

**§587. Variances**

Any person who owns or is in control of any source for which an air emission license was granted and construction was commenced prior to January 6, 1975, or a source other than a new or modified major stationary source for which an air emission license is granted after January 6, 1975, may apply to the department for a variance from ambient air quality standards or emission standards promulgated under this chapter. The application must be accompanied by such information and data as the department may reasonably require. The department may grant the variance if it finds that: [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §161 (AMD).]

**1. No danger to human health or safety.** The emissions occurring or proposed to occur do not endanger human health or safety; [PL 1979, c. 381, §9 (AMD).]

**2. Compliance to produce hardship.** Compliance with the rules or regulations from which variance is sought would produce serious hardships; and [PL 1979, c. 381, §9 (AMD).]

**3. Violation.** The variance will not cause or contribute to a violation of the applicable ambient air increment. [PL 1983, c. 566, §41 (AMD).]

No variance may be granted except after opportunity for a public hearing in the municipality where the applicant maintains the building or business in connection with which the variance is sought. [PL 1983, c. 566, §41 (AMD).]

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 air pollution involved, it is good only until the necessary means for prevention, abatement or control become known and available and subject to the taking of such reasonable substitute or alternate measures as the department may prescribe. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §162 (AMD).]

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it is for a period not to exceed such reasonable time as the department finds is requisite for the taking of the necessary measures. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §162 (AMD).]

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 subsections 1 and 2, it is only for such time as the department considers reasonable. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §162 (AMD).]

Any variance 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 department on account of the variance, no renewal of the variance may be granted, unless following public hearing on the complaint on due notice, the department finds that renewal is justified. No renewal may be granted except on application therefor. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §162 (AMD).]

Any person adversely affected by a variance or renewal granted by the board may obtain judicial review thereof by a proceeding in the Superior Court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious. [PL 1971, c. 618, §12 (AMD).]

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 section 347-A, subsection 3, to any person or that person's property. [PL 1989, c. 878, Pt. A, §115 (AMD).]

Any owner or operator of a new or modified major emitting source who applies for an air emission license after January 6, 1975, shall not be eligible for a variance from ambient air quality standards, including applicable ambient air increments, except that the source may apply for a variance to increments applicable to mandatory federal Class I areas under the terms and conditions set forth in section 165(d) of the Federal Clean Air Act, 42 United States Code Annotated, section 7475(d). [PL 1979, c. 381, §11 (NEW).]

#### SECTION HISTORY

PL 1969, c. 474, §1 (NEW). PL 1971, c. 618, §12 (AMD). PL 1973, c. 682 (AMD). PL 1975, c. 282, §3 (AMD). PL 1977, c. 300, §42 (AMD). PL 1979, c. 381, §§8-11 (AMD). PL 1983, c. 566, §41 (AMD). PL 1989, c. 878, §A115 (AMD). PL 1989, c. 890, §§A40,B161, 162 (AMD).

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