

Procedures for Processing Requests for Temporary Variance or Interim Authority Effective August 16, 2013

A temporary variance or interim authority is authorized under Ark. Code Ann. § 8-4-230, as amended by Act 1021 of 2013. Act 1021 will become effective August 16, 2013. Under this Act, the Director is required to make a decision within ten days of receipt of the request. Therefore, after August 16, 2013, please follow the procedures outlined in this document in order to ensure that a timely decision is reached by the Director on any request for temporary variance or interim authority sought under Ark. Code Ann. § 8-4-230.

Both a temporary variance and interim authority are permitting decisions of the Director. The applicant must submit a \$200 nonrefundable fee along with any information in support of the request for a temporary variance or interim authority. The applicant should include information in its request that addresses each factor the Director is required to consider.

Because the Director is required to make a decision within ten days of receipt, the applicant should submit its request to the Director with a cover page that clearly identifies the request as one for a temporary variance or interim authority. Also, the cover page should alert the mailroom or anyone handling the request that it is time sensitive. Therefore, ADEQ recommends that any application for a temporary variance or interim authority under Ark. Code Ann. § 8-4-230 should include a cover page with the following language clearly displayed:

**Request for Interim Authority or Temporary Variance Enclosed
This request is Time Sensitive
And
Requires a Director's Decision within 10 Days of Receipt**

Once a request for a temporary variance or interim authority is received, the procedures set out below should be followed in processing the request.

1. Timelines

The Director must make a decision within ten (10) days of receipt of a request for a temporary variance or interim authority, and the Director's decision must be published in a newspaper of general circulation within five (5) business days of the Director's decision.

For compelling reasons and good cause shown, the Director may grant a request for a temporary variance or interim authority. When a request for a temporary variance or interim authority is submitted to the Director, he or she has ten days to make a decision on the request. The Director may grant an unconditional temporary variance or interim authority, grant a temporary variance or interim authority with clearly stated conditions designed to be protective of human health and the environment, or deny the request. In order to render a timely decision, any request for temporary variance or interim authority must be routed and reviewed according to the following schedule:

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- Day 1-The request must be **forwarded immediately** upon receipt to the Chief of the media division responsible for preparing a draft recommendation on the request for the Director.
- Day 1-The Chief must immediately distribute the request to staff for drafting a recommendation. The staff shall consider the factors listed in paragraph numbers 2 through 4. The draft recommendation should be prepared within three days of receipt of the request. (All draft recommendations must include a description of the request and a written justification supporting the recommendation that sets out the factors considered.)
- On or before Day 4-Staff must forward the draft recommendation to the Division Chief and Legal Division Chief.
- On or before Day 6- The Division Chief and the attorney assigned to the matter by the Legal Division Chief must complete review of the draft recommendation within two days of receipt.
- On or before Day 8- the Division Chief and Legal Division Chief forward the final draft recommendation to the appropriate Deputy Director and the Director.
- On or before Day 10-Director makes his or her decision on the request.
- Public notice of the Director's decision must be forwarded to a newspaper of general circulation in the state as soon as possible in accordance with Section 5 below.

2. Factors which must be considered in making a decision.

In making his or her decision, the Director must consider certain factors. The Director cannot consider the statutorily specified factors in a timely manner (within ten days of receipt) without the applicant first submitting adequate documentation to support each separate factor. Therefore, the first step in processing a request for a temporary variance or interim authority will be to ascertain whether or not the applicant has provided sufficient information to enable the Director to consider the following factors:

- The environmental and public health effects of the request;
- Any economic advantage obtained by the requesting party over other similarly situated facilities that are operating in accordance with similar permit conditions and that have not requested a temporary variance or interim authority; and
- Whether strict compliance would result in the substantial curtailment or closing down of an existing business seeking a temporary variance or a proposed business seeking interim authority.

If the documentation provided by the applicant in support of its request for a temporary variance or interim authority is not adequate to allow the Director to consider these factors, then the recommendation should be to deny the applicant's request.

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In any event, and as previously noted, all draft recommendations must include a description of the request and a written justification supporting the recommendation that sets out the factors considered.

3. Additional factors to be considered for a request for temporary variance.

If the documentation for a temporary variance provided by the requesting party is adequate to allow the Director to consider the three factors listed in Section 2, then the Director may also consider the following factors:

- Whether strict compliance with permit terms is inappropriate because of conditions beyond the control of the person requesting the temporary variance;
- Whether the temporary variance request is prompted by recurrent or avoidable compliance problems;
- Whether a review of the operational history of the requesting party reveals relevant information; and
- Whether the public interest will be served by a temporary variance.

4. Additional factors to be considered for a request for interim authority.

If the documentation for interim authority provided by the requesting party is adequate to allow the Director to consider the factors set out in Section 2, then the Director may also consider the following factors:

- Whether the applicable permitting applications were timely and completely submitted;
- Whether there has been a delay in the final permitting action caused by conditions beyond the control of the person requesting the interim authority;
- Whether contractual or other business obligations will become due before a proper permit can be issued; and
- Whether the public interest will be served by construction or operation during the application review and permit issuance process.

5. The Director's decision must be published in a newspaper of general circulation in the state within five (5) business days of the Director's decision.

The Director's decision must be published in a newspaper of general circulation within five (5) business days of the Director's decision. Once the Director's decision is final, ADEQ will send a public notice of the decision to the newspaper for publication as soon as possible to ensure that the notice is published timely. The Arkansas Democrat-Gazette ("D-G") is probably the most likely newspaper to meet the description of "a newspaper of general circulation in the state." The D-G's normal deadlines for publishing legal notices are:

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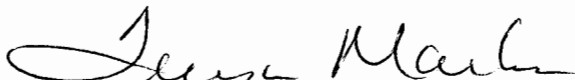
- For publication on Wednesday, Thursday, Friday, Saturday, or Sunday, the deadline is noon two days before the desired publication date; and.
- For publication on Monday or Tuesday, the deadline is noon on the preceding Friday. (The Legal Advertising Department of the paper is not open on weekends to process requests for ads.)

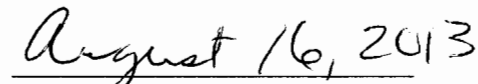
However, these “normal” deadlines could be subject to change. Given the uncertainty of the paper’s deadlines, it is important to forward the public notice to the newspaper as soon as possible. (If any question should arise, the Legal Advertising Department at the D-G can be contacted in advance of the planned publication date to confirm the actual deadline.)

The applicant is responsible for the costs of publication if the decision is to grant the request for a temporary variance or interim authority, and ADEQ is responsible for the costs of publication if the decision is to deny the request for temporary variance or interim authority. If the decision is to grant the applicant’s request, then ADEQ will send an invoice to the applicant for the publication costs.

6. The Director may revoke or modify the conditions of a temporary variance or interim authority.

The Director is authorized to revoke or modify the conditions of any temporary variance or interim authority for compelling reasons or good cause shown.


Teresa Marks, Director


Date