

ARTICLE III

VARIANCES

ADOPTED: June 9, 1969

REVISED: March 4, 2004

EFFECTIVE: April 10, 2004

SECTION 3.01 VARIANCES -- APPLICATION FOR -- CONSIDERATIONS -- LIMITATIONS -- RENEWALS -- REVIEW

- A. Any person, or group of persons, who own or is in control of any plant, building, structure, establishment, process or equipment, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, provided that variances to state rules shall require Ecology's approval, prior to being issued by the Board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either Ecology, where Ecology has retained jurisdiction, or the Board, but only after public involvement per WAC 173-400-171, if it finds that:
1. The emissions occurring or proposed to occur do not endanger public health, safety, or the environment; and
 2. Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.
- B. In addition to the requirements of Section 3.01.A above, applications seeking a variance shall not be considered complete unless the applicant provides:
1. A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, as deemed necessary by the Control Officer.
- C. No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond 500 feet, if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:
1. The time, date, and place of the hearing;
 2. The name and address of the owner or operator and the source;
 3. A brief description of the variance request; and
 4. The deadline for submitting written comments to the Agency.

- D. Any variance or renewal thereof shall be granted within the requirements of Section 3.01.A of this Regulation 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 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 measure that the Board 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 require 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 Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, 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 Sections 3.01.D.1 and 3.01.D.2 of this Regulation, it shall be for not more than one (1) year.
- E. 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 Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or the Authority.
- F. A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW, as now or hereafter amended.
- G. Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 to any person or his or her property.
- H. An application for a variance, or for the renewal thereof, submitted to the Board pursuant to this Section shall be approved or disapproved by the Board within sixty-five days of receipt, unless the applicant and the Board agree to a continuance.
- I. Per 40 CFR 52.2476(b), Variances, approved under this Article, shall not be included in orders or permits provided for in RCW 70.94.152 or RCW 70.94.161 until such time as the variance and has been accepted by the EPA as part of an approved SIP, in accordance with 40 CFR 51.104.

SECTION 3.02 FILING

A fee, as established in Section 10.08.D of this Regulation, shall be assessed to, and paid by, the applicant for requests pursuant to this Article. The applicant shall also be responsible to pay all costs associated with any legal notice(s) required pursuant to this Article.