



Where ideas connect

Department of Environmental Quality
Division of Air Quality

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MEMORANDUM

TO: Staff

FROM: Richard W. Sprott
Director

DATE: February 21, 2003

SUBJECT: Variance Procedures

1. In order to clarify how the Division will process requests for variance, the information below is provided. The actual statute and rule language are attached for your use as well. Should you have any questions, please see your manager.
2. Any person who owns or is in control of any plant, building, etc. may apply to the Air Quality Board (the Board) for a variance from state air quality rules or a permit condition. The Board may grant a variance request providing that the variance does not cause a violation of the Clean Air Act or associated federal regulations. The Board does not have the authority to grant a variance to federal regulations.
3. VARIANCE PROCEDURES:
 - a. The party requesting a variance must complete a Variance Request Form (attached) and submit the completed form to the Executive Secretary. The completed form should be submitted at least 30 days prior to a scheduled board meeting to allow sufficient time for public notice and staff review of the request. Exceptions to this time frame may be considered on a case-by-case basis taking into account the urgency of the request, the nature of the impact both to the public and to the source, and on the complexity of the request.

- b. The Air Standards Branch manager and Permitting Branch manager, following a review of the purpose for the request, will assign the request to the appropriate branch. Should the request relate to the Planning Branch, the Planning Branch manager will also be consulted. The request will then be assigned to appropriate staff for review and to make a recommendation concerning the Division's position regarding the variance. Due to normal timing on requests, this review must be accomplished as expeditiously as possible.
- c. Coordination with the Planning Branch for any variance that will result in an emissions increase will be necessary to assure there is no violation of the National Ambient Air Quality Standards (NAAQS).
- d. The branch that is handling the review process will keep the other branch managers and appropriate staff members informed about the review process and recommendations and solicit input and comments from the branches. The goal is to have a Division consensus on the recommendations when the variance request is presented to the Board. The board memo should be e-mailed to each branch manager for review and comment by the staff member preparing the memo before being included in the board mailing.
- e. Following review and development of recommendations, the variance request will be put on the Board's agenda.
 - 1) The Executive Secretary will provide appropriate information to the Board prior to the board meeting, including a copy of the variance request and a memo outlining the staff review and recommendation. Staff will assure that the requesting source is made aware of the board meeting time and place and that the source will be expected to make a brief presentation to the board on the request.
 - 2) The individual that is assigned to review the request will prepare a notice for publication in a local paper as well as the SL Tribune and Deseret News (Newspaper Agency Corp.). The notice will outline the request and indicate the date, time and place of the board meeting that will hear the request and indicate that we will accept comment through the date of the board meeting and the Board takes final action on the request. This notice should be published at least 10 days prior to the board meeting; it should coincide with the mailing of the board package.
- f. The Board chairman will introduce the variance request and will introduce the person(s) requesting the variance. Following the source's

presentation, the DAQ staff member assigned to review the request may be asked to comment on the Division's position.

- 1) The source requesting the variance will present the details of the request to the Board members, and respond to questions or statements from the Board concerning the request. DAQ staff is not expected to defend the variance.
 - 2) The Board chairman will then request comments from staff assigned to the variance request, if necessary. Staff will present any public comments that have been received, DAQ's position and recommendation and respond to the Board's questions and statements.
 - 3) Depending on the Board action (approved, modified or disapproved), the Executive Secretary will provide written notice to the requester concerning the Board's action, including any stipulations and limitations outlined by the Board. The same staff member that was assigned the initial action will prepare this notice.
- g. The Board may review any variance already in place using the same process that was used for the original application. The Board may also revoke the variance, following the review process and discussion at a board meeting.
- h. The variance can only be granted for a length of time as outlined in Utah Code 19-2-113(3) (see attached).

ATTACHMENT

STATUTE LANGUAGE

Title 19 Environmental Quality Code
Chapter 2 Air Conservation Act
19-2-113. Variances - Judicial Review

(1) (a) Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under 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.

(3) Any variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air 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;

(b) (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (a) or (b), it shall not be granted for more than one year.

