

## REGULATION V - PROCEDURE BEFORE THE HEARING BOARD

### Rule 5.7 Emergency Variances

An emergency variance or series of variances shall be in effect until the hearing to consider a request by the applicant for a variance other than an emergency variance, but not to exceed thirty days.

- A. Upon receipt of a request for an emergency variance, the Control Officer shall contact the Hearing Officer to establish a time and place for consideration of the request. The Control Officer shall inform the applicant of such time and place.
- B. The applicant and Control Officer shall present testimony and evidence to the Hearing Officer. The burden of proof shall be on the applicant to demonstrate that a breakdown or other emergency situation exists.
- C. In order to consider the granting of an emergency variance for an extended breakdown situation, the Hearing Officer should determine the causes of the breakdown and that the equipment failure or malfunction:
  1. Is not the result of neglect or disregard of any air pollution control law or rule or regulation.
  2. Is not intentional or the result of negligence.
  3. Is not the result of improper maintenance.
- D. After consideration of the emergency variance request, the Hearing Officer may grant or deny an emergency variance. Within five working days following the granting of an emergency variance, a written order shall be issued confirming the decision, with appropriate findings.
- E. No emergency variance shall be granted unless the Hearing Officer determines that:
  1. The emergency variance request is caused by a breakdown condition or other emergency situation and may not be delayed until a properly noticed hearing.
  2. Granting of the emergency variance will not cause a public nuisance.
  3. Granting of the emergency variance will not create an immediate threat or hazard to public health or safety.
  4. Granting of the emergency variance will not interfere with the attainment or maintenance of any national ambient air quality standard.
  5. The requirements for a variance set forth in Rule 5.6.C. have been met.
- F. At any time after an emergency variance has been granted, the applicant or Control Officer may request the Hearing Officer to revise, revoke, or further condition the variance and issue an amended written order. All procedures shall be as designated for the original hearing.
- G. An emergency variance shall remain in effect only as long as necessary to correct the breakdown or emergency condition, but not to exceed the time period required for a properly noticed hearing to consider an interim or ninety-day variance in accordance with Rule 5.6.D., or thirty days, whichever is the shorter time period.

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- H. Within ten days after the date of expiration of an emergency variance, the applicant shall submit a written report to the Control Office including, but not limited to, the following details:
1. Duration of excessive emissions.
  2. Estimate of quantity of emissions.
  3. Statement of the cause of the occurrence.
  4. Corrective measures to be taken to prevent a recurrence.

Documentation of the breakdown condition may be required by the Control Officer.

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