

**FINDINGS REQUIRED FOR ISSUANCE OF VARIANCE  
H&S CODE 42352**

**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.**