(4) (a) Any variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5) (a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air contaminant source is situated.

(6) (a) The board may review any variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to any person or property.

RULE LANGUAGE

R307-102-4. Variances Authorized.

(1) Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

(a) to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

(b) to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

(c) to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

(2) Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

VARIANCE REQUEST

**STATE OF UTAH
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF AIR QUALITY
(801) 536-4000**

PURPOSE: This form is to be used by any entity that is requesting a variance from either the state air rules (R307 series) or an air permit requirement (permit being either an Operating Permit or an Approval Order). See Utah Code 19-2-113 or Utah Administrative Code R307-102-4

INSTRUCTIONS: Complete each item below; each item must be addressed. Use additional pages if necessary. If there is a change in any of the information listed below, report the changes to the Utah Division of Air Quality immediately. You will be notified of the date, place, and time of the hearing or the determination made by the Executive Secretary.

Submit form to: Executive Secretary
Utah Division of Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, Utah, 84114-4820
Phone: 801-536-4000

Business Name

Street Address (Location of Business)

Mailing Address

City **County**

City **State**

Zip Code

Zip Code

- Applicant is:** Individual
 Partnership
 Corporation
 Government
 Other Entity

Contact - Name of the person authorized to receive notices

Contact Telephone Number

List names and addresses of all partners, officers, or other persons in control.

1. Initial Variance Renewal

2. The purpose of variance request (check one):

- a. no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved.
- b. compliance with the requirements from which variance is sought will require that measures, because of their extent of cost, must be spread over a long period of time.
- c. to relieve or prevent hardship of a kind other than provided for in 2.a or 2.b.

3. Describe the business or activity for which the variance is requested. List all past, present, and future businesses and activities.

4. Describe the emission unit or process equipment or other units/equipment involved in the request.

5. State the rules or permit conditions (identify whether Approval Order or Title V) from which the applicant seeks relief.

6. State the specific time period(s) for which the variance is requested.

7. State why compliance with the rule or approval order from which variance is sought would produce serious hardship without equal or greater benefits to the public. If financial hardship, include itemized and total costs of compliance.

8. List all possible alternatives in lieu of obtaining a variance. Discuss the advantages and disadvantages of each alternative. A cost estimate for each alternative must be included.

9. State the advantages and disadvantages to nearby residents if the variance is granted.

10. State how the applicant will reduce excess emissions to the maximum extent feasible during the period the variance is in effect.

11. State the facts showing why operations under such variance are not likely to cause a nuisance, as defined in 76-10-803, Utah Code Annotated.

12. The source is located in: ? a non-attainment area
 ? an attainment area

a. If located in a non-attainment area, will emissions resulting from approval of the variance cause a new violation of the National Ambient Air Quality Standards? Include all supporting data and calculations, such as emission estimates and modeling data. Give the exact location of the activity or business for which variance is sought.

b. If located in an attainment area, give the exact location of the activity or business for which variance is sought. Will emissions resulting from the approval of the variance cause a new violation of the National Ambient Air Quality Standards? Address the impact on increment consumption for the area and also address the possible impact on Class I areas.

13. Is the variance request considered an emergency situation? () Yes () No

If yes, explain in detail.

14. Are other regulatory agencies or permit authorities involved in the variance request?
() Yes () No

If yes, state the agency name(s), contact person(s), phone number(s), and reason for their involvement.

Signature

Date

Name

Title

EXCESS EMISSIONS CALCULATIONS

Business Name: _____

The following emission information must be provided by the applicant and filed with the variance application. Include a description of the methodology used to calculate emissions.

EQUIPMENT DESCRIPTION	AIR CONTAMINANT	EMISSION LIMIT	ACTUAL EMISSIONS ¹	EXCESS EMISSIONS ¹	EXCESS EMISSIONS FOR PERIOD OF VARIANCE ²

¹ Express actual emissions and excess emissions in units of pounds per hour

² Express total excess emissions for period of variance in pounds per hour or tons per year