

ARTICLE 4: VARIANCES

SECTION 4.01 VARIANCES Adopted 03/13/68 (12)

Revised 07/09/69 (25), 11/10/71 (135), 08/15/74 (264), Revised/Renumbered 08/08/91 (702), Revised 12/09/99 (905)

- (a) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who owns or controls like processes or like equipment, or any material subject to Article 8 of this regulation, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration, or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed 1 year. Variances to state rules shall require the approval of the Department of Ecology. The Board may grant such variance, but only after public hearing or due notice, if it finds that:
 - (1) The emissions occurring or proposed to occur do not endanger public health or 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 4.01(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 Air Pollution Control Officer; and
 - (2) For a variance from Article 8 of this regulation, written estimates of the cost of removing, recycling, or reducing the material in place versus burning the material.

- (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 Air Pollution Control Officer 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 Air Pollution 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) After the hearing is held, the Air Pollution Control Officer shall make written findings and forward same with a recommended decision on the variance to the Board. The Board shall take action at a regular board meeting.
- (e) Any variance or renewal thereof shall be granted within the requirements of Section 4.01(a) and under conditions consistent with the reasons therefor, 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 measures 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 Section 4.01(e)(1) and 4.01(e)(2), it shall be for not more than 1 year.
- (f) In addition to the criteria provided by state and federal statutes, the Air Pollution Control Officer may consider the following factors in making findings regarding requests seeking a variance from Article 8 of this regulation:
- (1) Unusual individual sites, such as those that are bisected by the no-burn boundary; and
 - (2) Unusual economic factors, such as extremely high costs for recycling or hauling, that are attributable to some site-specific condition; and
 - (3) Whether burning in place would be of lower risk or harm to the environment than either removal or reduction in place (chipping, composting, or decay) in such areas as drainages, steep slopes, beaches, and other inaccessible points.

- (g) 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 therefor. Any such application shall be made at least 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 the Board.
- (h) 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.
- (i) 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.
- (j) Variances approved under this section shall not be included in orders or permits provided for in RCW 70.94.161 until such time as the variance has been accepted by the United States Environmental Protection Agency as part of an approved State Implementation Plan.

SECTION 4.03 FILING FEES Adopted 12/13/72 (172)

Revised 12/09/82 (531), 02/13/86 (597), 01/12/89 (639), Revised/Renumbered 08/08/91 (702), 01/14/93 (746), Revised 12/09/99 (905)

A fee of \$1,000.00 shall be paid to the Agency upon the filing of any variance application. The applicant shall also pay all costs associated with any legal notice upon being invoiced by the Agency.