

3745-300-12 Variances from generic numerical standards or property specific risk assessment procedures.

(A) As used in this rule:

"Affected property" means a property, or portion thereof, for which a variance is being sought.

(B) The volunteer may apply to the director for a variance from standards otherwise applicable to a property on which a voluntary action is being conducted, in accordance with the rules adopted pursuant to divisions (B)(1) and (B)(2) of section 3746.04 of the Revised Code.

(C) 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. an application for a variance under this rule shall include, but is not limited to, the following information:

(1) The name of the person requesting the variance;

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

(3) A copy of the certified laboratory's certificate or an indication of the certified laboratory's identification number assigned by the agency;

(4) A statement of the standards applicable to the affected property, pursuant to the rules adopted pursuant to divisions (B)(1) and (B)(2) of section 3746.04 of the Revised Code;

(5) A statement of the proposed alternative standard(s) or set of standards proposed to be applicable to the affected property and any terms and conditions thereof;

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

(7) A description of the affected property, including the information required under paragraph (E) of rule 3745-300-13 of the Administrative Code.

(8) All information obtained from a phase i property assessment that is relevant to the affected property;

(9) All information obtained from a phase ii property assessment that is relevant to the affected property;

(10) A written demonstration that the proposed variance meets the requirements of Chapter 3746. of the Revised Code and paragraph (E) of this rule; and

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

- (D) Each application for a variance made under this rule shall be accompanied by full payment of the fee for a variance from applicable standards, established in paragraph (C)(9) of rule 3745-300-03 of the Administrative Code.
- (E) in order to obtain a variance from standards established in accordance with the rules adopted under divisions (B)(1) and (B)(2) of section 3746.04 of the Revised Code, an applicant must make all of the following demonstrations in the variance application to the director's satisfaction:
- (1) Either or both of the following:
 - (a) It is technically infeasible to comply with the applicable standards otherwise established at the affected property. to establish technical infeasibility, the applicant shall include, in a variance application, information sufficient for the director to make a determination that the available technology for remediating hazardous substance(s) or petroleum, or both, at the affected property will not achieve applicable standards; or
 - (b) The costs of complying with the applicable standards otherwise established at the affected property substantially exceed the economic benefits; and
 - (2) The proposed alternative standard(s) or set of standards and terms and conditions set forth in the variance application will result in an improvement of environmental conditions at the affected property and will ensure that public health and safety will be protected; and
 - (3) The establishment of and compliance with the alternative standard(s) or set of standards proposed to be applicable to the affected property and the terms and conditions thereof are necessary to preserve, promote, protect or enhance employment opportunities or the reuse of the affected property.
- (F) The director shall determine whether a variance application is complete and contains all of the items required pursuant to paragraph (C) 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.
- (G) After determining whether a variance application is complete, the director may request, at his discretion, additional information. the variance applicant through their certified professional, shall promptly respond to any requests from the director for additional information.
- (H) Upon determining that a variance application is complete the director shall do all of the following:

- (1) Transmit a copy of the variance application to the property revitalization board created in section 3746.08 of the Revised Code;
- (2) Mail notice of the variance application to each owner of each parcel of land that is adjacent to the affected property; and
- (3) Schedule a public meeting for the variance application and publish notice of the public meeting in accordance with PARAGRAPH (I) OF THIS RULE.
 - (a) The public meeting shall be held between thirty and ninety days after the date of the letter specified in paragraph (F) of this rule.
 - (b) The public meeting shall be held in the county where the affected property, or the greatest portion of that affected property is located.
- (I) At least thirty days before the date scheduled for the public meeting on a variance application, the director shall publish public notice of the public meeting.
 - (1) The public notice shall, at a minimum, contain all of the following information:
 - (a) Notification that the director will receive written comments on the variance 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 variance application pertains;
 - (c) A brief summary of the alternative standard(s) or set of standards and any terms and conditions proposed by the applicant; and
 - (d) The date, time, and location of the public meeting.
 - (2) 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.
- (J) Concurrently with the publication of the public notice required in paragraph (I) 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 (I) of this rule.

(K) The agency shall conduct a public meeting and shall maintain all records produced by or for that meeting.

(1) 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.

(2) A representative of the Ohio EPA who is familiar with the affected property and the variance 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 variance application.

(3) 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 variance application.

(L) 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, that indicates the director's intent with regard to the issuance or denial of the variance application, and 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:

(1) The advice provided by the property revitalization board established pursuant to section 3746.08 of the Revised Code;

(2) Comments on the variance application made by the public at the public meeting; and

(3) Written comments on the application received from the public.

(M) 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 (E) of this rule to the director's satisfaction.

(N) A variance issued under this rule shall state the specific standard(s) whose terms are being varied and shall set forth the specific alternative standard(s) 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 his variance application, except that the director may impose any additional or alternative terms and conditions that he

determines to be necessary to ensure that public health and safety will be protected.

(O) THE DIRECTOR SHALL DISAPPROVE A VARIANCE APPLICATION IF HE FINDS THAT THE APPLICANT DOES NOT MEET THE REQUIREMENTS OF PARAGRAPH (E) OF THIS RULE. IF THE VARIANCE APPLICATION FAILS TO PROPOSE APPLICABLE STANDARD(S) WHICH ARE PROTECTIVE OF PUBLIC HEALTH AND SAFETY, AS REQUIRED IN PARAGRAPH (E)(2) OF THIS RULE, THE DIRECTOR SHALL DISAPPROVE THE VARIANCE APPLICATION, UNLESS THE IMPOSITION OF ADDITIONAL OR ALTERNATIVE TERMS AND CONDITIONS, PURSUANT TO PARAGRAPH (N) OF THIS RULE, WILL ENSURE THAT PUBLIC HEALTH AND SAFETY WILL BE PROTECTED.

(P) If the director approves or disapproves the variance application, he shall issue an order to the applicant in accordance with the procedure contained in paragraph (L) of this rule.

(Q) Variances shall be issued or denied in accordance with this rule, section 3746.09 of the Revised Code, and Chapter 3745. of the Revised Code.

Effective: _____

Certification: _____

Date: _____

Promulgate Under: RC Chapter 119

Rule Amplifies: RC Chapter 3746.

Rule Authorized By: RC Section 3746.04

Prior Effective Dates: None