

29.0 APPEALS

29.1 General

- A. Any person, if dissatisfied with the Director's decision concerning a variance, may, within 10 days, appeal; in writing, therefrom to the Board which shall within a reasonable length of time, after public hearing, confirm, modify, or reverse the Director's decision.
- B. Any other person who disagrees with any ruling of the Director for any reason concerning air pollution may, within 30 days, appeal in writing that ruling to the Board which shall, within a reasonable length of time, after public hearing, confirm, modify, or reverse the Director's decision.
- C. Every applicant or petitioner requesting an appeal shall pay a fee. The schedule of fees shall be based upon cost as determined by the Director with the advice and consent of the Board. All requests for an appeal shall be published in a newspaper of general circulation in Knox County, not less than thirty (30) days prior to any action taken upon a request for an appeal.

29.2 Public Hearing of Appeals

- A. Hearings of appeals shall be conducted before a majority of the Board and will be conducted in the following manner:
 - 1. The petitioner shall be given written notice at the earliest practicable time as to the time and place of such hearing.
 - 2. The Chairman of the Board or his delegated member shall serve as a Hearing Examiner to conduct hearings, and a complete record of the hearing shall be made for a review by the Board members.
 - 3. All testimony shall be recorded and may or may not be under oath, at the discretion of the Board. The transcript so recorded shall be made available to the petitioner or any party to the hearing upon the payment of the fee for transcribing said testimony.
 - 4. The Board, in considering the granting of a variance, shall give due consideration to the equities of the petitioner and the others who may be affected by granting or denying the petition.
 - 5. The Board may make the granting of a petition for a variance contingent upon such other requirements or restrictions on the petitioner as the Board may deem appropriate and reasonable.

6. Any variance granted shall be for a period not to exceed one year.
- B. If the variance is granted on the ground that there are 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 Board may prescribe.
 - C. If the variance is granted on the ground that compliance with the particular requirement or requirements from which the 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, in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable.
 - D. The Board shall issue and give to the petitioner, in writing, within sixty (60) days following the final argument in such hearing, its final order or determination. Such order or determination shall be approved by at least the majority of members to which the Board is entitled.
 - E. Upon failure of the Board to issue a final order or determination within sixty (60) days after the final argument in any such hearing the petitioner shall be entitled to treat for all purposes such failure to act as a granting of the variance requested.
 - F. The burden of proof in such hearings shall be upon the petitioner.
 - G. Nothing in this section and no variance or renewal thereof granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of these regulations to any person or his property.
 - H. All final decisions of the Director and the Board shall be on file in the office of the Department and may be inspected by the public during regular office hours.

29.3 Judicial Review

Any ruling of the Board shall be subject to judicial review in State court as provided by Tennessee law.