

## TO BE RESCINDED

3745-35-03           **Variances.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the "Incorporation by Reference" paragraph at the end of rule 3745-35-01 of the Administrative Code.]

- (A) No person shall cause, permit, or allow the operation or other use of any air contaminant source that emits any air pollutant in violation of any applicable law, unless a variance has been applied for and obtained from the director for such source, pursuant to the provisions of this rule. No variance from any rule of the director adopted under Chapter 3704. of the Revised Code may be issued except pursuant to this rule.
  
- (B) No variance shall be granted from Chapter 3745-19 of the Administrative Code governing open burning.
  
- (C) No variance shall be granted to a new source, as defined in rule 3745-15-01 of the Administrative Code, from any emissions limitation which was applicable to the source as a new source.
  
- (D) Applications for variances
  - (1) Applications for variances shall be signed, in the case of a corporation, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emission described in the application originates.
  
  - (2) Applications for variances shall be signed, in the case of a partnership, by a general partner.
  
  - (3) Applications for variances shall be signed, in the case of a sole proprietorship, by the proprietor.
  
  - (4) Applications for variances shall be signed in the case of a municipal, state, federal or other government facility, by the principal executive officer, the ranking elected official, or other duly authorized employee.
  
  - (5) Applications for variances shall be made in a form and manner prescribed by the Ohio environmental protection agency.

- (6) Except as otherwise expressly provided by rule, a separate application for a variance shall be made for each air contaminant source to which this rule applies.
- (7) Any variance application that fails to provide information needed to provide a factual basis for ascertaining compliance with each of the relevant requirements of this rule may be considered defective and be treated as if it had not been filed. Such application shall be returned to the applicant as expeditiously as practicable with an indication of the deficiencies thereof. Further processing of the application, including issuance of a proposed or final action or the initiation of any other official response by the Ohio environmental protection agency with respect to the application, will not occur until deficiencies have been remedied.
- (8) An application which seeks a variance pursuant to this rule which allows applicant to emit an air pollutant at a specified level in excess of emissions standards prescribed by applicable law without requiring eventual compliance with such standards shall specify the level of emission sought. Any such application which fails to so specify may be treated as a deficient application as set forth in paragraph (D)(7) of this rule.

(E) Standards for granting variances

- (1) A variance for an air contaminant source may allow an applicant:
  - (a) To emit from such source a specified level of emissions of the particular air contaminant which exceeds the level permitted by applicable law, without achieving eventual compliance with the level permitted by applicable law; or
  - (b) To achieve compliance with applicable law pertaining to the particular air contaminant, pursuant to a compliance schedule included as a term and condition of the variance, on a date later than the date provided by applicable law upon which compliance by such source must be achieved; or
  - (c) Both to emit the particular air contaminant at a specified level of emissions which exceeds the level permitted by applicable law, without achieving eventual compliance with the level permitted by applicable law, and to achieve compliance with such higher level of emissions, pursuant to a compliance schedule included as a term and condition of the variance, on a date later than the date provided by applicable law

upon which compliance by such source with applicable law pertaining to such air contaminant must be achieved.

- (2) A variance may be issued only if the applicant either demonstrates the requirements of paragraphs (E)(2)(a) to (E)(2)(c) of this rule, paragraph (E)(2)(e) of this rule, and paragraph (E)(2)(f) of this rule or demonstrates the requirements of paragraphs (E)(2)(d) to (E)(2)(f) of this rule:

(a) Either:

(i) The ambient air quality standards for the particular air contaminant to which the requested variance pertains are currently being met throughout the region affected by the emissions from the air contaminant source; or

(ii) The emission of air contaminants in accordance with the variance will not prevent or interfere with the attainment of ambient air quality standards by contributing, either singly or in conjunction with other sources, to a failure to attain ambient air quality standards by the date or dates prescribed by applicable law throughout the region affected by the emissions from the air contaminant source;

(b) The emission of air contaminants in accordance with the variance will not prevent or interfere with the maintenance of ambient air quality standards by contributing, either singly or in conjunction with other sources, to a failure to maintain ambient air quality standards throughout the region affected by the emissions from the air contaminant source for the particular air contaminant to which the requested variance pertains after such ambient air quality standards are attained;

