

SECTION 5. VARIANCE.

- (A) Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the Director for a variance from rules or regulations. The Director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the Director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions or discharge involved including, but not limited to:
- (1) The character and degree of injury to or interference with the health and physical property of the people;
 - (2) The social and economic value of the source of the pollution;
 - (3) The question of priority of location in the area involved; and
 - (4) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source.
- (B) No variance shall be granted until the Director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
- (C) Any variance or renewal thereof shall be granted within the requirements of paragraph (A) of this section, for time periods and under conditions consistent with the reasons therefore, and within the following limitations:
- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the Director may prescribe;
 - (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable;
 - (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in paragraph (C)(1) or (C)(2) of this section, it shall be for not more than one (1) year.
- (D) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Director on account of the variance, no renewal thereof shall be granted unless the Director finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least thirty (30) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the Director shall give public notice of such application.
- (E) Any variance granted pursuant to this section may be modified, suspended, or revoked by the Director if it is determined there has been a failure to comply with the terms and conditions, or if it is determined that activities allowed under the variance are endangering human health or safety or damaging the environment. Notification of the Director's decision to modify, suspend, or revoke a variance shall be conducted in accordance with the provisions of Article 1, Section 3, paragraphs (C) and (D). Upon receiving such notification, the variance holder shall comply with the following, as applicable:
- (1) If the variance is suspended or revoked, the variance holder must cease all activities allowed under the variance, unless the variance holder can demonstrate that ceasing such activities would result in greater harm to human health or damage to the environment, or would cause significant damage to equipment and/or infrastructure, than would result from continuing activities until the next scheduled shutdown or stoppage.
 - (2) If the variance is modified, the variance holder must comply with all terms and conditions of the modified variance.
 - (3) The holder of any modified, suspended, or revoked variance may appeal the Director's decision in accordance with the procedures set forth under Article 1, Section 4.

- (F) The issuance or renewal of a variance shall not be the right of the applicant or holder thereof, but shall be at the discretion of the Director. The issuance, renewal, modification, denial, or revocation of a variance shall be by order of the Director.
- (G) Nothing in this section, and no variance or renewal granted pursuant to this section, shall be construed to prevent or limit the application of the emergency provisions and procedures of Article 2, Section 38 to any person or his or her property.
- (H) No variance shall be granted that would sanction any violation of state or federal statutes or regulations.
- (I) The fee associated with issuance of a variance shall be charged in accordance with Article 1, Section 6.