



Ohio Administrative Code

Rule 3745-300-12 Variances and case-by-case determinations.

Effective: October 17, 2019

(A) Authority and scope for variances. A volunteer may apply to the director for a variance from any applicable standard that otherwise applies to a property on which a voluntary action is conducted.

(1) Criteria for variances. The director shall issue a variance from those applicable standards only if the volunteer makes the following demonstrations to the director's satisfaction:

(a) Either or both of the following:

(i) Compliance with the applicable standards otherwise established at the property named in the application is technically infeasible.

(ii) The costs of compliance with the applicable standards otherwise established at the property substantially exceed the economic benefits.

(b) The proposed alternative standard or set of standards and terms and conditions provided in the application result in an improvement of environmental conditions at the property, and ensure the protection of public health and safety.

(c) The establishment of and compliance with the alternative standard or set of standards and terms and conditions are necessary to promote, protect, preserve, or enhance employment opportunities or the reuse of the property named in the application.

(2) Application contents. An application for a variance shall be prepared and submitted by a certified professional, on behalf of the volunteer, on a form provided by Ohio EPA. The application shall include, but is not limited to, the following information:

(a) The name and address of the volunteer.



- (b) The name and title of the volunteer's representative who requests the variance.
- (c) The certified professional's certification identification number assigned by Ohio EPA, and the certification's expiration date.
- (d) A copy of the certified laboratory's certificate or an indication of the certified laboratory's identification number assigned by Ohio EPA for any data submitted to support the variance request.
- (e) A statement that identifies the applicable standard that is the focus of the variance request.
- (f) A statement of the proposed alternative standard or set of standards proposed to be applicable to the affected property and any terms and conditions thereof, including a detailed description or explanation, and the supporting rationale for the new alternative standard.
- (g) A summary of the technology, methods, or controls used to achieve the alternative standard or set of standards and terms and conditions.
- (h) A description of the affected property.
- (i) All information obtained from a phase I or phase II property assessment that is relevant to the affected property.
- (j) A written demonstration that the proposed variance complies with paragraph (A)(1) of this rule.
- (k) The names and addresses of all adjacent property owners.
- (l) The addresses and parcel numbers of all adjacent properties.
- (3) Application review process.
 - (a) Within fourteen days after receipt of the application, the director shall determine whether a variance determination application is complete and contains all of the items required by paragraph



(A)(2) of this rule, and shall notify the applicant in a letter sent by certified mail.

(b) In determining whether a variance determination application is complete, the director may request additional information. The variance applicant, through a certified professional, shall promptly respond to any requests from the director for additional information.

(c) Upon determining that a variance determination application is complete, the director shall implement the public notice and public meeting procedures in paragraph (C) of this rule.

(d) The applicant for a variance, or a representative of the applicant who is knowledgeable about the affected property and the application, shall attend the public meeting for the variance application, shall present information about the application and the basis of the request for the variance, and shall respond to questions from the public about the affected property and the variance application.

(4) Issuance or denial of the variance determination.

(a) When considering whether to approve or deny the application, or whether to impose terms and conditions on the variance determination that are in addition to, or alternative to, any terms and conditions proposed by the applicant, the director shall consider the following:

(i) Any comments made by the public at the public meeting on the application.

(ii) Any written comments on the application.

(b) Within ninety days after the public meeting on a variance determination application, the director shall issue a proposed action to the applicant. The proposed action shall include the director's intent with regard to approval or denial of the application, and shall include the findings upon which that proposed action is based.

(c) The director shall issue a variance from applicable standards established in this chapter only if the variance application makes all of the demonstrations required by paragraph (A)(1) of this rule to the director's satisfaction.



(d) A variance issued pursuant to this rule shall do the following:

(i) State the specific standards whose terms are varied.

(ii) Provide the specific alternative standards or set of standards to be applicable to the affected property, and any terms and conditions of such standards that are imposed on the affected property.

(iii) Provide the specific alternative standards or set of standards to be applicable to the variance applicant, and any terms and conditions of such standards that are imposed on the variance applicant.

(iv) Include only standards and terms and conditions proposed by the applicant in the variance application, except that the director may impose any additional or alternative terms and conditions that the director determines necessary to ensure the protection of public health and safety.

(e) The director shall deny a variance application if the director finds that the application is not in compliance with paragraphs (A)(1) and (A)(2) of this rule. If the variance application fails to propose applicable standards which are protective of public health and safety as required in paragraph (A)(1)(b) of this rule, the director shall deny the variance application, unless the imposition of additional or alternative terms and conditions pursuant to paragraph (A)(4) of this rule are protective of public health and safety.

(f) Whether an approval or denial of the variance application, the director shall issue an order to the applicant in accordance with paragraph (A)(4) of this rule. Variances shall be approved or denied in accordance with this rule and Chapter 3745. of the Revised Code.

(B) Authority and scope for case-by-case determinations. A volunteer may apply to the director for a case-by-case determination that renders a generic numeric ground water standard or a property-specific risk assessment-derived ground water standard inapplicable to a property on which a voluntary action is conducted. If the no further action letter relies on a case-by-case determination, then the case-by-case determination shall be approved by the director prior to issuance of the no further action letter for that property.



(1) Criteria for case-by-case determinations. The director shall consider public comments received by Ohio EPA during the public comment period conducted pursuant to paragraph (C) of this rule. The director shall issue a case-by-case determination from those applicable standards to remediate contaminated ground water only if the volunteer demonstrates that doing so ensures the continued protection of public health and safety.