(c) The variance is necessary because compliance with the emission standard from which the variance is sought is, and, to the extent applicant has not complied with such emission standards, has been since the adoption of such emission standard, technically infeasible, economically unreasonable, or impossible because of conditions beyond the control of the applicant;

(d) Bubble concept:

(i) An alternative emission control strategy (bubble concept) is provided

which will allow emissions of air contaminant from the source for which the variance is requested to exceed the level permitted by applicable law and will also require emissions of the same air contaminant from another source or sources to be less than the level(s) permitted by applicable law. The alternative emission control strategy shall:

- (a) Result in a reduction in actual emissions of the air contaminant from such other source or sources which is equivalent to or greater than the reduction which would occur if the source for which the variance is requested were to comply with applicable law;
- (b) Result in an actual net ambient air quality improvement which is as good as, or better than, that which would occur if the source for which the variance is requested were to comply with applicable law and if all such other sources were to either comply with applicable law or maintain their actual level of emissions if such level is less than permitted by applicable law;
- (c) Include applications for variances or permits-to-operate (or modifications of existing variances or permits-to-operate) for such other sources at the same facility that specify a level of allowable emissions of an air contaminant which is below the level established by applicable law and which satisfies the requirements of paragraphs (E)(2)(d)(i)(a) and (E)(2)(d)(i)(b) of this rule:
  - (ii) Air contaminants from different sources shall be considered to be the same for purposes of paragraph (E)(2)(d)(i) of this rule only if they are comparable in terms of type of contaminant.
  - (iii) Emissions of particulates of the following types shall not be considered, for purposes of paragraph (E)(2)(d)(i) of this rule to be the same as emissions of particulates of any other types:
    - (a) Asbestos;
    - (b) Beryllium;
    - (c) Coke oven emissions;

(d) Lead; and

(e) Mercury.

(iv) Emissions of organic compounds of the following types shall not be considered, for purpose of paragraph (E)(2)(d)(i) of this rule, to be the same as emissions of organic compounds of any other types:

(a) Benzene; and

(b) Vinyl chloride.

(e) Such compliance with applicable law or other terms and conditions as is required by the variance will be achieved as expeditiously as practicable;

(f) If any rule from which a variance is sought has been approved by the administrator of the United States environmental protection agency as part of the implementation plan, the applicant must demonstrate those matters required by federal law or regulations, including, but not limited to 42 USC 7410 and 40 CFR Parts 51 and 52 for approval of a revision to the plan, except approval by the administrator or his representative as a revision to the implementation plan.

(F) The director retains the discretion to deny the application upon consideration of evidence regarding matters specified in division (H) of section 3704.03 of the Revised Code which is submitted by the applicant, developed by the agency, or obtained from another source, even though the demonstrations required by paragraph (E) of this rule have been made.

(G) Action on applications for variance

(1) Prior to taking any action on any application for a variance, the Ohio environmental protection agency may hold a public meeting on the proposed variance in the manner specified in Chapter 3745-47 of the Administrative Code.

(2) In granting, revoking, denying, or modifying any variance, the director shall state his reasons therefor in writing. The decision and reasons therefor shall be made publicly available at the cost of reproduction and handling.

- (3) The director shall act on an application for a variance within six months of the filing of a complete application by issuing a proposed or final action.
- (4) A single variance issued pursuant to this rule for an air contaminant source may provide the applicant relief from more than one emissions limitation.
- (5) Variances under this rule shall be issued, denied, modified, or revoked and may be challenged in accordance with the provisions of Chapter 3745-47 of the Administrative Code.
- (6) A variance from a rule which has been approved by the administrator of the United States environmental protection agency as part of the implementation plan shall not be issued unless:
  - (a) Such variance has been submitted to the administrator as a revision to the implementation plan pursuant to applicable law, including, but not limited to, 42 USC 7410 and 40 CFR Parts 51 and 52; and
  - (b) All requirements of applicable law, including, but not limited to, 40 CFR Parts 51 and 52 have been met, except approval by the administrator or his representative as a revision to the implementation plan; and
  - (c) The variance contains a condition that the variance will not be effective until approved by the administrator or his representative as a revision of the implementation plan.
- (7) If a variance has been approved by the administrator pursuant to paragraph (G)(6) of this rule, a renewal of such variance shall not be subject to the requirements of paragraph (G)(6) of this rule unless a significant difference exists between the material aspects of such variance and the renewed form of such variance. For the purposes of paragraph (G)(6) of this rule, a significant difference shall include any change in the final compliance date of any compliance schedule.
- (8) Upon issuance of a variance authorizing emissions as described in paragraph (E)(1)(a) or (E)(1)(c) of this rule, and upon approval thereof by the administrator as provided by paragraph (G)(6)(c) of this rule, if applicable, the director shall propose to amend the rule from which the variance is issued to provide for emissions authorized by the variance. The amended rule shall be proposed only if, in the director's judgment, such amended rule will conform to all requirements of applicable law, including, if applicable, requirements regarding implementation plans. Following rulemaking

