

3745-300-12

Variances and case-by-case determinations.

(A) Authority and scope for variances. Pursuant to section 3746.09 of the Revised Code, 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 being conducted.

(1) Approval criteria. The director shall issue a variance from those applicable standards only if the volunteer makes all of 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 complying 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 set forth in the application will result in an improvement of environmental conditions at the property and ensure that public health and safety will be protected.

(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 the agency. The application shall include, but is not limited to, the following information:

(a) The name of the person requesting the variance.

(b) A copy of the certified professional's certificate or an indication of the certified professional's identification number assigned by the agency.

(c) A copy of the certified laboratory's certificate or an indication of the certified laboratory's identification number assigned by the agency for any data submitted to support the variance request.

(d) A statement that identifies the applicable standard that is the focus of the variance request.

(e) 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.

(f) A summary of the technology, methods or controls used to achieve the alternative standard or set of standards and terms and conditions.

(g) A description of the affected property.

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

(i) A written demonstration that the proposed variance meets the requirements of paragraph (A)(1) of this rule.

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

(3) Application review process.

(a) The director shall determine whether a variance application is complete and contains all of the items required pursuant to paragraph (A)(2) of this rule within fourteen days of receiving the application, and shall notify the applicant of this determination in a letter sent by certified mail.

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

(c) Upon determining that a variance application is complete the director shall follow the public notice and public meeting requirements described in paragraph (C) of this rule.

(d) In accordance with paragraph (C) of this rule, 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 regarding the application and the basis of the request for the variance, and shall respond to questions from the public regarding the affected property and the variance application.

(4) Issuance or denial of the variance application.

(a) Within ninety days after conducting the public meeting on a variance 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 the issuance or

denial of the variance application, and shall include the findings upon which that action is based. When considering whether to issue or deny the variance application or whether to impose terms and conditions on the variance that are in addition or alternative to those proposed by the applicant, the director shall consider any comments on the variance application made by the public at the public meeting and any written comments on the application received.

(b) The director shall issue a variance from standards established in accordance with the rules adopted pursuant to division (B)(1) or (B)(2) of section 3746.04 of the Revised Code only if the variance application makes all of the demonstrations required under paragraph (A)(1) of this rule to the director's satisfaction.

(c) A variance issued under this rule shall state the specific standards whose terms are being varied and shall set forth the specific alternative standards or set of standards to be applicable to the affected property and any terms and conditions thereof imposed on the affected property and the variance applicant. The variance shall 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 to be necessary to ensure that public health and safety will be protected.

(d) The director shall deny a variance application if the director finds that the applicant does not meet the requirements of paragraph (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)(c) of this rule, will ensure that public health and safety will be protected.

(e) Whether an approval or denial of the variance application, the director shall issue an order to the applicant in accordance with the procedure contained in paragraph (A)(4)(a) of this rule. Variances shall be approved or denied in accordance with this rule, section 3746.09 of the Revised Code, and Chapter 3745. of the Revised Code.

(B) Authority and scope for case-by-case determinations. Pursuant to division (B)(12) of section 3746.04 of the Revised Code, a volunteer may apply to the director for a case-by-case determination that renders a generic numeric ground water standard or risk-derived ground water standard inapplicable to a property on which a voluntary action is being conducted. If the no further action letter relies on a case-by-case determination, then the case-by-case determination must be approved by the director prior to issuance of the no further action letter for that property.

(1) Approval criteria. The director shall issue a case-by-case determination from those applicable standards for remediating contaminated ground water only if the volunteer demonstrates that doing so will ensure that public health and safety is and will continue to be protected. The director shall consider public comments made during the public comment period conducted in accordance with paragraph (C) of this rule.

(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 the agency. The application shall include, but is not limited to, the following information:

(a) The name of the person requesting the determination.

(b) A copy of the certified professional's certificate or an indication of the certified professional's identification number assigned by the agency for any data submitted to support the case-by-case request.

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

(d) A description of the affected property.

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

(f) If applicable, 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.

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

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

(3) Application review process.

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

(b) After determining whether a case-by-case application is complete, the

director may request, at the director's discretion, additional information. The applicant, through their certified professional, shall promptly respond to any requests from the director for additional information.

(c) Upon determining that a case-by-case application is complete the director shall follow the public notice and public meeting requirements described in paragraph (C) of this rule.

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

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

(a) Within ninety days after conducting the public meeting on a case-by-case 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 the issuance or denial of the case-by-case application, and shall include the findings upon which that action is based. When considering whether to issue or deny the application or whether to impose terms and conditions on the determination that are in addition or alternative to any proposed by the applicant, the director shall consider any comments on the case-by-case application made by the public at the public meeting and any written comments on the application.

(b) 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. The director shall consider public comments made during the public comment period.

(c) Whether an approval or denial of the case-by-case application, the director shall issue an order to the applicant in accordance with the procedure contained in paragraph (B)(4)(a) of this rule. Case-by-case determinations shall be approved or denied in accordance with this rule, section 3746.04 of the Revised Code, and Chapter 3745. of the Revised Code.

(C) Public notice and public meeting requirements. Upon determining that a variance or case-by-case determination application is complete, the director shall do all of 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 also publish the public notice in a newspaper of general circulation in the adjacent county. The public notice shall, at a minimum, contain all of the following information:

 - (a) Notification that the director will receive written comments on the application for a period of forty-five days commencing 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 the 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 adjacent land owners and legislative authorities shall contain the same information as the public notice described in paragraph (C)(3) of this rule.
- (5) A representative of the 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 regarding 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 regarding the application. The agency shall conduct a public meeting and shall maintain all records produced by or for that meeting.

(D) Administrative fees. An applicant seeking a variance or case-by case determination is responsible for reimbursing the agency for actual costs incurred to review the application and accompanying information. The applicant must establish a direct billing schedule under paragraph (E) of rule 3745-300-03 of the Administrative Code. A statement of costs will be sent to the applicant after the application is approved, denied, or withdrawn. The applicant must pay the costs, in full, within sixty days of receipt of the statement of costs.

(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 consideration by the director. A request for withdrawal must be submitted prior to approval or denial of the application. Upon withdrawal, the director may cease review of the application and discontinue the public notice and public meeting processes. Any fees levied under paragraph (D) of this rule for administrative costs prior to withdrawal are non-refundable.