

§490-E. Variances

The owner or operator must comply with the performance standards in section 490-D unless a variance from those performance standards is approved by the department. Except where prohibited by section 490-D, the department may grant a variance from the performance standards in this article if the owner or operator affirmatively demonstrates to the department that the variance does not adversely affect natural resources or existing uses and does not adversely affect the health, safety and general welfare of the public. A variance application must include any fee applicable under section 490-J. The department shall process the variance application according to chapter 2 and the rules adopted by the department for processing an application. An applicant for a variance under this article shall hold a public informational meeting as described in those rules. [PL 1995, c. 700, §25 (AMD).]

The department shall adopt rules that set forth the standards for granting a variance from the performance standards in this article. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 602, §6 (AMD).]

When an owner applies for a variance to allow an excavation to be reclaimed as a pond of at least 10 acres but less than 30 acres in size, the department may require public access as a condition for granting the variance. When an owner applies for a variance to allow an excavation to be reclaimed as a pond of 30 acres or greater in size, the department may grant the variance only if the owner demonstrates that public access to the pond is ensured. The requirement for public access may be met by existing public rights or by granting an easement or other right including a right to travel a reasonable distance by foot to a designated area of the shoreline. [PL 2001, c. 466, §11 (NEW).]

A variance from performance standards may not be granted prior to March 1, 1997 unless the owner or operator requesting the variance had filed a notice of intent to comply under section 490-C prior to the effective date of this paragraph. [PL 1995, c. 700, §25 (NEW).]

The department shall publish a timetable for responding to variance applications in the same manner prescribed in section 344-B. A variance is not valid unless approved by the department and, if a municipality is the regulator, the municipality. In making its decision on variance applications, the department shall consider comments or information received and the compliance record of the owner or operator. The department shall inform the owner or operator of any significant concerns or issues raised. [PL 1995, c. 700, §25 (AMD).]

SECTION HISTORY

PL 1993, c. 350, §5 (NEW). PL 1995, c. 700, §25 (AMD). PL 2001, c. 466, §11 (AMD). PL 2005, c. 602, §6 (AMD).

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