

**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 (l). 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 (l) be considered a contested case pursuant to 3 V.S.A. § 809.

§ 2. VARIANCE APPLICATION.

(a)(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 (l) shall be sent to:

Vermont Dept. of Environmental Conservation
Commissioner's Office
One South Building
103 South Main Street
Waterbury, Vermont 05671-0401

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) The proposed plan for public notice as required by § 3 of this procedure.

(8) 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) The proposed plan for public notice as required by § 3 of this procedure.

(6) 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) The proposed plan for public notice as required by § 3 of this procedure.

(5) 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. PLAN FOR PUBLIC NOTICE.

Any person who requests a variance from the application of rules adopted pursuant to chapters 23 or 159 of title 10 or the provisions of 3 V.S.A. § 2822(j), (k), and (l) shall provide to the Secretary a proposed plan for public notice that contains the following:

(1) Notice statement. The applicant shall provide a notice statement that identifies the plant, building, structure, process, or equipment (hereinafter "facility") requesting the variance and the address of that facility. The notice shall cite the rule from which the variance is requested. The notice shall state that the variance application is available for review by contacting the office of the commissioner of environmental conservation or the town offices where the facility is located. The notice shall state the conditions, as provided in § 5 of this procedure, under which a public meeting will be held on the variance. The notice shall state that a comment period on this variance shall run for a

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period of thirty (30) days from the last date of publication of this notice, and all comments or requests for a public meeting shall be directed to:

Vermont Dept. of Environmental Conservation
Commissioner's Office
One South Building
103 South Main Street
Waterbury, Vermont 05671-0401
Telephone: 802-241-3800

Note: Comments on variance applications will be reviewed and responded to by the director of the division considering the variance.

(2) Plan for publishing notice statement. The applicant shall provide a plan for publishing the notice statement. The notice statement shall be published in at least two newspapers of general circulation in the area of the proposed facility. One of those newspapers shall be a regional weekly newspaper, if available.

(3) Municipal notice. The applicant shall provide a plan for serving a copy of the approved notice statement and the variance application on the municipality in which the facility is located and on any adjacent Vermont municipality if the facility is located on a boundary. The applicant for a variance from the rules adopted pursuant to chapter 23 of title 10 shall also serve notice upon any Vermont municipality that will be impacted by emissions from the facility for which a variance is sought.

(4) Notice to other persons. The applicant shall provide a plan for the notification of adjoining landowners as follows:

(A) For applicants requesting a variance from the rules adopted pursuant to chapter 159 of title 10:

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(i) Diffuse disposal facilities. The notice shall be sent to all residences and landowners within five hundred (500) feet of the proposed diffuse disposal area, and to all adjoining residences and landowners.

(ii) Sludge and septage storage and treatment facilities located at a wastewater treatment plant. The notice shall be sent to all adjoining residences and landowners within one thousand (1000) feet of the facility. This notice requirement does not apply to facilities treating material to achieve process to further reduce pathogens (PFRP).

(iii) Other facilities. The notice shall be given to all residences and landowners within a one-half mile radius of the facility or the nearest one hundred (100) residences and landowners whichever is lesser.

(B) For applicants requesting a variance from the rules adopted pursuant to chapter 23 of title 10 or the fee provisions of 3 V.S.A. § 2822(j), (k), and (l), written notice shall be provided to all abutting property owners, any person who has requested to be notified, and other appropriate persons identified by the Secretary.

§ 4. EXECUTION OF PLAN FOR PUBLIC NOTICE.

Within twenty (20) business days of receiving written notification from the Secretary that the variance application is administratively complete and that the applicant's proposed plan for public notice is acceptable, the applicant shall provide to the Secretary a certificate of service signed by the applicant stating that the public notice has been published and served on all parties pursuant to the approved plan for public notice. Failure to publish and serve the approved plan for public notice within this time period will be grounds for denying the application. Within five (5) business days of the

last publication of the notice, the applicant shall provide the Secretary with copies of the newspaper notification and the dates upon which the notification was published.

§ 5. PUBLIC MEETING.

The Secretary shall hold a public meeting to receive comment on the application for a variance if requested during the public comment period by (i) the legislative body of any municipality upon which notice is required to be served by § 3(3) of this procedure the municipality where the facility is located, (ii) an affected state Agency or subdivision thereof, or (iii) twenty-five (25) or more citizens from within any municipalities upon which notice is required to be served by § 3(3) of this procedure. The Secretary may also hold a public meeting on his or her own authority. The Secretary shall provide the applicant with a public notice statement containing the date, time, location, and purpose of any public meeting. Within fifteen (15) business days of receiving written notification from the Secretary that a public meeting upon a variance will be held, the applicant shall provide the Secretary with a certificate of service signed by the applicant stating that the approved notice of public meeting statement has been published in at least two newspapers of general circulation in the area of the proposed facility, one of which shall be a regional weekly newspaper, if available. Any public informational meeting shall be held no sooner than fourteen (14) calendar days after the last date of publication of the meeting notice required by this subsection. If necessary, the public comment period will be extended to ensure that it does not end until five (5) business days after the public meeting if one is held pursuant to this section.

§ 6. 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.

§ 7. 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. § 2822(j), (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.

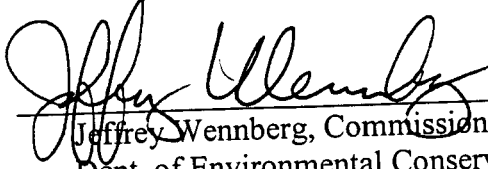
§ 8. RENEWAL OF VARIANCES.

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. Immediately upon receipt of an application for renewal, the Secretary shall give public notice of the application. Notice shall be published in at least two newspapers of general circulation in the area in which the plant, building, structure, process, or equipment for which a variance is sought or will be located. One of those newspapers shall be a regional weekly newspaper, if available.

§ 9. APPEALS.

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

Date: 7/15/05

Adopted: 
Jeffrey Wennberg, Commissioner
Dept. of Environmental Conservation