

## CHAPTER 13 VARIANCES

### Rule 13.101 - Purpose

A variance is permission given by the Control Board after a hearing allowing short-term deviation from strict compliance with these regulations.

### Rule 13.102 - General Requirements

- (1) A person who owns or is in control of a property subject to this Program may apply to the Control Board for a variance from rules governing the quality, nature, duration or extent of emissions of air pollutants.
- (2) The Control Board may grant or renew a variance if it finds:
  - (a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and
  - (b) Compliance with the provisions of this Program from which variance or variance renewal is sought would produce hardship without equal or greater benefit to the public.
- (3) The Control Board may place conditions on a variance or variance renewal to reduce emissions, minimize the impacts of air pollutants or protect the public health or safety, and the person subject to the variance shall adhere to those conditions. Failure to adhere to the conditions is a violation of this Program and is cause for revocation of the variance or renewal and other appropriate legal action.
- (4) The Control Board shall hold a public hearing before deciding on a variance or variance renewal request.
- (5) Variances and variance renewals are non-transferable and remain valid only for the applicant to whom they are granted.
- (6) No variance or variance renewal granted by the Control Board prevents or limits the application of the emergency provisions and proceedings of Chapter 4 of this Program to any person or his property.

### Rule 13.103 - Limitations to Granting Variances

- (1) The Control Board may grant a variance only after a public hearing and after it has considered the relative interest of the applicant, owners of property likely to be affected by the emissions and the general public.
- (2) The Control Board may not grant a variance or variance renewal for a period of more than six months, except that a variance or variance renewal from the provisions of Chapter 9 (Solid Fuel Burning Devices) may be granted for up to one year.
- (3) The Control Board may renew a variance only once.

### Rule 13.104 - Application

- (1) An application for a variance may be in the form of a letter and must contain the following information:
  - (a) Applicant's name and address;
  - (b) Specific provision(s) of this Program from which a variance is requested;
  - (c) Legal description or address of property where variance would apply;

- (d) Detailed and accurate description of the circumstances under consideration;
  - (e) Explanation addressing each criteria under Rule 13.102(2);
  - (f) Any other relevant information that the department or Control Board may require.
- (2) Upon receipt of a completed application and fee, the Control Board shall schedule a public hearing and shall give the applicant at least thirty days notice prior to the hearing.

**Rule 13.105 - Public Notice**

- (1) Notice of a variance hearing must be published:
- (a) at least once in a newspaper of general circulation in the geographical area where the plant, equipment, or affected property is located;
  - (b) at least thirty (30) days before the hearing.
- (2) Notice of hearing must be given to all known interested persons and to any person or group upon request.
- (3) The contents of the public notice must include at least the following:
- (a) The name and address of the applicant;
  - (b) Time, location and nature of the hearing;
  - (c) Brief description of applicant's activities, matter asserted, or operations for which a variance is requested;
  - (d) the location of the facility or activity subject to the variance request;
  - (e) A brief description of the purpose of the hearing, including a reference to the particular statute and rules involved;
  - (f) Address and phone number of the premises at which interested persons may obtain further information, inspect, copy or obtain a copy of the application; and
  - (g) The legal authority and jurisdiction under which the hearing is to be held.

**Rule 13.106 - Final Decision**

- (1) The Control Board shall make a final decision within thirty (30) days following the public hearing, unless it notifies the applicant that more time (up to an additional 60 days) is needed. The final order must be in writing and signed by the chair of the Control Board and must include findings of fact and conclusions of law and a decision. Notice of the final order is to be given parties and their attorneys within twenty (20) days following issuance of the final order.
- (2) The granting of a variance or a variance renewal is made solely at the discretion of the Control Board. A person adversely affected by a variance or variance renewal granted by the Control Board may obtain judicial review thereof as provided in Chapter 14 of this Program.

**Rule 13.107 - Renewal**

- (1) A person who has been granted a variance by the Control Board may request a renewal.
- (2) Requests for renewals may be in the form of a letter, and must include the information required in Rule 13.104.

- (3) Upon receipt of a completed application and payment of the fee required by 13.108, the Control Board shall schedule a public hearing and shall notify the applicant of the time and place of that hearing.
- (4) Public notice of the renewal application and public hearing must be given at the applicant's expense at least 30 days prior to the hearing by publication at least once in a newspaper of general circulation published within the geographical area wherein the plant, equipment or property is located.
- (5) The notice must include the following information:
  - (a) a statement that application is being made to the Control Board to renew a variance and for what purpose;
  - (b) the address of the property where the variance applies;
  - (c) the name and business address of the applicant; and
  - (d) the time, location and date of the public hearing.
- (6) The applicant shall provide a copy of the notice, certified as to the manner of publication, to the department concurrent with the publication.

**Rule 13.108 - Fees**

- (1) A person who applies to the Control Board for a variance shall submit with the application a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000.
- (2) The person requesting the variance shall describe the facility or situation in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine the fee with reasonable accuracy.
- (3) The department may charge a minimum variance application fee of \$50 for requests for a variance from Chapter 9 if the applicant demonstrates economic hardship.
- (4) The department shall prepare a statement of actual costs incurred and shall return unused fees to the applicant.
- (5) For a renewal of a variance the minimum fee applies or the fee may be waived by the department.
- (6) The fee must be deposited in a special revenue account of the Health fund and used by the Control Board to compile the information required for rendering a decision on the request, to offset the costs of a public hearing, printing or mailing and to carry out its other responsibilities under this Program.