



Oregon Department of Environmental Quality

# Rule Concept: Variances

## Onsite Wastewater Management Program 2025

Date: Dec. 30, 2024

### Summary of existing rule

Oregon Administrative Rules allow property owners to apply to DEQ for a variance from the rules, usually as a result of having been denied a site evaluation approval. After holding a public hearing, a variance officer appointed by DEQ's director may grant a for cause variance to any rule in [OAR 340-071](#) if:

- (a) Strict compliance with the rule or standard is inappropriate; or
- (b) Special physical conditions render strict compliance unreasonable, burdensome, or impractical.

Additionally, anyone adversely impacted by a variance denial may appeal the decision to a circuit court under ORS 183.484.

### Description of the issue

Based on agency experience, the current rules do not provide sufficient guidance to applicants that a variance proposal be at least as protective to public health and the environment. Without sufficient guidance regarding this standard, applicants may pursue applying for a variance from the rules without understanding that the proposal must demonstrate the proposed design is protective. This revision would add specific reference to this overarching requirement in the variance standard.

Currently if DEQ denies a variance proposal and any person adversely impacted wishes to appeal that decision, they must file a petition for judicial review in circuit court. This process is time consuming and expensive for both the petitioner and DEQ. Other permit-related appeals within DEQ's Water Quality program are handled by Administrative Law Judges through the Office of Administrative Hearings. These proceedings tend to be less formal and provide for quicker resolution.

### Revised sections

Changes are proposed to section 340-071-0415, 0430, and 0440.

### Implications of rule changes

- Public health and the environment will be better protected because the rules will include a clear requirement to ensure that approved variance applications are protective.
- Applicants will better understand the basic requirements for their variance proposal.
- Variance denial appeals will be less costly for DEQ and the petitioner.
- Variance denial appeals will more likely be decided by a judge that has a specialized understanding of administrative law.

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- It is possible that property owners affected by a variance denial may be more inclined to challenge those decisions through the contested case hearing process because it is generally less expensive and faster than the existing circuit court process.
- The Environmental Quality Commission, EQC, would have to handle reviews of proposed contested case orders, when requested. Spending time on these issues could take away time spent on decision-making for other environmental matters.

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