

# **Regulation VI**

## **Rule 602 – Emergency Variances**

*This Rule was first adopted November 3, 1982; revised May 19, 2005. The current version was adopted by the Governing Board via Resolution 2014-8 on October 16, 2014.*

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#### **A. EMERGENCY VARIANCES**

## **RULE 603 EMERGENCY VARIANCES**

- A. **EMERGENCY VARIANCE:** Notwithstanding other provisions of Chapter VI of these regulations, the Chairperson of the Hearing Board or any other member of that Hearing Board designated thereby as the Hearing Officer, except an alternate member, may issue, without notice and hearing, an emergency variance or series of variances to an applicant. The emergency variance or series of variances, if granted, 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 30 days.
1. 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.
  2. 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.
  3. Prior to acting on the petition for an emergency variance, the Hearing Officer shall determine, if possible, the causes of the breakdown and that the equipment failure or malfunction is not the result of intentional disregard of any air pollution control law or rule or regulation;
  4. 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.
  5. An emergency variance shall be granted only after the Hearing Officer makes the following determinations.
    - a. The emergency variance request is caused by a breakdown condition or other emergency situation and may not be delayed until a properly noticed hearing.
    - b. Granting of the emergency variance will not create an immediate threat or hazard to public health or safety.
    - c. Requiring immediate compliance would result in either an arbitrary or unreasonable taking of property, or, a closing of a lawful business without a corresponding benefit in reducing air contaminants.
    - d. That good cause exists for the granting of the variance.
  6. 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.
  7. An emergency variance shall remain in effect no longer than thirty (30) days, or 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 90-day variance in accordance with Rule 605 (1.2), or the date set forth in the emergency variance order, whichever is the shorter time period.
  8. Within ten (10) days after the date of expiration of an emergency variance, the applicant shall submit a written report to the Control Officer including, but not limited to, the following details:
    - a. Duration of excessive emissions.
    - b. Estimate of quantity of emissions.
    - c. Statement of the cause of the occurrence.
    - d. Corrective measures to be taken to prevent a recurrence.

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