

65-3013. Variances; hearing. (a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the secretary for a variance from rules and regulations governing the quality, nature, duration or extent of emissions. The application shall be accompanied by such information and data as the secretary may reasonably require. The secretary may grant such variance if the secretary finds that:

- (1) The emissions occurring or proposed to occur do not endanger or tend significantly to endanger human health or safety; and
- (2) Compliance with the rules and regulations from which variance is sought would produce serious hardships without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) and for time periods and under conditions consistent with the reasons therefor, 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 air 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 measures that the secretary 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 necessitate 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 the secretary finds 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 subsections (c)(1) and (2), it shall be for not more than one year.

(d) 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 secretary on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the secretary finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the secretary shall give public notice of such application in accordance with rules and regulations of the secretary.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary. Within 15 days after the secretary's written decision to grant or deny a variance or renewal thereof, the applicant or holder of a variance or renewal may file a request for a hearing with the secretary. Such hearing shall be conducted in accordance with the Kansas administrative procedure act. However, any person who participated in the public comment process or the public hearing or who otherwise would have standing under K.S.A. 77-611, and amendments thereto, and is adversely affected by any final action of the secretary pursuant to this section shall have standing to obtain judicial review of the secretary's final action on the variance or renewal in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final variance or renewal decision, including the variance or renewal application and any addenda or amendments thereto, the variance or renewal summary, the draft variance or renewal, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the variance or renewal application, all responses by the applicant or holder of a variance or renewal to any written comments or testimony, the secretary's response to the public comments and testimony and the final variance or renewal.

(f) 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 K.S.A. 65-3012, and amendments thereto, to any person or any person's property.

History: L. 1967, ch. 347, § 13; L. 1970, ch. 261, § 13; L. 1974, ch. 352, § 145; L. 1986, ch. 318, § 93; L. 1988, ch. 356, § 202; L. 2006, ch. 79, § 2; April 13.