

**§ 130A-309.215. Variance authority.**

(a) In recognition of the complexity and magnitude of the issues surrounding the management of coal combustion residuals and coal combustion residuals surface impoundments, the General Assembly authorizes the Secretary to grant a variance to extend any deadline under this act, on the Secretary's own motion, or that of an impoundment owner, on the basis that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public.

(a1) For variances requested by an impoundment owner, the owner shall, no earlier than one year prior to the applicable deadline, submit an application in a form acceptable to the Department which shall include, at a minimum, all of the following information: identification of the site, applicable requirements, and applicable deadlines for which a variance is sought, and the site-specific circumstances that support the need for the variance. The owner of the impoundment shall also provide detailed information that demonstrates (i) the owner has substantially complied with all other requirements and deadlines established by this Part; (ii) the owner has made good faith efforts to comply with the applicable deadline for closure of the impoundment; and (iii) that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public. As soon as practicable, but no later than 60 days from receipt of an application, the Secretary shall evaluate the information submitted in conjunction with the application, and any other information the Secretary deems relevant, to determine whether the information supports issuance of a variance.

(a2) The Department shall provide for public participation on a proposed variance in the manner provided by G.S. 130A-309.214(b) and shall take the public input received through the process into account in its decision concerning issuance of a variance. The Department shall only approve a variance if it determines that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public. The Department shall issue its determination in writing, including findings in support of its determination. If the Department fails to act on a variance request within 60 days of receipt, the variance shall be deemed denied.

(a3) Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the General Statutes.

(b) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016.

(c) Repealed by Session Laws 2016-95, s. 1, effective July 14, 2016. (2014-122, s. 3(a); 2016-95, s. 1.)