminants.
- 1.4 That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
- 1.5 During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
- 1.6 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.
- 1.7 That the applicant shall produce any other findings required to be made by law, together with their underlying justification.

2.0 Consideration of Evidence

In determining whether or not the petitioner has presented evidence sufficient to make the finding specified in the Health and Safety Code Section 42352(a) and Rule 5160, Section 1.2, the Hearing Board shall consider, in addition to any other relevant factors, both of the following:

- 2.1 In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the Hearing Board shall consider whether or not the petitioner took actions to comply or seek a variance which were timely and

reasonable under the circumstances. In doing so, the Board shall consider actions taken by the petitioner since the adoption of the rule from which the variance is sought.

2.2 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.

2.3 If the petitioner is a small business, as defined by the Small Business Administration, and emits 10 tons or less per year of air contaminants, the Hearing Board shall consider the factors specified in sections 2.1 and 2.2 in the following manner:

2.3.1 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.

2.3.2 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.

2.3.3 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.

3.0 Notice of Decision

The decision shall be in writing, filed and served on the petitioner within 15 days after the submission of the cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issues presented, and the order of the Hearing Board. A copy of the Hearing Board decision shall be mailed or delivered to the APCO, to the petitioner, and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing. The Hearing Board decision shall be mailed to the ARB within 30 days of the hearing.

4.0 Effective Date of Decision

Unless otherwise ordered, the decision of the Hearing Board shall become effective upon the concurring vote of three or more of its members.

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