

Variances

To: Onsite Program Rulemaking Advisory Committee, RAC

From: DEQ Onsite Program

Date: Dec. 30, 2024

Summary of Existing Rule

Oregon Administrative Rules (OARs) 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 Department 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.
- 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.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).

Proposed Rule Changes Pertaining to Variances

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

~~Text deleted from one location~~ - and moved to another location

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

340-071-0415

For Cause Variances

- (1) An applicant may request variances from any rule or standard in this division.
- (2) Variances. Variance officers the director appoints may, after a public hearing, grant variances from any rule in this division to permit applicants.
- (3) To grant a variance, the variance officer must find that: ~~the proposal demonstrates that the system design will be equally or more protective to public health and the environment as the rules or standards in this division; and one of the following:~~
 - a. Strict compliance with the rule or standard is inappropriate; or
 - b. Special physical conditions render strict compliance unreasonable, burdensome, or impractical
- (4) Applications. . .

340-071-0430

Variance Hearings and Decisions

- (1) A variance officer must hold a public information hearing on each variance application for a for cause or hardship variance within 30 days after receiving a completed application.
- (2) The hearing must be held in the county where the property described in the application is located.
- (3) The applicant must demonstrate the variance is warranted.
- (4) The variance officer must visit the site of the proposed system before conducting the hearing.
- (5) The variance officer or, for hardship variances, the commission, must grant or deny the variance within 45 days after the hearing is completed. A decision to grant a variance must include the location of the onsite system and the specifications and conditions of the variance. The conditions set forth in the variance approval may include any ongoing sampling and/or reporting requirements deemed necessary to ensure the intended performance of the system and must be followed until the system is decommissioned. Adhering to variance approval conditions is the responsibility of the property owner and any such conditions shall transfer to subsequent property owners; and
- (6) Except for hardship variances under OAR 340-071-0420, variances run with the land.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0440

Variance Appeals

- (1) Any person adversely affected by a variance officer's approval of a variance under OAR 340-071-0415 or ~~340-071-0420~~ may appeal that decision to the commission under ORS 454.660(1).
- ~~(2) Any person adversely affected by the denial of a variance under OAR 340-071-0415 or 340-071-0420 or by the commission's approval of a hardship variance under OAR 340-071-0420 may appeal that decision to a circuit court under ORS 183.484.~~
- (2) Any person adversely affected by the denial of a variance may appeal that decision.
 - a. For cause variance denials under OAR 340-071-0415 may be appealed through the contested case hearing procedure set forth in ORS Chapter 183 and OAR chapter 340, division 011; or
 - b. Hardship variance decisions under OAR 340-071-0420 may be appealed through the court of appeals ORS 183.485.

Stat. Auth.: ORS 454.625

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05