

## Meyers, Leasue

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**From:** Bollinger, Michael F <MBollinger@ameren.com>  
**Sent:** Friday, November 07, 2014 2:00 PM  
**To:** Meyers, Leasue  
**Cc:** Pozzo, John C; Smallwood, Michael J; Bollinger, Michael F  
**Subject:** RE: Draft Provisional Variance Language  
**Attachments:** Provisional Variances draft with proposed Ameren changes.docx

Leasue: Consistent with our recent discussions, I marked up the draft revisions to the language in 20-6.010 you sent me (several months ago), to address Ameren's initial concerns. Attached is a copy of the document in track changes mode, for your consideration. I believe these changes would provide considerable flexibility and better reflect the process we followed previously in Illinois, while remaining fully consistent with the changes to the Missouri statute. Please call me or reply to this email if you have questions or comments regarding these suggested edits.

Thanks - mfb

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**From:** Meyers, Leasue [<mailto:leasue.meyers@dnr.mo.gov>]  
**Sent:** Wednesday, July 02, 2014 1:26 PM  
**To:** Bollinger, Michael F  
**Subject:** Draft Provisional Variance Language

Mike,  
Attached is the draft language for 10 CSR 20-6.010 for provisional variances. Ideas on improvements to the rule language or guidance to assist facilities would be greatly appreciated.

Thanks,

Leasue Meyers, EIT  
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### **(13) Variance Request Process**

- (A) Applicability.** Any person, permittee, or group of permittees seeking a variance shall file a petition for variance with the Department. The petition shall include the following:
- 1. The appropriate fee as required in 10 CSR 20-6.011;**
  - 2. A statement identifying the limitations, rules, standards, requirements, or orders from the Department the applicant is seeking a variance from;**
  - 3. A statement on the conditions giving rise to the need for a variance;**
  - 4. If seeking a variance from a permit limitation, the amount of pollutant the applicant is seeking to discharge;**
  - 5. An assessment of any adverse environmental impacts the variance may produce;**
  - 6. A statement explaining why compliance with the limitations, rules, standards, requirements, or order imposes an arbitrary or unreasonable hardship;**
  - 7. A description of the proposed methods to achieve compliance with the limitations, rules, standards, requirements, or order;**
  - 8. The period of time for which the variance is requested; and**
  - 9. A statement regarding the current permit status of the applicant(s) and any orders in effect regarding the applicant's activities.**
- (B) The Department shall review the petition and submit a recommendation to the Clean Water Commission as to whether the variance should be granted or denied.**
- 1. The Department shall notify the applicant(s) of the recommended action and at the same time shall provide notice to the public prior to the Clean Water Commission.**
  - 2. The Clean Water Commission may approve, require changes, deny and hold public hearings on the petition request.**
  - 3. In any hearing pursuant to this section the burden of proof shall be on the person, permittee, or group of permittees petitioning for a variance.**
  - 4. The Clean Water Commission may require the filing of a bond or other security as a condition for the issuance of a variance in an amount determined by the commission to be sufficient to ensure compliance with the terms and conditions of the variance. The proof of financial responsibility maybe in the form of a surety bond, certificate of deposit (CD), or irrevocable letter of credit and shall be subject to the following:**
    - A. The bond shall be signed by the applicant(s) as principal, and by a corporate surety licensed to do business in the state of Missouri; and**
    - B. The bond shall remain in effect until the terms and conditions of the variance are met and rules and regulations promulgated pursuant thereto are complied with.**
  - 5. Any decision of the Clean Water Commission made pursuant to a hearing held pursuant to this section is subject to judicial review as provided in section 644.071 RSMo.**
- (C) Provisional Variance.**
- 1. A provisional variance is short term, time limited reprieve from limitations, rules, standards, requirements, or order of the director because of conditions beyond the reasonable control of the permittee and will result in arbitrary or unreasonable hardship and the costs of compliance are substantial and certain.**
  - 2. In accordance with 644.062, RSMo 2013, any person or permittee may apply for a provisional variance for limitations, rules, standards, requirements, or orders from the Department pursuant to sections 644.006 through 644.141, RSMo. A provisional variance may not be granted under this regulation for limitations, rules, standards, requirements, or orders from the Department pursuant to other statutes. The applicant must submit the information required in subsection (13)(A) of this rule with its petition for a provisional variance.**
  - 3. The provisional variance is issued by the Department. If a provisional variance is granted, notice shall be published in the same method as operating permits issued by the Department. The Department shall promptly notify the applicant of the decision in writing, and file the decision with the Clean Water Commission. Granting of a**

- provisional variance is documentation of the Department's enforcement discretion. There is no public notice period prior to issuance of a provisional variance.
4. Provisional variances will not be granted for the following:
    - A. In the Department's judgment said variance would endanger public health, cause significant harm to aquatic life or wildlife, result in damage to property, or other demonstrable and measurable harm to downstream interests;
    - B. In anticipation of Federal approval of any changes to a state water quality standard;
    - C. From the requirement to obtain a permit for an activity, in accordance with 10 CSR 20-6 and section 644 RSMo.;
    - D. To allow an activity which would otherwise require a permit to begin before the Department issues or denies a permit; or
    - E. To allow a facility to exceed a permit limitation while the Department considers an application to modify the permit limitation.
  5. A provisional variance may be issued to for up to forty-five (45) days, and may be extended once for up to an additional forty-five (45) days. The appropriate length of the provisional variance shall be determined at the discretion of the Department.
    - A. Provisional variances may be issued for periods less than forty-five (45) days, or terminated earlier than the length of time specified at issuance, at the permittee's request (assuming the variance is no longer essential for compliance).
    - A-B. The provisional variance may be granted subject to conditions determined necessary by the Department. In order to qualify for an extension, the applicant must demonstrate that the conditions under which the previous variance were granted still exist or are substantially similar.
    - B-C. In no case shall a provisional variance be granted to the same person or permitted entity for more than ninety (90) days within the same calendar year.
  6. Should a person or facility apply for ~~a third~~ multiple provisional variances or a single variance for the maximum ninety (90) days allowed, for relief from the same limit, rule, standard, requirement or order, subject to the restrictions set forth above, a long term plan to eliminate the need for a provisional variance shall accompany the application for ~~the third~~ subsequent variance requests in order for the application to be considered complete. ~~The plan shall include timelines for changes at their facility to alleviate the need for a variance.~~
  7. If the provisional variance is issued for delay of implementation of limitations, rules, standards, requirements, or orders from the Department to correct a violation, section 644.062 RSMo. requires the applicant post a performance bond or other security to assure completion of the work covered by the variance. The proof of financial responsibility maybe in the form of a surety bond, certificate of deposit (CD), or irrevocable letter of credit and shall be subject to the following:
    - A. The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do business in the state of Missouri;
    - B. The bond shall remain in effect until the terms and conditions of the variance are met and rules and regulations promulgated pursuant thereto are complied with;
    - C. It must be placed on file with the Department;
    - D. It must be made payable to the Department of Natural Resources; and
    - E. If the bond, CD, or letter of credit is cancelled by the issuing agent, permittee must submit new proof of financial responsibility within thirty (30) days of cancellation, or provisional variance will be cancelled.