



Monterey Bay Air Resources District

**HEARING BOARD MEETING**

**MICHAEL GUTH, CHAIR**

**FRIDAY, SEPTEMBER 8, 2023 - 2:00 P.M.**

**24580 Silver Cloud Court, Monterey, CA - Boardroom**

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**REMOTE MEETING OPTION FOR PUBLIC**

Link to meeting: <https://us02web.zoom.us/j/83651244370>

**Webinar ID: 836 5124 4370**

**By Phone (audio only, Webinar ID required): 1-669-900-6833**

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Members of the public that wish to participate in the hearing may do so by joining the Zoom Webinar ID or in-person at 24580 Silver Cloud Ct. Monterey. Should you have any questions, please contact Sirie Thongchua, Executive Assistant, at 831-718-8028 or by email at [sirie@mbard.org](mailto:sirie@mbard.org).

**To Provide Public Comment via Zoom teleconference/video conference:** During the meeting live verbal public comments may be made by members of the public joining the meeting via Zoom. Zoom access information is provided above. Use the “raise hand” feature (for those joining by phone, press \*9 to “raise hand”) during the public comment period for the agenda item you wish to address. Members of the public participating via Zoom will be muted during the proceedings and may be unmuted to speak during public comment after requesting and receiving recognition by the Chair. Please clearly state your full name for the record at the start of your public comment.

**Before the Meeting:** Persons who wish to address the Hearing Board for public comment of an item not on the agenda are encouraged to submit comments in writing to Sirie Thongchua, Executive Assistant, at [sirie@mbard.org](mailto:sirie@mbard.org) by 5:00 p.m. on Tuesday, September 5, 2023. Comments received will be distributed to the Hearing Board prior to the meeting.

## SUMMARY OF ACTIONS

1. CALL TO ORDER – **The meeting was called to order by Chair Guth at 2:02 p.m.**
2. ROLL CALL – **Present:** Daniel Dodge Jr., Michael Guth, Emmett Linder.
3. PUBLIC COMMENT FOR ITEMS NOT ON AGENDA – **None.**
4. **Accepted and Filed** Summary of Actions for the Hearing Board Meeting of June 13, 2023
5. **Conducted** Public Hearing  
Docket 23-003: Granite Construction Company Interim Variance  
Project Site: 721 Work Street, Salinas, California
  - a. Chair Guth administered oath to all persons who provided testimony for Docket 23-003 – Petitioners: Christine Williams, Donald Roland, Caleb Peterson, Granite Construction Company. Staff: Amy Clymo, Engineering and Compliance Manager, Mary Giraudo, Engineering Supervisor, Isael Rubio-Salazar, Air Quality Compliance Inspector II.
  - b. Petitioner Presented Case - Christine Williams, Donald Roland, and Caleb Peterson provided verbal testimony.
  - c. Staff Presented Report - Amy Clymo, Mary Giraudo, and Isael Rubio-Salazar provided verbal testimony.
  - d. Public Comment Related to Docket 23-003 –**None.**
  - e. Hearing Board Discussion/Questions
  - f. Hearing Board Decision/Order
    - i. Make “Good Cause” Finding
      - a. **Motion:** Approve draft order for Docket 23-003. **Action:** Approve. **Moved by Daniel Dodge Jr., Seconded by Emmett Linder. Vote:** Motion carried **unanimously by roll call vote (summary: Yes = 3). Yes:** Daniel Dodge Jr., Michael Guth, Emmett Linder.
    - ii. Discuss Conditions
6. ADJOURNMENT – **The meeting adjourned at 2:41 p.m.**

*Carol Fontanilla*  
*Office Assistant*

BEFORE THE HEARING BOARD OF THE  
MONTEREY BAY AIR RESOURCES DISTRICT  
STATE OF CALIFORNIA

IN THE MATTER OF	)	DOCKET NO.: 23-003
THE APPLICATION OF	)	
	)	CONDITIONAL ORDER
GRANITE CONSTRUCTION COMPANY	)	GRANTING INTERIM VARIANCE
721 Work Street	)	
Salinas, California	)	
	)	
	)	
	)	
	)	

On August 31, 2023 at 4:57 pm, Petitioner, Granite Construction Company (hereinafter referred to as "Petitioner") filed with this Hearing Board an application for an Interim Variance. Petitioner is also applying for a Short Term Variance.

Petitioner requested that the Hearing Board grant a variance from Monterey Bay Air Resources District (MBARD) Rule 207 and MBARD Authority to Construct No. MOD-22-00049A. Petitioner seeks relief from the Conditions 8, 11, 13, and 14 on MOD-22-00049A (attached).

NOTICE OF HEARING

Notice of the application and the hearing of September 8, 2023 at 2:00 p.m. have been given pursuant to the provisions of the California Health and Safety Code Section 40824. The request and MBARD's staff recommendations were presented to the Hearing Board. The hearing was conducted by Hearing Board Members. The MBARD was represented by Amy Clymo, Engineering and Compliance Manager. The petitioner was represented by Christine Williams, Environmental Manager, Granite Construction.

**Agenda Item No. 4**

BACKGROUND

1  
2 Granite Construction Company ("Petitioner") is in the business of  
3 producing asphalt concrete, a common roadway surface. Aggregates are heated  
4 in a rotary dryer burner to remove water. Asphalt oil is stored in heated  
5 tanks until it is mixed with hot aggregates. AC mix designs determine the  
6 type and amount of aggregate, oil, and additives used for each particular  
7 mix. Some mix designs will require other additives, such as rubberized oil  
8 or Recycled Asphalt Products (RAP).

