



ADMINISTRATIVE RULES OF MONTANA



4.12.741 VARIANCE PROCEDURE

- (1) The Montana department of agriculture may grant a temporary or permanent variance if it finds that:
 - (a) the present or proposed anhydrous ammonia facility does not constitute a danger to public health or safety and;
 - (b) compliance with the rules from which the variance is sought would produce hardship without equal or greater benefits to the public.
- (2) No variance or temporary variance may be granted except after public hearing on due notice and until the Montana department of agriculture has considered the relations interests of the applicant, other owners or property likely to be affected by the anhydrous ammonia facility, and the general public.
- (3) The variance or temporary variance may be renewed if no complaint is made to the department because of it or if, after the complaint has been made and duly considered at a public hearing held by the department of agriculture on due notice, the department finds that the renewal is justified. No renewal may be granted except on application therefore. An application shall be made at least 60 days before the expiration of the variance or temporary variance. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1) .
- (4) Variance or temporary variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the department of agriculture. However, a person adversely affected by a variance or temporary variance, or renewal granted by the department may obtain judicial review thereof.
- (5) Nothing in this section and no variance, temporary variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of 80-10-303(5) MCA, pre-existing facilities. If the department determines that a danger exists to health, safety or welfare that was not known at the time of issuance of the variance, then the variance, or temporary variance may be revoked.

Authorizing statute(s): Sec. 80-10-503, MCA

Implementing statute(s): Sec. 80-10-503, MCA

History: NEW, 1986 MAR p. 1820, Eff. 10/31/86.