procedures mandated by law on the proposal, the director shall take such action on the proposal as is lawful and reasonable.

(H) Terms and conditions

- (1) Except as otherwise appropriate under paragraph (E) of this rule, an approved compliance schedule shall be incorporated into any variance granted, and shall be a term and condition thereof.
- (2) Each variance issued pursuant to this rule and each variance or permit-to-operate issued to another source pursuant to paragraph (E)(2)(d) of this rule shall include as terms and conditions a specified emission limit for each air contaminant for which a variance is granted and test methods for demonstrating compliance with such emissions limits.
- (3) Variances shall be effective for whatever period the director deems appropriate, not to exceed five years. A variance may be renewed only when the Ohio environmental protection agency is satisfied that the source for which the variance was granted is making satisfactory progress toward achievement of the program specified in any compliance schedule incorporated into the variance and/or is complying with any other terms and conditions of the variance.
- (4) The possession of a variance shall not relieve the holder of responsibility to comply with all other applicable law and rules of the Ohio environmental protection agency.
- (5) Any variance issued by the director shall be subject to revision in response to changes in applicable rules or other factors affecting the compliance of the source or control facility with the standards or conditions of the original variance.
- (6) In the event of a transfer of ownership or operation of an air contaminant source to which a variance has been issued, the variance shall be transferred to the new owner or operator. The transferee shall assume the responsibilities of the transferor. The Ohio environmental protection agency must be notified in writing of any transfer of a variance.
- (7) Such air pollution emergency episode plans as are submitted and approved pursuant to Chapter 3745-25 of the Administrative Code shall become terms and conditions of the variance and shall have full force and effect as a part thereof.

- (8) The director may include such other terms and conditions as are necessary to ensure compliance with applicable law or to gather information about ambient air quality, emission levels, or other aspects of the source operation.
- (9) In addition to the other registration and reporting requirements of all air contaminant sources, the holder of a variance which contains a compliance schedule shall file reports every two months or as otherwise required by the Ohio environmental protection agency. Such reports shall be signed by the applicant for the variance. These reports shall demonstrate to the satisfaction of the director that the source for which the variance was issued is making consistent progress and has met all interim deadlines specified in the compliance schedule or specified by the Ohio environmental protection agency. If the responsible official fails to file an interim report, or if such report fails to satisfy the director that the source is making satisfactory progress, then the director may revoke the variance. False or misleading statements in an interim report shall be grounds for revocation of the variance.
- (I) Possession of a variance relieving an air contaminant source from having to comply with any requirement of applicable law shall not relieve an air contaminant source of the responsibility to comply with all other requirements of applicable law.

(J) Revocation

- (1) The director may revoke a variance if the director determines that any of the terms, conditions, standards, or requirements of this rule have been or will be violated or that circumstances have changed so that the applicant is no longer eligible for a variance under paragraph (E) of this rule.
- (2) A variance that has been revoked shall forthwith be surrendered to the Ohio environmental protection agency.

Effective: 06/30/2008

R.C. 119.032 review dates: 07/03/2007

CERTIFIED ELECTRONICALLY

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Certification

06/02/2008

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Date

Promulgated Under: 119.03  
Statutory Authority: 3704.03(G)  
Rule Amplifies: 3704.03(G), 3704.03 (A)  
Prior Effective Dates: 7/5/73, 11/7/79, 12/5/80, 8/30/82, 6/18/01, 11/3/06