9 Petitioner conducted a source test on August 31, 2023 to measure  
10 pollutant emissions. Oxides of nitrogen (NOx) and carbon monoxide (CO)  
11 exceeded the limits of Petitioner's Authority to Construct. For this  
12 specific variance request, Petitioner will work with burner manufacturer  
13 (Astec) to find a way to have the burner adjusted to meet the limits or  
14 replaced with a burner that will meet limits. Petitioner's emissions on the  
15 newly installed primary burner are not in alignment with the manufacturers  
16 promised emission levels.

FINDINGS OF FACT

17  
18 1. Pursuant to California Health and Safety Code Section 42351 (b),  
19 the Hearing Board finds that good cause can be made based on its belief that  
20 there is a reasonable possibility that the required six (6) findings could be  
21 made during the hearing of the Short Term variance request, as follows:

22 (a) The Petitioner is or will be in violation of Section 41701 or of  
23 any rule, regulation, or order of the District.

24 (b) Due to conditions beyond the reasonable control of the Petitioner  
25 requiring compliance would result in either (1) an arbitrary or unreasonable  
26 taking of property, or (2) the practical closing and elimination of a lawful  
27 business.

1 (c) The closing or taking would be without a corresponding benefit in  
2 reducing air contaminants.

3 (d) The Petitioner for the variance has given consideration to  
4 curtailing operations of the source in lieu of obtaining a variance.

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

7 (f) During the period the variance is in effect, the Petitioner will  
8 monitor or otherwise quantify emission levels from the source, if requested  
9 to do so by the district, and report these emission levels to the district  
10 pursuant to the schedule established by the District.

11 2. A nuisance as defined in MBARD Rule 402 is not expected to occur as  
12 a result of this variance and continued operation is not likely to create an  
13 immediate threat or hazard to public health or safety.

14 3. The purpose of the variance is not to avoid the provisions of  
15 Health and Safety Code Section 40826.

16 ORDER

17 NOW THEREFORE, THE HEARING BOARD ORDERS THAT GRANITE CONSTRUCTION  
18 COMPANY is granted an Interim Variance from MBARD Rule 207 AND MBARD  
19 Authority to Construct MOD-22-00049A (copy attached), from the conditions 8,  
20 11, 13, and 14.

21 1. Compliance with this Order will not relieve Petitioner from  
22 liability under MBARD's Rules for any violation thereof, unless specifically  
23 permitted by this Order, and will not preclude MBARD from pursuing remedies  
24 in accordance with the Health and Safety Code in the event of any violation.

25 2. Any modification of the final compliance date of this Variance  
26 Order must be brought before the Hearing Board.

#### Agenda Item No. 4

1           3. The failure to abide by any condition of this Decision and Order  
2 will subject the party receiving the variance to penalties as set forth in  
3 Health and Safety Code Section 42402.

4           4. Each day during any portion of which a violation occurs is a  
5 separate offense.

6           5. Under Section 42362 of the California Health and Safety Code, the  
7 State Board may revoke or modify any variance granted by a district if, in  
8 its judgment, the variance does not require compliance with a required  
9 schedule of increments of progress or emission standards as expeditiously as  
10 practicable, or the variance does not meet the requirements of Article 2,  
11 Chapter 4, Division 26, of the California Health and Safety Code.

12           6. Petitioner shall retain the obligation to comply with all other  
13 local, state and federal regulations not specifically referenced in this  
14 variance order. Note that federal regulations do not recognize variance  
15 orders.

#### CONDITIONS AND REPORTING REQUIREMENTS

16  
17           1. Said variance is from August 31, 2023 at 4:57 pm until MBARD's  
18 Hearing Board makes a decision on the pending Short Term Variance  
19 application, anticipated to be on October 13, 2023, but not to be more than  
20 90 days from August 31, 2023.

21           2. Petitioner will pay an excess emission fee of \$560.00 no later than  
22 September 18, 2023.

23           3. Petitioner shall not exceed 4,500 tons per day of product, during  
24 the term of this variance.

25           4. Petitioner shall report to MBARD on a weekly basis the daily NOx  
26 emissions each day the burner operates. The report for the previous week  
27 shall be submitted via email to isaelrs@mbard.org by 5 pm each Monday during  
28 the variance period, beginning September 11, 2023.

1           5. Within 10 days of the termination of this variance and within 10  
2 days of the achievement of an incremental step or final compliance date  
3 specified in this Variance Order, the Petitioner will immediately notify the  
4 MBARD of its compliance or non-compliance with this Order's requirements and  
5 the reasons for compliance or non-compliance. This reporting requirement is  
6 in addition to those specified as conditions to this order.

7           6. If delay is anticipated in meeting any requirement of this Variance  
8 Order, the Petitioner will immediately notify the MBARD by telephone and in  
9 writing of the anticipated delay and the reasons for such delay.  
10 Notification to the District of an anticipated delay does not excuse the  
11 delay. Notification is not to be misconstrued as an extension of this  
12 variance.

13           7. The Petitioner will report immediately to MBARD staff and the  
14 Hearing Board, in writing, its failure to meet any date or condition set  
15 forth in this Order or in any schedule established pursuant to this Order.  
16 Any such violation will constitute a violation of this Order.

17           8. All submittals and notifications to the MBARD pursuant to this  
18 Variance Order will be made to:

19                           Isael Rubio-Salazar, Air Quality Inspector II  
20                           MONTEREY BAY AIR RESOURCES DISTRICT  
21                           24580 Silver Cloud Court  
22                           Monterey, CA 93940  
23                           [isealrs@mbard.org](mailto:isealrs@mbard.org)

24 Moved by:

25 Seconded by:

26 AYES:

27 Dated Signed:

*Sept. 11, 2023*

*Michael Gutt*

28 HEARING BOARD, MONTEREY BAY AIR  
RESOURCES DISTRICT