

**PROCEDURE FOR VARIANCES FROM THE SOLID WASTE MANAGEMENT RULES;
HAZARDOUS WASTE MANAGEMENT REGULATIONS; AND AIR POLLUTION CONTROL
REGULATIONS**

§ 1. APPLICABILITY.

Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the Secretary for a variance from the rules adopted under chapters 23 or 159 of title 10 or from the provisions of 3 V.S.A. § 2822(j), (k), and (1). In no case shall a request for a variance from the rules adopted under chapters 23 or 159 of title 10 or from the provisions of 3 V.S.A. § 2822(j), (k), and (1) be considered a contested case pursuant to 3 V.S. A. § 809.

§ 2. VARIANCE APPLICATION.

(a) All variance applications.

- (1) The applicant shall apply in writing to the Secretary for a variance, providing an original and three (3) copies of each document submitted as part of the application.
- (2) Applications for variances from rules adopted under chapter 23 or 159 of title 10 or the provisions of 3 V.S.A. § 2822(j), (k), or (1) shall be sent to:

Vermont Dept. of Environmental Conservation
Commissioner's Office
1 National Life Drive, Davis 3
Montpelier, VT 05620-3901

Note : Variance applications will be reviewed and considered by the director of the relevant division.

(b) Applications for a variance from the solid waste management rules and the hazardous waste management regulations.

Applications for a variance from rules adopted pursuant to chapter 159 of title 10 shall contain, at a minimum, the following information:

- (1) The specific rule from which the variance is sought, a statement by the applicant of why a variance is needed, and the grounds, pursuant to 10 V.S.A. § 6613(c), upon which the variance is sought.

- (2) A concise statement of the relief sought and the reasons therefore.
- (3) Information demonstrating that the alternate standard or process will not endanger or tend to endanger human health or safety.
- (4) Information demonstrating serious hardship from compliance with the rule without equal or greater benefit to the public (e.g., cost benefit analyses, profit and loss statements, balance sheets, federal income tax returns, and other documentation as necessary).
- (5) A schedule for obtaining compliance with the rule in question, unless the request is for a permanent variance from the siting requirements of rules adopted pursuant to chapter 159 of title 10.
- (6) Information demonstrating that the grant of a variance will not enable the applicant to generate, transport, treat, store, or dispose of hazardous waste in a manner less stringent than that required by the provisions of Subtitle C of the Resource Conservation and Recovery Act of 1972, as amended, and the regulations promulgated under that Act.
- (7) Any additional supporting or technical information that the applicant or the Secretary believes would be useful in determining whether to grant a variance.

(c) Applications for a variance from the air pollution control regulations.

Applications for a variance from rules adopted pursuant to chapter 23 of title 10 shall contain, at a minimum, the following information:

- (1) The specific rule from which the variance is sought and the grounds, pursuant to 10 V.S.A. § 561(c), upon which the variance is sought.
- (2) A concise statement of the relief sought and the reasons therefore.
- (3) Information demonstrating that the emissions occurring or proposed to occur will not endanger or tend to endanger human health or safety; at a minimum such information shall include each air contaminant emitted or proposed to be emitted, including all hazardous constituents, the proposed emission rate of each contaminant, and other data as necessary.
- (4) Information demonstrating that compliance with the rules from which the variance is sought would produce serious hardship without equal or greater benefits to the public (e.g., cost benefit analyses, profit and loss statements, balance sheets, federal income tax returns, and other documentation as necessary).

- (5) Any additional supporting or technical information that the applicant or the Secretary believes would be useful in determining whether to grant a variance.

(d) Applications for an air pollution control fee amendment variance.

Applications for a fee amendment variance by a person who is subject to an increased air emission fee caused by amendments to the provisions of 3 V.S.A. § 2822(j), (k), and (l) shall contain, at a minimum, the following information:

- (1) The specific statutory provision from which the variance is sought and the grounds, pursuant to 10 V.S.A. § 561 (c), upon which the variance is sought.
- (2) A concise statement of the relief sought and the reasons therefore.
- (3) Information demonstrating that payment of the increased fee would produce serious hardship (e.g., cost benefit analyses, profit and loss statements, balance sheets, federal income tax returns, and other documentation as necessary).
- (4) Any additional supporting or technical information that the applicant or the Secretary believes would be useful in determining whether to grant a fee amendment variance.

§ 3. PUBLIC NOTICE AND PUBLIC MEETING

The applicant will follow the public notice and public meeting procedures set forth in 10 V.S.A. § 7713.

§ 4. ADMINISTRATIVE DELAY OF PROCESSING.

Prior to the determination that the application for a variance is administratively complete, and at the discretion of the Secretary, in accord with 10 V.S.A. § 561(e) and § 6613(e), the processing of a variance application may be delayed when an applicant for a variance or renewal, is not in compliance with an administrative order or an assurance of discontinuance with respect to a violation that is directly related to the activity which is the subject of the application.

§ 5. REVIEW OF VARIANCES.

- (a)(1) The Secretary shall only grant a variance from the rules adopted pursuant to chapter 159 of title 10 upon finding that the requirements of 10 V.S.A. § 6613(a) and (b) have been met.
- (2) The Secretary shall only grant a variance from the rules adopted pursuant to chapter 23 of title 10 upon finding that the requirements of 10 V.S.A. § 561(a) and (b) have been met.

(3) The Secretary shall only grant a variance from the provisions of 3 V.S.A. § 2822G), (k), and (l) upon a finding that the requirements of 10 V.S.A. § 561(g) have been met.

(b) Variances shall be issued with conditions and for a time period consistent with the reasons for the variance and consistent with the provisions of 10 V.S.A. § 6613(c) or 10 V.S.A. § 561(c), as applicable. A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Secretary. At a minimum, variance approvals, denials, or renewals shall contain the following:

- (1) An opinion detailing the factual findings that are the basis of the approval, denial, or renewal; the conclusions of the Secretary on how the variance meets the requirements of 10 V.S.A. § 6613 or 10 V.S.A. § 561, as applicable; any conditions necessary for the approval or renewal of the variance; and any other discussion the Secretary deems necessary.
- (2) A summary of responses to comments from the public on the variance application.

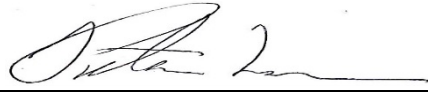
§ 6. RENEWAL OF VARIANCES.

Any variance granted pursuant to 10 V.S.A. § 561(c) or § 6613(c) may be renewed on terms and conditions and for periods, which would be appropriate on initial granting of a variance. A variance renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Secretary. If complaint is made to the Secretary on account of the variance, no renewal thereof shall be granted, unless following public notice and an opportunity for a public meeting on the complaint, the Secretary finds that renewal is justified. No renewal shall be granted except on application therefore in accordance with § 2. The application shall be made at least 60 days prior to the expiration of the variance. The public notice and public meeting requirements set forth in § 3 shall apply to any application for renewal.

§ 7. APPEALS.

The appeal of any variance decision shall be to the environmental court pursuant to chapter 220 of title 10.

Date: 4/16/2020

Adopted: 
Peter Walke
Commissioner
Department of Environmental Conservation