

# ARTICLE III

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## VARIANCES

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**EFFECTIVE: July 15, 2023**

### **SECTION 3.01 VARIANCES – APPLICATION FOR – CONSIDERATIONS – LIMITATIONS – RENEWALS – REVIEW**

- (A) Applicability (RCW 70A.15.2310). Any person, or group of persons, who is directly impacted by SRCAA Regulation I, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed one year.
- (B) General Process. The Board may grant a variance from SRCAA Regulation I. However, if the variance sought also requires a variance from state rules, Ecology must first issue its approval of the variance in writing.
  - (1) If the variance pertains to SRCAA Regulation I only, the applicant must submit the variance application to SRCAA and the decision to approve or deny the variance will be made by the Board.
  - (2) If the variance pertains to SRCAA Regulation I and a state rule, the applicant must submit the variance application concurrently to both SRCAA and Ecology. If approved by Ecology, the variance application may then be reviewed and processed by SRCAA with the decision to approve or deny the variance being made by the Board. Approval of such a variance is contingent upon approval by both Ecology and SRCAA. If denied by Ecology, SRCAA will not make a determination on the variance request.
    - (a) Per 40 CFR 52.2476(b), any change to a provision of the state implementation plan described in 40 CFR 52.2476(a) must be submitted by Ecology for approval by EPA in accordance with the requirements of 40 CFR 51.104. In accordance with 40 CFR 51.104, variances approved under Article III will not be included in orders or permits provided for in RCW 70A.15.2210 (Notice of Construction) or RCW 70A.15.2260 (Operating Permits) until such

time as the variance has been accepted by the EPA as part of an approved State Implementation Plan in 40 CFR Part 52, subpart WW.

- (C) Conditions for Granting a Variance.
- (1) Pursuant to RCW 70A.15.2310(1), variances may be issued by the Board if it finds that:
    - (a) The emissions occurring or proposed to occur do not endanger public health, safety, or the environment; and
    - (b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.
  - (2) The interests of the applicant, other owners of property likely to be affected by the emissions, and the general public must also be considered pursuant to Section 3.01(E) and RCW 70A.15.2310(2).
- (D) Complete Application. In addition to the requirements of Section 3.01(A), applicants seeking a variance must submit an accurate and complete application. Application must be made using SRCAA prepared and furnished forms. An application is not deemed complete until all of the information identified below is received. At a minimum, applicants must submit all of the following information:
- (1) A list of interested parties and neighbors within five hundred (500) feet or more of the property on which the variance is proposed to occur, including mailing addresses, or as deemed necessary by the Control Officer.
  - (2) The specific laws and/or regulations from which a variance is being sought.
  - (3) How compliance with rules or regulations from which the variance is sought would produce serious hardship to the applicant without equal or greater benefits to the public.
  - (4) An explanation of the time period for which the variance is sought; not to exceed one (1) year.
  - (5) How the applicant will comply with the applicable laws and/or regulations following expiration of the variance so as to alleviate the need for a renewal of a variance, if one is approved.
  - (6) An explanation, if applicable, as to why there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved.
  - (7) If alternatives are available, what the cost of the alternatives are. Supporting documentation must be provided.
  - (8) Detailed maps of the site subject to the variance application.
  - (9) Any additional information requested by SRCAA prior to, during, or following submittal of the application.
  - (10) The variance application must be complete and accurate and a statement to this effect by the applicant must be included in the application. Incomplete or inaccurate applications may be returned to the applicant for completion or correction.

- (11) If the variance application requires Ecology's approval pursuant to Section 3.01(B), the applicant must demonstrate to SRCAA that a variance application has been approved by Ecology (i.e. by submitting a copy of Ecology's written decision to SRCAA).
- (E) Public Notice and Public Hearing.
  - (1) Variance may be issued only after public involvement per SRCAA Regulation I, Article V, Section 5.05. No variance shall be granted pursuant to 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. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within five hundred (500) feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond five hundred (500) feet, if deemed necessary. A thirty (30) calendar day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:
    - (a) The time, date, and place of the hearing;
    - (b) The name and address of the owner or operator and the source;
    - (c) A brief description of the variance request; and
    - (d) The deadline for submitting written comments to SRCAA.
  - (2) For variances that pertain to SRCAA Regulation I and a state rule, SRCAA may determine that public notice and public hearing conducted by Ecology under WAC 173-400-171 satisfies the provision in Article V, Section 5.05.
- (F) Variance Limitations. Any variance or renewal thereof shall be granted within the requirements of Section 3.01(A) and (C) for not more than one (1) year under conditions consistent with the reasons therefore, and within the following limitations:
  - (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the 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 measure that the Board may prescribe.
  - (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

- (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Sections 3.01(F)(1) and (2), it shall be for not more than one (1) year.
- (G) **Renewal.** Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of a complete and accurate application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or SRCAA.
- (H) **Appeal Process.** A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW, as of the effective date of this regulation or thereafter amended.
- (I) **Emergency Provisions.** Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6000 through 70A.15.6040 (Air Pollution Episodes) to any person or his or her property.
- (J) **Processing Period.** Unless the applicant and the Board agree to a continuance, an application for a variance, or for the renewal thereof, submitted to the Board pursuant to Section 3.01(B)(1) shall be approved or disapproved by the Board within sixty-five (65) days of SRCAA determining that the application for a variance is accurate and complete and receiving the filing fee reference in Section 3.02(A). If approval from Ecology is required per Section 3.01(B)(2), and unless the applicant and the Board agree to a continuance, approval or denial by the Board shall occur within sixty-five (65) days of receipt of all of the following: an accurate and complete application, Ecology's written decision to approve the variance, and the filing fee referenced in Section 3.02(A).

## **SECTION 3.02 FEES**

- (A) **Fees.** Except as provided in Section 3.02(B), below, the filing fees, all legal fees, legal notice fees, and all hourly fees incurred by SRCAA must be paid by the applicant regardless of whether the variance is granted, denied, or determined to be incomplete.

- (1) Filing Fees. For applications submitted pursuant to Section 3.01(B)(1) (SRCAA Regulation I only), a filing fee as specified in SRCAA Regulation I, Article X, Section 10.08 and Section 10.08 of the Consolidated Fee Schedule shall be submitted at the time of application and shall be applied to the final invoice fee. For applications submitted pursuant to Section 3.01(B)(2) (SRCAA Regulation I and Ecology rules), a filing fee as specified in Section 10.08 in Article X and in the Consolidated Fee Schedule shall be submitted at the same time Ecology's written approval is submitted to SRCAA pursuant to Section 3.01(J) and shall be applied to the final invoice fee.
  - (2) Legal Fees / Legal Notice Fees. The applicant shall also be responsible to pay all legal fees incurred by SRCAA directly attributed to the application for a variance and costs associated with any legal notice(s) required pursuant to Article III.
  - (3) Hourly Fees. An hourly fee, as established in Section 10.08 in Article X and in the Consolidated Fee Schedule, shall also be assessed to, and paid by, the applicant for applications reviewed by SRCAA pursuant to Article III.
- (B) Reduced Fees or Refunds. The applicant may request that some portion of the variance fees be waived or refunded if it is demonstrated to the Board that SRCAA's variance application process did not fully and accurately inform the applicant of the variance process described in Sections 3.01-3.02(A). Such request must be made in writing no later than thirty (30) days after denial or approval of the variance by the Board. Any fee reductions or refunds shall be at the full discretion of the Board.