(2) Application contents. An application for a case-by-case determination shall be prepared and submitted by a certified professional, on behalf of the volunteer, on a form provided by Ohio EPA. The application shall include, but is not limited to, the following information:

(a) The name and address of the volunteer.

(b) The name and title of the volunteer's representative who requests the determination.

(c) The certified professional's certification identification number assigned by Ohio EPA, and the certification's expiration date.

(d) A copy of the certified laboratory's certificate or an identification number assigned by Ohio EPA for any data submitted to support the case-by-case determination request.

(e) A description of the affected property.

(f) A statement that identifies the applicable ground water standard that is the focus of the case-by-case determination request.

(g) A statement of the proposed alternative standard or set of standards proposed to be applicable to the affected property and any terms and conditions thereof. Include a detailed description or explanation, and the supporting rationale for the new alternative standard, if any.

(h) All information obtained from a phase I or phase II property assessment that is relevant to the determination and the affected property.

(i) The names and addresses of all adjacent property owners.



(j) The addresses and parcel numbers of all adjacent properties.

(3) Application review process.

(a) Within fourteen days after receipt of the application, the director shall determine whether the case-by-case determination application is complete and contains all of the items required by paragraph (B)(2) of this rule, and shall notify the applicant in a letter sent by certified mail.

(b) In determining whether a case-by-case determination application is complete, the director may request additional information. The applicant, through a certified professional, shall promptly respond to any requests from the director for additional information.

(c) Upon determining that a case-by-case determination application is complete, the director shall implement the public notice and public meeting procedures in paragraph (C) of this rule.

(d) The applicant for a case-by-case determination, or a representative of the applicant who is knowledgeable about the affected property and the application, shall attend the public meeting, shall present information about the application and the basis of the request for the case-by-case determination, and shall respond to questions from the public about the affected property and the application.

(4) Issuance or denial of the case-by-case determination.

(a) When considering whether to approve or deny the application, or whether to impose terms and conditions on the case-by-case determination that are in addition to, or alternative to, any terms and conditions proposed by the applicant, the director shall consider the following:

(i) Any comments made by the public at the public meeting on the application.

(ii) Any written comments on the application.

(b) Within ninety days after the public meeting on a case-by-case determination application, the



director shall issue a proposed action to the applicant in accordance with section 3745.07 of the Revised Code. The proposed action shall include the director's intent with regard to approval or denial of the application, and shall include the findings upon which that proposed action is based.

(c) The director shall deny a case-by-case application if the director finds that the application fails to be protective of public health and safety, as required in paragraph (B)(1) of this rule.

(d) Whether an approval or denial of the case-by-case determination application, the director shall issue an order to the applicant in accordance with paragraph (B)(4) of this rule. Case-by-case determinations shall be approved or denied in accordance with this rule and Chapter 3745. of the Revised Code.

(C) Public notice and public meeting. Upon determining that a variance or case-by-case determination application is complete, the director shall do the following:

(1) Mail notice of the application to each owner of each parcel of land that is adjacent to the affected property.

(2) Schedule a public meeting for the application and publish notice of the public meeting. The public meeting shall be held between thirty and ninety days after the date of the letter specified in paragraph (A)(3)(a) or (B)(3)(a) of this rule. The public meeting shall be held in the county where the affected property or the greatest portion of that affected property is located.

(3) At least thirty days before the date scheduled for the public meeting on an application, the director shall publish public notice of the public meeting. The public notice shall be published in a newspaper of general circulation in the county in which the affected property is located. If the affected property is located in close proximity, as determined by the director, to the boundary of that county with an adjacent county, the director shall publish the public notice in a newspaper of general circulation in the adjacent county. At a minimum, the public notice shall contain the following information:

(a) Notification that the director will receive written comments on the application for a period of forty-five days that begins on the date of publication of the public notice.



(b) The address of the property to which the application pertains.

(c) A brief summary of the alternative standards or set of standards and any terms and conditions proposed by the applicant.

(d) The date, time, and location of the public meeting.

(4) Concurrently with the publication of the public notice required in paragraph (C)(3) of this rule, the director shall mail notice by certified mail of the application, comment period, and public meeting to each owner of each parcel of land that is adjacent to the affected property, and to the legislative authority of the municipal corporation or township, and county, in which the property is located. The notices mailed to the owners of adjacent land and legislative authorities shall contain the same information as the public notice described in paragraph (C)(3) of this rule.

(5) A representative of Ohio EPA who is familiar with the affected property and the application shall attend the public meeting to receive comments from the public and to respond to questions from the public about the affected property and the application.

(6) A stenographic record of the proceedings at the public meeting shall be kept and shall be made a part of the administrative record about the application. Ohio EPA shall maintain all records produced by or for the public meeting.

(D) Administrative fees. An applicant who seeks a variance or case-by case determination shall reimburse Ohio EPA for actual costs incurred to review the application and the application's accompanying information. The applicant shall establish a direct billing schedule for payments, as required by paragraph (E) of rule 3745-300-03 of the Administrative Code. After the application is approved, denied, or withdrawn, Ohio EPA shall send to the applicant a statement of actual costs for payment. The applicant shall pay the actual costs, in full, within sixty days after receipt of the statement.

(E) Application withdrawal. Upon receipt of a written request by the applicant, an application for variance or a case-by-case determination made in accordance with this rule may be withdrawn from



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the director's consideration. A request for withdrawal shall be submitted to Ohio EPA prior to an approval or denial of the application. Upon the application's withdrawal, the director shall cease review of the application and shall discontinue the public notice and public meeting processes. Any costs incurred by Ohio EPA prior to withdrawal are non-refundable.